

# Senator Adam Kline

37TH LEGISLATIVE DISTRICT • SUMMER 2007



## Senator Adam Kline

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### Committees:

- Judiciary (Chair)
- Government Operations & Elections
- Rules

## Dear Neighbors,

This was my eleventh session representing you in Olympia, and by far my favorite yet. I know y'all think we legislators just *work* in Olympia, and yes, there's lots we do that I'd call by that name, but there are some things that are *way* too much fun to be work. Here's a recollection of the best fun I've had in eleven years. And just the very top of a long list, too.

Every session in Olympia requires some attention to the state of our schools. This year, we had both the political majority and the dollars to **actually do something about K-12 education**. We paid some attention to the economic development of our own neighborhoods by expanding the **Linked Deposit lending program for women- and minority-owned businesses**, and I helped persuade my colleagues to put that money where it does the most good. **Climate change has become a state issue by default**, and that's (almost) fine by me, because we're actually willing to take it on. When the states and cities have a president willing to join us in this, we'll be happy to show him or her the way. A sweet piece of this year's action was to make the **first small breach in the legal barrier that prevents some of us from marrying the ones we love**. We can't call it by the M-word just yet, but at my age I just want to be around when we can, and I'm hopeful. My aide, Bryn Houghton, reports on how **we're even getting smarter on crime**, by paying some attention to the factors that prevent recidivism. And although the rule in my house is, "Never argue with the judge," **we took on a majority of the Supreme Court** and won a big, fat, sweet one for folks with disabilities.

All this, and we had fun, too. Y'all are so *easy* to represent!

Enjoy the summer!

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**P.S. Would you rather get this Newsletter by e-mail?** Promise me you'll *actually read it*, and I'll send it to you on those hot little electrons. I'll get to throw in a few extra commentaries during the following legislative sessions, when issues arise that are of specific interest to Southeast Seattle residents. Trust me, stuff happens around here that needs more space and quicker delivery than this paper version allows. That way, we get to communicate about political events as they happen. And we get to save trees and the taxpayers' money on postage, and you get to forward it to your cousin in Houston for a good laugh. Raise your right hand, promise me you'll read it. **Go to my home page to subscribe:** [www.sdc.wa.gov/kline.htm](http://www.sdc.wa.gov/kline.htm)

## Tough Love Meets K-12 Education

With Gov. Gregoire announcing from the outset that this would be the year we really *really* fund education, and with a budget surplus waiting for us when we got to Olympia, we delivered the goods. Our annual per-pupil expenditure of state funds went up radically from \$6,030 to \$6,936, a whopping 15% increase. Hey, the money was there, and this is what it's for.

That's the macro. Here's the micro:

We fully funded the two teacher-sponsored initiatives from 2000 that mandated smaller class sizes (I-728) and applied a cost-of-living increase to teachers' pay (I-732), which cost \$140 million and \$379 million, respectively; we funded full-day kindergarten at \$51.2 million; we spent \$34.2 million to expand the Early Childhood Education and Assistance Program; we spent a record \$75.2 million in the special education budget; we boosted the Learning Assistance Program by \$16.9 million; we eliminated the lunch co-pays for the little kids in K-3 (at \$3.3 million); and even managed to help Seattle schools with \$4.27 million to help close the "achievement gap." On the capital side, we will lay out \$880 million for K-12 construction projects these next two years. Not bad for three and a half months work, huh?

But these are just numbers unless we have a good understanding of what these programs are, and what they do for the most important people in our lives. At the risk of spending too many of these pages on K-12 finance, let's take a look at the statewide programs that most directly involve our Southeast Seattle kids.

The two initiatives were the result of decades of discontent in the K-12 community, particularly within the Washington Education Association, with two problems—large class sizes and poor pay—that result from poor funding, and that are manifest nowhere more clearly than in the larger cities. At a time when average class sizes were pushing 30, and when a beginning teacher could not hope to rent an apartment in this gentrified city, the WEA was the major organizer behind these initiatives. But not only did the initiatives not *create* a funding-source for the millions of dollars they cost, the voters passed them in the very same election in 2000 in which they passed I-722, which *capped* the usual funding-source, the property tax. We found the money elsewhere this time, but only because the economy is good and the money's handy. It can't always be this way.

The Early Childhood Education and Assistance Project (ECEAP) is the state version of Head Start, an educational program for 3 and 4-year-olds that incorporates parenting skills training and health advice. Though not administered by

the Superintendent of Public Instruction, I include it here as an educational program because it is one—I don't know how many studies now have shown that it results in increased school performance.

The same guiding principles behind ECEAP—that kids learn better earlier, that a little TLC applied early to kids pays off in more ways than we can count, that intelligence itself is malleable and best engaged early—have put full-day kindergarten high on the wish-list for many years. It should be the norm, and we'll help local districts make that happen.



The Learning Assistance Program was created by the Legislature in 1987 as a remedial program that provides additional staff, school hours, and parent-outreach to help students who had failed the statewide assessments, now called the WASLs. In the 1983 court order that defined the "basic education" for which the state is financially responsible, this was held to be an intrinsic part of the state's obligation. Given that as recently as the 2006 spring WASL results, 44.5% of the state's 10th grade students were not on track to graduate due to failing one or more of the WASLs, it has become apparent that we need to expand the funding for this program. Personally, I think funding the core educational programs better in past years would have reduced the need for this remedial program, but hey, you can't re-write history. The judge was right: failure is now so built-in that a remedial program qualifies logically as "basic." So we expanded it by 10%. We also allowed some of the I-728 funds to be used for remediation, as well as funds from a non-basic-education program, Promoting Academic Success.

Special education was a specific target for improvement, in a year in which particular strides were made toward real engagement of the developmentally disabled in so many ways. Our budget has always distributed funds to the 296 school districts in a formula that funds programs for specific categories of students (special-ed, non-English speaking, free or reduced-price lunch, etc.), a gesture that recognizes that there are additional costs of educating them, but still fails to *fully* fund them. This year,

we made a substantial correction to that problem, adding \$73 to the formula for each special-ed student. We created a safety net for those districts that attract a larger-than-normal special-ed population, thus averting a problem for the districts in which the five state institutions for the developmentally disabled are located. (As you may have read in the papers, we have not fully funded the community-based services that would allow people with disabilities to live in the least restrictive living arrangement which their abilities allow, and as a result there are now school-age children living in Fircrest and possibly other institutions—not a good thing, in my opinion.)

Lunch co-pays—the 40 cents that each student pays for a reduced-price lunch—were eliminated for kids in K-3. Federal guidelines require districts to provide free lunch for kids whose families earn 130% or less of the poverty level, and to make lunch available at a reduced price—that's the 40 cents—if the family earns below 185%. Federal and state funds are made available, and of course the state can add to this. Last year, we made breakfast available for the kids who qualify for a reduced-price lunch, and this year we waived the 40 cent co-pay for kids in K-3. This makes sense; kids can't pay attention when they're hungry, and anyway the tiny fee costs almost as much to administer as it brings in.

Bridging the "achievement gap" between white and minority kids isn't just a Seattle problem. Poverty, more than race, is the obstacle to student success, and this is a statewide problem. We'll fund pilot programs in major districts—Seattle Public Schools will receive \$4.27 million—which work with the Washington Education Association or other organizations to resolve the systemic problems that contribute to this. To whatever extent this is a school-generated problem, there must be a school-generated response. The Seattle Public Schools has already begun, with Rainier Beach High and its area elementary and middle schools in 2005 and Chief Sealth and its area schools last year. Cleveland High is now on board. I believe, however, that the strongest response will come from the people most in a position to affect any student's potential failure—his or her parents and other family members. My hat's off to the schools, the teachers, the parents, the staff, and of course to the kids.

We have a long way to go until we have adequate and stable K-12 funding, and we are still courting a lawsuit by those who subscribe to the quaint notion that we should fully fund basic education. But we did right by K-12 education in *this* Budget.

Still, in the longer term, what we did *best* for the kids wasn't in the Budget at all—it

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## Tough Love Meets K-12 Education (cont. from previous page)

was the constitutional amendment, HJR 4204, that will appear on the November ballot. If passed by a vote of the people, this will allow all subsequent school levies to pass with a *simple majority*—that's the usual 50%-plus-one. Under the current constitutional provision, a school levy, unlike really important public expenditures like ballparks, must pass by 60% in an election in which the turnout was at least 40% of that in the last gubernatorial election. I know, I know, this is such simple example of democracy, such a slam-dunk notion of how to run a government, that you just have to ask, "What took you so long?" Well, it was a partisan battle waged over at least the last decade that I've spent in the Legislature, between those who object only to taxes and those of us who also object to educational breakdown, academic failure, a non-competitive workforce, and the steadily mounting force of public ignorance. With Democrats in the majority, 32 to 19, we managed to pass it 33-16, the bare two-thirds needed to pass a constitutional amendment. Believe it or not, some 16 of my colleagues will *boast* in a future November that they fought against this "tax increase."

Yet even here, the thrill I feel at having helped place this needed reform on the ballot

is tempered by skepticism. Are we not just enabling local school officials and taxpayers to make up for our failure to *fully* fund basic education in Olympia? Bear with me, I'm not a party-pooper at heart, but plainly the glass is still half-empty. Local levies are no longer just to add a few extras, like uniforms for the school band, but have become vitally needed to complete significant percentages of the funding of what the courts defined as "basic" education. The funding of basic education is the *state's* paramount duty under the state constitution. We can and will do it when we reform our tax structure to give us the stable, fairly-raised, and adequate revenues that this huge task requires. We made great progress in this year's budget, helped by a healthy economy that brought us a \$2 billion gift in unanticipated revenue this biennium, but a long-term solution still eludes us—and it will until we confront the No New Taxes and correct our regressive tax structure.

And then there's the annual debate over the WASL. We disagreed politely with our Governor, and delayed the point at which passage of the math and science portions of the WASLs will be *required* for a high-school diploma. Previously, the requirement would have been to meet math standards by the Class of 2008 and science standards by the

Class of 2010. Now, students graduating in 2008 will be required to pass only the reading and writing portions of the WASL. The Class of 2013 will be the first students required to pass the math and science portions of the WASL in order to get a full diploma.

The Governor had told us she preferred less of a delay for the math and science requirements, but still she signed the delay section of the bill into law. However, she vetoed sections of the WASL bill that would have given special exemptions to students who are learning English as a second language, and that would have set up regional appeals boards for students who fail the WASLs. She also vetoed a study that would have explored the possibility of replacing the math and science WASLs with end-of-course exams.

Personally, I favor the WASL tests as a graduation requirement. It's accountability, it's tough love. But I feel like I have to look the high school kids in the eye when I say that. These are our own kids, and ultimately it's we who are accountable to them. "*Your diploma has to mean something, to yourself and to others,*" I would say, and I want to add, "*and we expect you to pass it because we gave you a real opportunity to learn.*" I want to be able to say that by 2013.

## Climate Change, A State Issue

While our president has just in the last six months gotten his mouth around the words "climate change" and just now agreed that human activity may have something to do with it, states have been at the forefront of the movement to decrease our nation's disproportionate share of carbon emissions. From the viewpoint of a federalist—I personally feel that Congress has made a practice of pre-empting too many traditional areas of state law-making—states ought to make the most of *any* opportunity to assert their role in a federal system, even one that falls to us by default. One such opportunity arises from the President's six-year-long state of denial, dating from his refusal in 2001 to even *ask* Congress to ratify the Kyoto Accord. In passing SB 6001, we have taken the issue into our own hands.

In a nutshell, the bill does three things: it sets our state's goals to reduce greenhouse gas (GHG) emissions, expressed as percentages of the 1990 level; requires the Governor to recommend specific actions to achieve those goals; and sets clear emissions standards for one of the most polluting industries, the power plants that generate electricity.

This industry is hardly the only one in need of tighter GHG standards, but it is crucial for reasons wholly apart from its current performance. In the Northwest, much of our power is generated by hydroelectric turbines, which emit no GHG, though they present a very different environmental problem, as a barrier to salmon migration. However, as attested by our melting glaciers, we have every reason to expect a lessening of our snow-pack over the coming decades, and a likely decrease in hydropower output. We'll need to look elsewhere, to wind, solar, geothermal, and, as I just read in the paper a few weeks back, even tidal power based on turbines placed underwater at sites in the Sound that have swift daily currents. It's all good. But will it be enough? And if it isn't enough, will there be a push to return to nuclear energy, as even some perfectly reasonable folks are now beginning to wonder? As a fuel in large-scale generators, natural gas is far cleaner than coal, but coal is by far more plentiful and cheap. The industry itself will sort out which fuel to use, but it is we who will set the emissions standards.

The goals are stated simply. We will begin immediately to reduce GHG emissions, and

will by the year 2020 attain a reduction to the 1990 level. In the following 15 years, by 2035, we'll be at 75% of the 1990 level; and in the next 15-year period ending in 2050 we'll be at half the 1990 level. That latter point is *70% below* the currently-forecast emissions for the year 2050, assuming we took no action. Yes, these goals are aspirational, in the sense that they involve some optimism concerning both technological advances and human nature, but they are not mere guesswork. They are the collective recommendation of a widely representative stakeholder group representing utilities, technology experts, technology engineers and manufacturers, environmentalists, and economists. They included in their assumptions that state—and eventually, some day, federal—governments would grant a certain level of tax incentive to more efficient turbines and new technologies such as geothermal generation, the use of landfill gas, and geological sequestration (turning emissions into a more stable form and placing it underground). They also recognized that the equivalent of a half-dozen power plants' output will be "generated," so to speak,

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## Climate Change, A State Issue (cont. from previous page)

simply by consumers learning to practice the habits of conservation.

The specific actions, the exact nature of which the Governor is to recommend to the Legislature by December 31, 2007, include a number of possibilities. They must include, but are not limited to: how market mechanisms (a cap-and-trade system?) would work; whether carbon sequestration methods such as geological injection and forest sequestration deserve further study; whether tax incentives should be used to encourage the replacement of older turbines or other equipment that have exceeded their expected useful life with cleaner-generating equipment; what methods would be best used to bring renewable resources such as geothermal and landfill gas into full-scale use; and, more generally, how regulatory and tax policies could be amended to help achieve these goals in a way that is equitable both to private utilities and consumers. My guess is that the industry will have its hand out for tax-breaks, some of which may actually represent reasonable investment opportunities for us, as well as for greater regulatory freedom, some of which may also allow flexibility in making real environmental progress. The Governor gets to separate the wheat from the chaff in making her recommendations to us.

The third purpose of the bill is to set power-plant emissions standards to go into effect immediately. This is done in a way that assumes that as technology allows, the Legislature will tighten-down the standards. The beginning standard, effective July 1, 2008, is 1100 pounds of GHGs per megawatt-hour produced. Beginning that date, any new commitment to produce power in the state (for example, a new plant, a major upgrade of an existing plant's capacity, a new owner's purchase of an existing plant, or a new or renewed contract with a customer for five years or more) must meet this standard. This allows the grandfathering of older plants, on which the industry insisted, and if the EPA's recent experience is an indicator, this would mean that unless standards are tightened, some plants wouldn't be sold or upgraded until their turbines wore out. With tightened standards every five or ten years, upgrades will be reasonably frequent, and we can expect new technology to be installed within years of coming on the market. My guess is that the big fights of the future will be over when and how much to tighten the standards.

The electrical generating industry is already highly regulated at both the state and federal levels, and I predict it will become

even more so. It will respond to governmental decisions. The Governor's unenviable task is to make recommendations, and ours is to make the final decisions, that will influence the future of technical innovation, and commit this state's taxpayers to significant investments, the result of which is not *greater* production of energy, but *cleaner* production. By rights, the way America has worked this last century, Congress should have done this years ago, and the President should have lead the charge. But they didn't. There's a reason our Founders gave the states a major role in government.

Will all this be worth it? The measures of cost and benefit, in this as in all bills, need to be balanced. I feel strongly that the measure of cost we should take into this balance isn't the cost of a kilowatt-hour in the year 2050 versus the cost now, but rather all costs between now and 2050 versus the cost of doing nothing. The anticipated benefits of this course of action, I feel, are much greater than the costs. We are just now hearing predictions of what life, if we did nothing, might be like for those of us young enough to expect to live that long. Some of these predictions are no doubt alarmist, some reasonable, some the result of denial. Let's not find out the hard way.

## Sweet, Sweet Victory on Domestic Partnerships

No issue has been raised by so many constituents that I meet in the grocery store or on the sidewalk as this one: the Domestic Partnerships bill. This was our first successful step towards what I truly hope and believe will be an eventual decision to just recognize same-sex marriage. Like I say, some things we do in Olympia are just way too much fun to be work—and this tops the list.

It is in fact a modest change in law, meant to be expanded as public opinion allows. Of all the hundreds of identifiable rights that state and federal law allow only to married people—and estimates of the number vary, though they're always in the hundreds—this bill allows *fourteen* to partners in a registered domestic partnership. For example, partners will be able to grant informed consent for health care on behalf of a partner who is no longer competent; to visit a partner in a hospital; to receive health care information about a partner from a doctor; to make funeral arrangements for a deceased partner; to take legal action as a beneficiary in a suit for wrongful death; to be treated as a spouse for purpose of inheritance if the partner dies without a will; and to administer the estate if the person named in the will declines, or if there is no will. To qualify, partners will register as a domestic partnership with the Secretary of State in Olympia, file a notarized

statement, and pay a filing fee. The Secretary of State will issue a certificate.

None of these are earth-shaking changes to the law. All are firmly in accord with our common sense of compassion for families in a time of crisis, such as illness or death. That's why they were selected for this first bill. And none of this will cost the taxpayers a dime. So why the outcry from conservative opponents? Why were we in the Senate treated to a series of floor speeches about debasing the institution of marriage, tearing at our nation's social fabric, even one warning of necrophilia, incest, and bestiality? My guess—and in contemplating the conservative mind I am always left to guess—is that we are recognizing a truth that some find disconcerting, that families are not always a man, a woman, and kids. We are recognizing these folks as *families*—and for some folks, that's the problem.

Some opponents of this measure, and of the larger social movement behind it, warned that it was a first step toward "gay marriage." Well, yeah, it is. That's hardly the sinister secret it's meant to appear. What is it about this movement to expand marriage that so incenses conservatives, that moves them to question the morality of gays and lesbians, and of those of us who accept them as a vital part of our social fabric? I've often wondered what is so different about this issue that

moves even some lifelong libertarians—those folks who say they just want government out of our lives—to insist that government *limit* the definition of family?

One other observation regarding the domestic partnership debate: Much opposition to this bill, last year's anti-discrimination bill, and others, such as the medically accurate sex-education bill, was cast in terms of the measures' "morality". My thought is that there are many issues we deal with in Olympia -- among them, our stewardship of the environment for future generations, health care for children, simply feeding those who are hungry in the midst of plenty -- that for some reason are not argued in moral terms by conservatives. Yet I believe that they *are* issues of morality, that they need to be part of the moral vision we act on as state legislators. When conservatives focus on only a few hot button legislative issues, principally relating to sex and sexual orientation, as worthy of a "moral" argument they distract us from a larger and I believe more compelling moral vision for our state that we need to wrestle with every January when we convene.

Personally, I can think of no more moral an action that a state government can take than to start the process of inclusion of all of our families in the social equation. There is no second-class love.

In the 2006 session, the Legislature set up a Task Force on Prisoner Re-Entry, composed of legislators, the Secretary of the Department of Corrections (DOC), and other Governor-appointed members. The nine official Task Force members invited a wide variety of folks to provide input, including DOC officials, county and city officials, prosecutors, defense lawyers, former prisoners, crime victims, and teachers, counselors and others who work in the criminal justice system. The Task Force's work-plan was wide-reaching, and required that we split into four workgroups: Education and Employment; Community Partnerships; Legal Barriers and Civil Liability; and Transitional Programs and State/County Coordination. Nearly 100 people took part in the process. I was an observer, sitting in at Sen. Kline's request. We met from April to November, 2006.

Despite the group's diverse professional makeup and ideological mix, there was some common ground.

Members agreed that we've been throwing a lot of money towards incarceration: the average per-prisoner cost has climbed to \$29,000 per year. The Legislature had, after some delay, voted \$179 million to build a new prison at Coyote Ridge, and roughly an equal amount will be required to pay the interest on that project's share of the 30-year bonds needed to finance state capital expenditures. We didn't want to have to do that again anytime soon. Many Task Force members also recognized the personal cost of crime and incarceration, on the victims, on the offenders, and on the innocent families of both. Because 97% of the people we incarcerate are eventually released, and because our recidivism rate has been topping 50% in recent years, it's important to gear our criminal justice programs towards their successful re-entry into our communities.

In the seven months of weekly meetings, most task force members either had or gained an understanding that policy and fiscal decisions regarding criminal justice and community safety need to move beyond just toughening sentencing laws and building more prisons. The group took on competing ideas of how to implement effective, research-proven programs and policy to improve an offender's chance of successful reintegration into his or her community. Each of the four workgroups made comprehensive recommendations. With an eye towards creating legislation that had a chance of bipartisan approval by legislators who don't prioritize criminal justice reform, the nine official



Task Force members narrowed the recommendations into a final set that were introduced as SB 5070.

SB 5070 passed the Senate easily, 47-1. However, when confronted with House Republican concerns about expensive programs that "coddle" criminals, the House Democrats balked at many parts of the bill, thus requiring the Senate sponsors to reintroduce the less controversial provisions as SB 6157, which the House later accepted. The Legislature also approved nearly \$28 million to fund the re-entry programs for the biennium.

SB 6157 requires that all counties conduct an inventory of the services they can provide to people released from prisons, and to apply for grants from the state Department of Community, Trade and Economic Development to set up transition programs, networks, and housing programs. It also strengthens work release programs, creates a pilot program to assist counties in coordinating re-entry efforts for offenders returning to the

community, and encourages collaboration between local government and the DOC in the supervision of ex-prisoners. It removes some of the barriers that make transition into the community difficult by making it easier for ex-prisoners to obtain a driver's license or other ID, eliminating legal liability of landlords who rent to ex-prisoners under certain conditions, and providing more transitional housing assistance to prisoners upon release.

The core of SB 6157 is the requirement that the DOC to work with each prisoner, starting in the first few months after arrival in prison, to develop a detailed Individual Reentry Plan (IRP), including assessments of the prisoner's needs, experience, risk factors, interests and abilities. The IRP will map out the course of the prisoner's incarceration, including prison work assignments, mental health and substance abuse treatment, education and vocational training. The IRP will also define the conditions of release and the nature of the programs needed for the prisoner's transition into the community. Prisoners will be able to earn limited "early release" time if they participate in certain programs specified in their IRP.

Most Task Force members understood that the IRP was the easy part. The difficulty is actually providing and funding the promised programs. Our DOC has been operating since the late 1970's on a model that places punishment—hard time—ahead of rehabilitation. While an IRP seems to *assume* the existence of adequate mental health and substance abuse treatment, education, and vocational

training for all of the 17,500 people in prison or on work release, actually *providing* them is another matter.

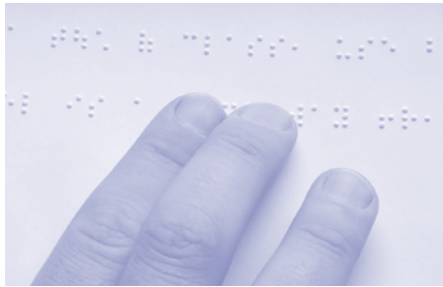
We required the DOC, *to the extent of available funds*, to provide mental health and substance-abuse treatment as well as basic education and vocational programs during incarceration. We also established a post-secondary academic degree program—proven by recent research to be the strongest and most cost-effective in reducing recidivism. Unfortunately, the related provisions in the budget continue to underfund basic education, vocational programs, and treatment programs. And even though the Legislature required that the DOC *establish* a post-secondary degree program, the budget didn't provide funds to actually *implement* the program, thus insuring a long waiting-list of prisoners eager to take us up on our promise. Even if we had funded the degree programs, prisoners (or their friends and family) would be required under the bill's language to pay *all* of the tuition and administrative costs—thus limiting the very strongest anti-recidivism effect to those prisoners whose families can afford it. This was a direct effect of the House Republicans' protest: in order to avoid the appearance that we were "coddling criminals," we removed the strongest tool to reduce recidivism—the strongest protection for future victims being *prevention*, not more jail time. Go figure.

An interesting side-story developed as the original bill passed through the Senate Committee on Human Services and Corrections, and later the full Senate. Currently, all offenders convicted of a felony and sent to prison lose the right to vote, until they have completed all components of their sentence, including paying off their legal financial obligations, then apply to a judge for restoration of their civil rights. Yet one provision of the original SB 5070 allowed felons the right to vote, immediately upon release from prison and during their two-year post-supervisory period. Despite the troubles of separate House and Senate bills that made that same proposal in stand-alone form, little opposition was focused on this provision in the Senate, buried as it was in a much wider variety of other controversial policy issues, in a bill which had been worked by one of the Senate's most outspoken conservatives. The House Republicans objected to this provision, and it was removed from the final version of the re-entry legislation. We came close to achieving a major advance to the civil rights of offenders who have served their time in prison.

We'll need to address these shortcomings in future sessions. I'll be happy to sit in on the sequel, too.

# Disability Discrimination: We Held the Line

Most folks who read the papers and keep an eye on public events know very well that our law prohibits discrimination on the basis of race and gender, and most folks are aware that we amended it in 2006 to include sexual orientation. But fewer know that our law also prohibits discrimination against an individual because of a physical, mental, or sensory disability. When we added disability as a prohibited ground of discrimination in the early 1970's, we left the term "disability" undefined. This allowed the courts to define the term on a case-by-case basis, as courts have done historically when terms are left undefined. The result has been a series of cases from the State Supreme Court and the three Courts of Appeals over the last 35 years, defining what physical, mental, and sensory abnormalities qualify as disabilities, and which don't. Our state's definition has become a fairly broad one: although a condition must present a substantial problem in life or work, it may also be



temporary in nature. Then came the State Supreme Court's decision in *McClarty v. Totem Electric Co.*, in July 2006. (For the legally-inclined, the opinion appears at 137 P.3d 844.)

In this decision, a 5-4 majority of the Justices discarded 35 years of judicial opinion defining "disability," on the ground that an administrative regulation written by the Human Rights Commission in the early 1970's, intending to define the term, demonstrated "circular logic." They were quite right that the regulation was circular—which is exactly why the courts had for 35 years simply ignored it and written

their own definition, as courts do. The accumulated judicial opinions had long ago superceded the regulation as the reigning definition of the term, and few lawyers or judges involved in those cases paid further attention to the regulation.

The Court, however, seized upon the regulation as a pretext to disregard our state's strong law against discrimination, and to weaken it by tightly restricting the definition of disability to those conditions which severely restrict a person's ability to live his or her daily life—in effect, defining as disabled only those who need help literally to just manage living. This is the effect of the federal Americans with Disabilities Act (ADA), which the majority somehow, in an undisguised act of judicial activism, grafted upon state law. I refer

**"Our law against discrimination has covered people with disabilities a decade longer than the ADA, and we do a better job, and we kept it that way."**

~Senator Adam Kline



the legally-inclined to Justice Owens' pungent dissent.

As a protection for *employment*, the majority opinion would render the law virtually irrelevant, for it would then apply to very few of the literally thousands of gainfully employed Washingtonians with disabilities. To correct this decision, I sought the help of lawyers who represent disabled and other workers, and asked their help in drafting the bill that became SB 5340. The purpose of this bill was not to expand the definition—though business interests apparently saw it that way—but to simply restate the essence of those 35 years of case-decisions, and preserve the status quo. I'm thankful it passed, and especially thankful to the Governor for signing it into law last month, despite a stack of letters from business interests requesting her veto. Our law against discrimination has covered people with disabilities a decade longer than the ADA, and we do a better job, and we kept it that way.

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