

Senator Adam Kline

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Senator Adam Kline

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- Judiciary (Chair)
- Labor & Commerce
- Ways & Means

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Dear Neighbors,

I've spent most evenings these past three months on my active listening tour, my autumn-and-winter round of neighborhood groups, crime prevention councils, and service clubs, in which I just appear and ask what you want me to do this year. (As opposed to the spring round, right after session, when I spend a couple of months telling y'all what we just did.) The Budget we stripped bare last session kicked in on July 1, and already I'm getting an earful. I promise—this year, we'll fight even harder to enact some **tax increases to defray the human cost of the budget cuts**. I'm not going to hold my breath for the Legislature to enact Senate Bill 6147, the high-earners income tax bill that Sen. Kohl-Welles and I introduced last session, but we will go to the mat for a significant stream of revenue, raised from the wealthier among us, and applied to services for the folks struggling the hardest.

Five years ago, Congress let the federal ban on assault weapons expire; now we are seeing them in the marketplace, and—more tragically—in the news. I have brought a **bill to ban assault weapons in Washington**. In July, right here in Southeast Seattle, a young man was killed, and then in late October a police officer was killed and another hurt, both times by assailants armed with assault weapons. These weapons are designed for war: their purpose is to enable a soldier to kill the largest number of enemy combatants in the shortest time. They are efficient killing-machines, with no legitimate civilian use. The bill will ban them outright.

Having heard from local advocates for day-laborers, and from unions representing workers in the construction trades, that there has been an increase in incidents of employers withholding wages, I have introduced a **bill to strengthen our laws against wage-theft**.

Reports of Puget Sound fish with traces of estrogen and a high rate of deformities have prompted concern over the way we dispose of unused drugs by flushing them down the drain or tossing them in the garbage. I've convinced law enforcement and public health groups to join with environmentalists to help pass a **medications "take-back" and disposal program**.

We'll consider the offense of **Driving While Poor**, known officially as Driving While License Suspended, 3rd Degree. Prosecutions for this minor crime are fully 30% of the caseload of the District and Municipal Courts, and I aim to repeal it, substituting a way for motorists to get their fines paid, insurance in place, and their licenses back.

Honorable mentions: **"Basic Education" defined, and a funding formula in place; environmental priorities in a no-money budget.**

As usual, this is just a sample of the public policy issues that occupy your public servants in Olympia. If there is something of personal interest to you that didn't happen to make the cut in this edition, I want you to call me and let me know. If you are interested in how your state government works, I want to talk with you.

Doggone, I love this job!

Adam Kline

Why We Need A Tax Increase



At an early October hearing before the Senate Committee on Ways and Means, on which I sit, our new State Economist, Dr. Arun Raha, predicted that overall tax revenues for the 2009-11 biennium would be slightly below the level of 2006, and that only a slight increase can be expected early in the 2011-13 biennium. A more detailed quarterly forecast will come after this newsletter goes to press, but the outlook

is not a happy one for our state's many unemployed, for those caught in the social services safety net, nor for kids and teachers in public schools. While the presentation showed much cause for concern in all economic indicators, the worst news was for those Washingtonians now out of work and seeking jobs.

Economists look to initial unemployment claims as the lead indicator of the job-market. Nationally, the peak in initial claims was in March 2009, when almost 670,000 Americans put in for unemployment compensation, but this year's pattern shows a sustained level of unemployment long after the peak, worse even than the infamous "jobless recovery" of 1982-83. Given the enormity of the numbers, it's cold comfort that Washington's unemployment rate rose more slowly than the nation's as a whole, and is expected to drop a bit more quickly because of our benefit from local exports to the Asian markets where recovery has already started. Dr. Raha also confirmed what my friends in the construction trades had been telling me for months: construction is way down, and men and women with years of construction experience, and kids to feed, were taking lower-paying jobs.

This is the worst possible time to burden working people with a tax increase, yet a revenue increase is sorely needed. The trick will be to devise a change to the tax-structure as a whole that eases the burden on ordinary wage-earners, and imposes that burden on those who can best shoulder it—exactly what a fair tax-structure would have done from the outset.

I have been meeting this fall with other progressives on the Ways and Means Committee to review our choices, and to narrow them in a way that takes our shared values into account. We've agreed to several basic tests of any tax change: First, it must tax those who can afford to pay more. Second, it must target products or activities that do social harm. Third, any new revenues must be relatively stable. These values will be applied to some existing tax-loopholes that can be closed, to existing taxes such as the B&O that can be altered, and to any extension of the Retail Sales Tax—the most regressive of all—to goods or services not currently taxed.

Among the possibilities at this early date, the first should be closing loopholes in the existing tax structure that seem to have been politically rather than fiscally motivated: gaps in the taxation of property, gross receipts (B&O), and retail sales that appear to have been passed by our predecessors to satisfy some political interest, rather than in the service of rational economic policy.

Second, in my view, is an extension of the sales tax to those services the users of which are most commonly businesses or the very wealthy: accountants, consultants, lobbyists, architects, engineers, and yes, lawyers' hourly fees.

Third—and let me admit up-front that this is an opportune moment to do what we should have done long ago for small businesses and start-ups—is a rearrangement of the B&O tax that would exempt the first so many thousand dollars of gross receipts altogether, and grant some reasonable exemptions, but then increase the rates uniformly, so that the result is more nearly a tax on a business' *profit* rather than on its gross receipts.

Fourth, without raising the *rate* at which property is taxed, we can certainly expand the tax-base to include intangible property, and thus take some pressure off owners of real property. Trademarks, trade names, copyrights, and other intangibles are no less "property" than land and houses, are typically owned by businesses, and are currently tax-exempt by state law.

I'd add a series of sin taxes to this list (liquor, cigarettes), but in all these decades without an income tax, we've repeatedly searched for other sources, and always found sin a politically easy target. It may be politically incorrect to say this, but these are sales taxes, and thus inherently harder on low-income people. Hey, smokes are \$9.63 a pack, and a guy can't afford a bottle of good whiskey without a trip to Canada. Let me suggest instead that we re-examine the \$3.2 billion in breaks we gave in 2003 to a certain airplane manufacturer, which promptly moved its mucky-mucks to Chicago and now its production to South Carolina.

Assault Weapons Ban



From September 14, 1994, when President Clinton signed it, until September 14, 2004 when Congress allowed it to expire, federal law banned a well-defined type of semi-automatic weapon. They are now showing up in legal gun sales at dealers, in illegal sales at gun-shows, and, a few months ago, in the murder of young Aaron Sullivan in an otherwise peaceful street in Leschi. Three months later and a mile away, Officer Tim Brenton, SPD, was gunned down with a similar weapon, and a police trainee was injured as she returned fire.

Aaron was 17, a good student in his junior year at NOVA, a likely college applicant, and as the police quickly learned, a young man without the slightest interest in gangs. Officer Brenton was a respected veteran of the Seattle Police Department, a husband and father of two. Both were killed senselessly, with lethal weapons wholly out of place in civilian life.

Fully automatic weapons have been banned by federal law since 1934, and no one questions that policy. Here's the rub: the difference between fully- and semi-automatic is that with a semi you have to move your trigger-finger to pull off shots at a rate of up to 200 a minute, while a fully-automatic does it with one pull. *Yes, that's the only difference.*

Both are military weapons, developed to allow soldiers to clear large areas quickly. In civilian use, the only real purpose of semi-automatic assault weapons is gang-warfare and crime; these “street-sweepers” are staples in the drug trade already. They are designed with large magazines and with pistol-grips so that even an untrained amateur with lousy aim can just point them in the general direction of the people he wants dead and be assured a kill, or several, or dozens. They represent a quantum leap in lethality; it is this that differentiates them from ordinary rifles and shotguns.

Yet the NRA claims that attempts to ban them are just “Democrats trying to seize our deer-rifles,” a violation of their Second Commandment. So far, when the NRA has opposed rational gun legislation in Washington, it has been 100% successful. (There was a bill last year in which for the first time the NRA acquiesced; it banned possession of a firearm by a person who had been involuntarily committed for long-term mental health treatment.)

This year, I have introduced legislation to ban assault weapons, a defined class of semi-automatic weapons. I have assembled a statewide coalition of interests, including individual sheriffs and police chiefs, some prosecutors, community-based youth and anti-gang groups, the NAACP, leaders in the medical and nursing professions, and, at the head of the line, Aaron’s mother, Dr. Deborah Sullivan, a highly respected educator and civic leader in our city.

This bill may pass this year, maybe next, maybe in a few. It certainly will not pass if good people remain silent. I’m in this for the long haul. In a state in which any legal gun can be sold illegally at gun-shows, with no questions asked, we cannot allow these highly lethal killing machines to become the new norm.

Wage-Theft



At a hearing that I scheduled in the Senate Judiciary Committee this fall, representatives of Laborers Local 440 and of Casa Latina testified to the many problems faced here in Seattle by their members. Casa Latina has for the past 18 years afforded working opportunities, ESL and citizenship classes, and many other services to recent immigrants, and last year re-located to our District. Workers, some speaking through a translator, testified to violations such as non-payment of wages and/or overtime, payment of less than the legal minimum wage, unexplained deductions from pay, and the use of threats to keep injured workers from making Workers Compensation claims. They said that although some individual homeowners have been identified as violators, the majority are established companies. Many of the victims are immigrants, some undocumented, who are thought by their employers to be less likely to complain to authorities. Yet, as the witnesses pointed out, those employers who were established businesses withheld income tax from their pay and presumably remitted the tax to the IRS.

The phenomenon is hardly just local: a study published by the Ford Foundation this fall surveyed almost 4,400 workers in low-wage industries in three states, and found that the typical worker had lost \$51 in wage violations in the previous week, out of an average weekly wage of \$339. That’s a 15% loss in pay, a huge loss to anyone, but more so to people earning at that

level. The victims are typically on the lowest rung of the economic ladder: the study found that in the week before the survey, 26% of the workers had been paid less than the minimum wage, and one in seven had worked off the clock. Of those who had worked overtime the previous week, 76% had not been paid fully for it. The full study, published in *The American Prospect*, can be found at http://www.prospect.org/cs/articles?article=broken_laws_unprotected_workers.

The workers who testified before my committee understood that nothing government can do will fully erase this embarrassment. They sought merely a tool with which they can seek justice. Under current law, they have two poor choices. They can theoretically hire a lawyer, and if they somehow persist in court and win, the court can award double damages. Or they can make a complaint to the Department of Labor and Industries, and wait up to three years while L&I’s understaffed employees investigate, seek documents, and chase down employers—some of whom will by then have sold the business or just changed its name and address, in some cases solely to escape liability.

We can do better than that. I have introduced legislation that will streamline the L&I process and remove the barriers to recovery, so that it works quickly and effectively to bring justice to victims of wage-theft.

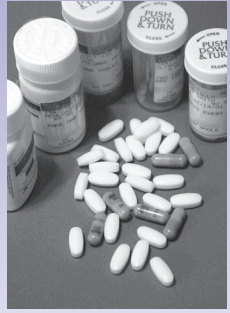
First, because time works against workers who live from paycheck to paycheck, the bill requires L&I to make its decision within 60 days of the worker’s written complaint.

Second, the state needs to send a message to cheating employers: the bill increases the penalty against employers who are repeat violators and those found to have a business practice of disregard for wage law. Current law already allows for payment of back wages, with interest at 1% per month, and a discretionary penalty of either \$500 or 10% of the unpaid wages, whichever is greater. However, the law allows the penalty to be waived if the employer pays in full within 10 days of the final order. This allows some employers to play a familiar cat-and-mouse game, requiring the workers to initiate this time-consuming process, in effect betting they won’t, especially those who fear the *Migra*--but then in the few cases in which the worker wins the final order, the employer can pay up within 10 days, thus avoiding penalties, and treat the interest as a cost of doing business. The bill combats this practice by raising the *minimum* penalty from \$500 to \$1,000 against all violators, and targets repeat violators by making the *full* penalty (up to \$20,000) non-waivable if the employer had been found liable for a wage violation in the previous five years.

As to employers who sell the business after a citation has been issued, whether to avoid paying wages or for other reasons, the bill makes the successor (the business buyer) liable, with a right to seek contribution from the initial owner who left the workers unpaid. My guess is that this will make business buyers and their lawyers a little more careful about assuring that wages are paid in the first place, like the heat and light.

At the initial hearing on this bill, some legislators resisted, asking about the immigration status of the workers who testified. I ruled those questions out of order, as I believe they are. People who came here to work so that they can feed their families are due simple justice—honest pay for honest labor—and this the state can provide, regardless of the status of federal paperwork.

Medications Take-Back



Ever wonder what happens to all those pills you have in your medicine-cabinet? Yeah, right there behind the mirror you look at every morning. Aspirin, pain-meds, those antibiotics you didn't finish, the excema ointment—all that stuff. Where does it go when you don't need it any more?

Most likely, some has gone in the garbage, or was tossed in the john, or...uh...

passed through you first. In Seattle, what goes in the john gets to Puget Sound, and what goes in the garbage gets to a landfill. Some preliminary studies are showing Puget Sound fish with estrogen levels. Yes, fish with estrogen. And heaven knows what's leaching from landfills into groundwater. Seattle, we have a problem.

With a little help from my friends, I think I have a solution: Senate Bill 5279, which will require the pharmaceutical manufacturers, who sold us these pills and who profit handsomely from our \$3.5 billion annual prescription and over-the-counter drug purchases, to design *and fund* a process to take the unused pills back and dispose of them safely. Safe disposal means incineration at 1100 degrees F., sufficient to change the drugs' molecular structure (or something like that) so the smoke is non-toxic.

This idea was brought to me by environmental activists. But it occurred to me that there are others who need to support any process to get old or excess drugs out of our medicine cabinets: cops for one and public health officials for another. Cops can tell legislators about kids getting high on Mom's prescription drugs and selling them at school. Public health folks have statistics on deaths and severe complications caused by this same behavior. Bingo, a coalition that ought to appeal to every legislator.

Enter the large manufacturers, represented by the Pharmaceutical Research and Manufacturers Association (Pharma). These folks are interested in selling drugs, not taking them back. Based on its opposition to this bill last session, both in the Senate and House, it is clear that Pharma will continue to resist the notion that those who put a product into the marketplace and profit from it owe the public some obligation of stewardship over it. A few years back, we took the electronics manufacturers down this path; the presence of mercury in many of their products required that they oversee responsible disposal of dead computers. We were aided by conscientious users and buyers of computer electronics, who pressured the industry until its leaders—a politically savvy bunch—finally heard their customers.

Big Pharma isn't there yet. As I write this, the industry is getting what it wants in Congress right now, and apparently doesn't feel it needs to worry about some state legislature in the upper left hand corner.

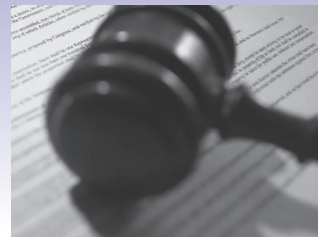
Never mind that just north of us in BC, when the provincial parliament made it clear in the late 1990's that it would pass a comprehensive product-stewardship law requiring manufacturers of electronics, paints, pharmaceuticals, industrial chemicals, and a host of other consumer products, to plan and pay for a take-back and recycling program, Pharma chose to cooperate. It now pays about \$325,000 (that's Canadian) per year as its share

of the total program. There may be somewhat more or less cost in Washington, since our population is half-again greater than BC's, but our land-mass and hauling-distances are smaller.

I'm told by some colleagues that Pharma's lobbyists claim the take-back program would cost \$5 million per year, a figure I'd question if I ever saw it in writing. But let's not quibble over mere millions! Let's look instead at some real money: In this Washington, according to the Kaiser Family Foundation's website, *statehealthfacts.org*, prescription drug sales in 2008 were a tad under \$3.5 billion, and that's not including over-the-counter drugs. (Using *Forbes Magazine's* estimate of an industry-wide average profit margin of 19%, that's \$665 million in annual profits from our state.) And in the other Washington, in just the first six months of 2009, *Time Magazine* reports that the industry spent \$110 million on lobbying Congress—that's \$609,000 per day, every day, for half a year, with 1,228 registered lobbyists, or 2.3 lobbyists per Member of Congress. Then there's the \$4.4 billion spent annually on direct-to-consumer advertising, a major annoyance to your doctor. And then there's the tiny figure of \$124 million—that's the amount that six manufacturers just paid in December to settle a Justice Department lawsuit claiming that they had cheated the federal and state Medicaid programs by mis-classifying a variety of drugs in order to pay a lower rebate.

So if Pharma ends up spending roughly the same here as in BC to exercise a little stewardship over its products, it will be a tiny fraction of their profits from drug sales in the state. (And a little over *half a day's* worth of their Congressional lobbying budget.) It will mean that kids will be less likely to play with drugs, and teenagers less likely to get high or sell them, and all of us less likely to rely on old ineffective drugs when we're sick, and fish less likely to have estrogen levels. Still, Pharma's lobbyists in Olympia are fighting this. Stay tuned.

Driving While Poor



As Chair of the Senate Judiciary Committee, I am the one committee chair whose chosen agenda is made easier, not harder, by the current recession and the anticipated downturn in state tax revenues. The committee chairs in healthcare, education, and social

services seek to protect beneficial programs that require more state funding than we have available. By contrast, the major expenditure in my beat is incarceration, which costs the taxpayers \$37,000 per year per average inmate. I have long believed that we use these funds unwisely when we dictate long mandatory minimums for non-violent offenders, such as in drug and property crimes, and when we fail to provide drug-treatment for addicted offenders while in custody.

These past two years, I have made good use of this crisis by taking steps to reduce county jail and state prison population in a responsible way, most notably by the Legislature's passage this past session of two of my bills: Senate Bill 6167, which raised the dollar thresholds of some eight property crimes, such as theft and bad-check writing, and Senate Bill 5732, which authorized the prosecutors and courts to divert offenders to re-licensing

programs instead of prosecuting them for Driving While License Suspended, Third Degree. These are folks who failed to show up at a hearing or pay a fine, other than for DUI. It is the common understanding of judges, prosecutors, and defenders that some small fraction of these offenders are scofflaws; most are simply unable to pay their fines, hence the term “Driving While Poor.”

This offense, DWLS-3, represents a whopping 30% of the caseload of our District and Municipal Courts, so my goal here is getting offenders off the courts’ dockets and into programs in which they pay their overdue fines and get their licenses back. This benefits both the drivers, many of whom need to drive to work or school, and the cities and counties to whom these fines are due.

While SB 5732 is expected to both reduce dockets and get drivers re-licensed, I had initially sought more: the complete *de-criminalization* of Driving While Poor. Police and prosecutors resisted, and I suspect that their resistance was based on their desire to maintain the search-and-seizure authority over a car and driver that comes incidental to a lawful arrest for a *crime*. Since the bill’s passage, however, the US Supreme Court has ruled that a search violates the Fourth Amendment where the only crime apparent to the officer is driving on a suspended license. This removed the only remaining reason for the police resistance.

I expect to go forward this year with a bill conforming to my original purpose: the *de-criminalization* of Driving While Poor. The bill will not deprive the police of a needed law enforcement tool. It will free up our courts and local jails to deal with more serious offenses and will induce low-income drivers to get their fines paid, their licenses re-instated, and to become insurable and back on the road legally—in short, the goal is to solve the underlying problem, which has never been solved by an arrest.

Note: this one’s for the late Bob Markholt (1939-2009), whose dedication to the apprentices he trained was an inspiration to many, and who got me working on this issue.

Marijuana Reclassification



Senate Bill 5615, sponsored by Senator Jeanne Kohl-Welles and myself, passed out of Senate Judiciary Committee last session, and is now in the Rules Committee, from which we may get it to the full Senate. I confess, I had to get a Republican vote to get the bill out of committee,

since I don’t have all committee Democrats on this issue, but that’s the nature of the my job (Can you blame me for loving this job?). The vote-counting is on, and the results are still unclear, but you’ll hear about it first on my blog visit SenateDemocrats.wa.gov/senators/kline.

The bill reclassifies from misdemeanor to infraction the status of the prohibition, as applied to adults who simply possess 40 grams or less. (It will not change our laws against sale, delivery, or manufacture.) Get caught with that much, and you pay a \$100 fine. No jail time, no criminal record, no explaining on the job application.

Would I prefer simple legalization of marijuana for adults, regulated like alcohol and taxed? Yes, I would. But not only do

we not have the votes, there is some question about whether the federal government would step in to prosecute where we do not. President Obama has instructed Attorney-General Holder to desist from the gamesmanship played by the Bush administration against California’s legal purveyors and users of *medical* marijuana, but there is no assurance that the administration would take the same tack if we were to *generally* legalize it.

K-12: the Definition of “Basic Education”



Last session, in House Bill 2261 we defined “basic education” as that term is used in our state constitution. Given a no-money budget, it was literally the best we could do, in at least two senses of the word. More obviously, at least we could define it, even if we couldn’t pay for it. But less obviously, we could put ourselves on the hook for it in court. The constitution man-

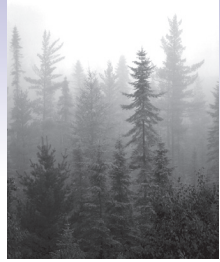
dates that it is our paramount duty to provide amply for the basic education of every child within the state’s borders. Having defined the term ourselves, we’re on the hook for funding it as of 2018—and we are betting on an economic improvement that will allow us the new and stable revenues needed to make good on our promise.

The first order of business this year will be to design a new funding formula, to take effect in the 2011 school year. A prototype was established last session, but needs to be fleshed out with recommendations coming from a funding workgroup of technical experts, a group established in last year’s bill. The workgroup has established seven sub-groups to deal with particular funding items: teachers’ planning time, class-size help for high-poverty schools, specific needs of small schools and districts, central administration, technical education and running start programs that allow greater per-student funding, categorical programs like LAP and Bilingual, and substitutes and sick-leave.

Meanwhile, the Professional Educator Standards Board has met several times this summer to develop a uniform assessment tool for the certification of teachers, a task originally given to the Professional Educator Standards Board in 2008, but now made more urgent, as it will replace the college program requirements in 2011. The same group unveiled *Pro-Teach*, an online program by which each teacher will, over a period of up to 14 months, develop a “portfolio” demonstrating evidence of teaching skills. This replaces continuing education credits, which many teachers had criticized as “seat-time” spent in wasteful seminars, requiring no demonstration of skill. Teachers’ comments were taken into account in making this change.

The new attention we are paying to teacher certification has led us to establish a category of “master teacher,” again relying on the PESB to establish the defining characteristics. The PESB, being smarter than we are, is about to ask us precisely what we mean by that. Do we mean a teacher we want to pay more? One we want to be a role model to other teachers? One who will have more professional discretion? Will we want to distribute masters equally across the state? Hmmm.

Environmental Priorities in a No-Money Budget



That's what comes from serving on the Ways and Means Committee: now I look at the price of everything. The environmental organizations learned some six or seven years ago that they get what they want when they act in unison, and so they have prioritized their most important bills. This year, they recognize, they will be playing defense, not on the merits of clean water

or keeping bisphenol A (BPA) out of baby bottles—the subjects of two of this year's priorities—but about the *cost* of environmental policy generally. The third priority is not a bill, but an assertive watchfulness on the budgets of the existing programs carried out by three agencies, the Departments of Ecology, Fish and Wildlife, and Natural Resources.

As a former board member of one of the most politically active environmental organizations, I have long taken an active role in advancing the environmental agenda. Last year,

we passed what we could with no money. This year, with yet another huge loss in anticipated tax revenues, estimated at \$2.6 billion as this goes to press, the stage is set for a scene that no progressive wants to see: competition between good causes over scarce resources. There is no single "environmental budget," and if we were to organize our budget that way it would illustrate that environmental protection accounts for a small fraction of the state's spending. But when every dollar counts so much, and when it is politically impossible to raise all \$2.6 billion in new revenue in a single session, it is inevitable that advocates for K-12, higher education, healthcare, social services, and environmental protection programs will find themselves lobbying our committee for the same dollars. Good people who care passionately about these things are being forced to compete for scarce dollars, and from where I sit this is not a pretty sight.

Let me tell you publicly what I have told every advocate privately: my vote won't go to the budget items sought by the squeakiest wheels in Olympia, but to those sought by the advocates who join together in a unified public voice for the new tax revenues we need in order to keep this state fiscally healthy.

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