



THEODORE R. KULONGOSKI
Governor

August 29, 2005

The Honorable Bill Bradbury
Secretary of State
900 Court Street NE – Room 136
Salem OR 97301

Dear Secretary Bradbury:

Under Article V, section 15a, of the Oregon Constitution, the Governor of Oregon has the “power to veto single items in appropriation bills, * * * without thereby affecting any other provision of such bill.” In accordance with Article V, section 15a, I hereby disapprove and veto section 6 only of Enrolled House Bill 5135, without affecting the remaining provisions of the bill.

HB 5135 is an appropriation bill that triggers my line item veto authority. Section 6 is a separately stated, “single item” within the bill, which purports to limit the expenditure of funds by DEQ or the Environmental Quality Commission for the purpose of adopting or enforcing California’s higher automobile emissions standards. Section 6 is distinct and severable. In stating these reasons, I do not intend to suggest that they are the only reasons or standards for making a “single item” determination under Article V, section 15a or that each of these reasons are necessary in every instance. However, these reasons are more than sufficient in this particular circumstance.

Moreover, in taking this action, I do not concede or agree that the Legislature properly may include provisions like section 6 within an appropriation bill. On the contrary, I believe that HB 5135 is unconstitutional pursuant to Article IX, section 7 of the Oregon Constitution, which limits the scope of appropriation bills:

Laws making appropriations for the salaries of public officers, and other current expenses of the State, shall contain provisions on no other subject.

In fact, as discussed below, the conflict between section 6 and Article IX, section 7, is also a factor in my decision to veto section 6.

I object to section 6 for two policy reasons: (1) substantive legislative policy decisions should not—and cannot—be made in appropriation bills; and (2) the Environmental Quality

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Commission should not be precluded from considering the California automobile emission standards as part of its ongoing efforts to promulgate rules that effectively protect Oregon's air quality.

As expressed under Article IX, section 7 of the Oregon Constitution, the Legislature must examine and express its substantive policy choices through bills directly addressing those choices – not in appropriation bills. The Oregon Supreme Court has expressly opined that the purpose of Article IX, section 7, was:

“* * * to prevent the introduction of such matters of legislation into appropriation bills as were not germane, and thus make these bills the vehicle of carrying through matters of doubtful expediency, such as could not be passed on their own merits.” *Burch v. Earhart*, 7 Or 58, 66 (1879).

In the area of automobile emission standards, the Legislature has already empowered the Environmental Quality Commission with authority to adopt such standards. Section 6 of HB 5135 appears to be an effort to amend the commission's statutory authority, but without the notice, hearings and debate that normally would accompany such a policy change in statute. I note, in this regard, that the Legislature's own counsel advised that body that section 6 could not, consistent with Article IX, section 7, be added to HB 5135. But regardless of whether the addition of section 6 to the bill is unconstitutional or merely ill-advised, such a provision should not be included in an appropriation bill. I believe it is critically important that the Environmental Quality Commission be able to consider the adoption of California's higher automobile emission standards. For these reasons, I have exercised by line-item veto authority to veto section 6 of HB 5135.

Sincerely,

A handwritten signature in black ink, appearing to read 'Theodore R. Kulongoski', with a large, stylized initial 'T'.

THEODORE R. KULONGOSKI
Governor

TRK:DCR:lmh

**Enrolled
House Bill 5135**

Sponsored by COMMITTEE ON HEALTH AND HUMAN SERVICES

CHAPTER

AN ACT

Relating to state financial administration; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. There are appropriated to the Department of Environmental Quality, for the biennium beginning July 1, 2005, out of the General Fund, the following amounts for the following purposes:

- (1) Air quality..... \$ 3,306,252
- (2) Water quality..... \$ 13,364,309
- (3) Land quality..... \$ 1,043,961
- (4) Cross media \$ 672,716
- (5) Debt service..... \$ 4,387,306

SECTION 2. Notwithstanding any other law limiting expenditures, the following amounts are established for the biennium beginning July 1, 2005, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, the proceeds of bonds for the Orphan Site Account and federal funds from the Bureau of Land Management and United States Forest Service for smoke monitoring laboratory services, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Environmental Quality, for the following purposes:

- (1) Air quality..... \$ 35,641,920
- (2) Water quality..... \$ 15,798,192
- (3) Land quality..... \$ 41,421,616
- (4) Cross media \$ 1,561,244
- (5) Agency management..... \$ 19,883,593

SECTION 3. Notwithstanding any other law limiting expenditures, the amount of \$3,719,599 is established for the biennium beginning July 1, 2005, as the maximum limit for payment of expenses from lottery moneys allocated from the Parks and Natural Resources Fund to the Department of Environmental Quality for activities and projects to implement section 4 (10), Article XV of the Oregon Constitution.

SECTION 4. For the biennium beginning July 1, 2005, expenditures by the Department of Environmental Quality for debt service, for loans made from the Pollution Control Fund and for loans made from the Water Pollution Control Revolving Fund are not limited.

SECTION 5. Notwithstanding any other law limiting expenditures, the following amounts are established for the biennium beginning July 1, 2005, as the maximum limits for payment

of expenses from federal funds other than those described in section 2 of this 2005 Act collected or received by the Department of Environmental Quality, for the following purposes:

- (1) Air quality..... \$ 6,478,481
- (2) Water quality..... \$ 14,128,456
- (3) Land quality..... \$ 16,764,217
- (4) Cross media \$ 742,483

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~~*SECTION 6. Notwithstanding any other law, neither the Department of Environmental Quality nor the Environmental Quality Commission may expend any moneys for the biennium beginning July 1, 2005, to adopt or enforce rules that impose California auto emission standards on motor vehicles sold, leased or titled in Oregon. TRK~~

SECTION 7. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect July 1, 2005.

Passed by House June 16, 2005

Received by Governor:

Repassed by House July 29, 2005

11:45 a.m. August 8 2005

Approved: (except for section 6) TRK 8/29/05

12:50 p.m. August 29 2005

Larmonia J. Kenady
Chief Clerk of House

Paul H. Helyar
Governor

Robert M. Morris
Speaker of House

Passed by Senate July 28, 2005

Filed in Office of Secretary of State:

Peter Courtney
President of Senate

.....M.,....., 2005

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Secretary of State

* Section 6 only has been and is vetoed pursuant to the Governor's single item veto authority established in Article V, section 15a, of the Oregon Constitution, without thereby affecting any other provision of this bill.

Paul H. Helyar
8/29/05