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Economics and Finance Consulting

DATE	**Sunday, February 4, 2024**
FROM	**Randall Pozdena, PhD CFA • <pozdena@quantecon.com>**
TO	**The House Committee On Economic Development and Small Business**
RE	**HB 4041 - Relating to the Economic Equity Investment Program (EEIP)**
SUBJECT	**Legal and Economic Concerns with the EEIP**

BACKGROUND

During the 2022 short session, the Oregon legislature passed SB 1579, the Economic Equity Investment Act. It claims to build economic stability, self-sufficiency, wealth building and economic equity among disadvantaged individuals, families, businesses, and communities in the state that face so-called "economic equity risk factors". The Oregon legislature is now considering expanding the definition of "economic equity risk factor" to include recognized Indian tribes.

To finance this program the State takes from the General Fund, the revenues of which are used to underwrite so-called "equity investments" by the State through the giving of grants. As I understand it, the Economic Equity Investment Program provides grants used selectively to redress alleged historic inequities experienced by selected racial individuals or groups.

My concerns about HB 4041 derive from these main issues:

1. **The EEIP faces serious 14th Amendment issues as well as the issue of embracing a policy that many Oregonians will perceive as exclusionary and racist**

    - Specifically, the Supreme Court of the United States (SCOTUS) found in its decision in Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023), that eliminating racial discrimination means eliminating all of it. "without regard to any differences of race, of color, or of nationality"—it is "universal in [its] application." Chief Justice Roberts, writing for the Court, emphasized the universality of the opinion when he characterized the diversity goals in educational settings as "commendable", but stated that, "[r]acial classifications are simply too pernicious to permit."

    - Analysis by Legislative Counsel of the State of Oregon found in a recent analysis that although the EEIP was not differentiating on the basis of race in the same context as the university cases, EEIP was nonetheless at risk of being subject to the same treatment. Specifically the Legislative Counsel concluded that, "While we cannot say whether the EEIP would be challenged in the first place, we believe that the program would be subject to strict scrutiny and would not survive the test." This conclusion was reached after a very lengthy legal analysis by the Counsel.[1]

- In my opinion, the EEIP, by treating people of different races and skin colors differently, is also effectively redistributing income of Oregonians in a discriminatory manner. The equity investments program implicitly embraces the woke notion that a ruling class (white people) exploit other races unfairly. As I understand it, it assumes that there is an obvious and persistent difference in opportunity and returns that favors the white class that abounds in the Oregon economy. It implicitly assumes that any such differences will be redressed by implementing a sharply targeted grant program.

- As I demonstrate in the next section, programs like the EEIP, around the country, are likely to fail precisely because inept government management of EEIP and similar programs raises the cost to tax payers by excluding private sector, white management. The following section elaborates this point.

2. **The State of Oregon has demonstrated that it lacks the capability to implement productively programs like the EEIP.**

- The State of Oregon has tried such efforts previously and has, in most cases, made Oregonians worse and not better off. Taxpayers will have to bail out a State fund that made bad loans to increasingly speculative renewable energy projects resulting in higher costs imposed on all classes, and often the favored classes severally.

- For example, Oregon Energy Department's Small Scale Energy Loan Program (SELP) made loans for renewable energy projects that the private sector was reluctant to support. These were generally projects in rural areas, and thus might be seen as areas with disadvantaged populations. The projects included an ethanol plant in Clatskanie, a solar company in Linn County, a resort in Central Oregon, among others. Like the EEIP program, officials of the State of Oregon made the choice of which investments would be best to select among projects to give activities that were shunned by other investors.

- Although EEIP programs focus on classes of individuals who are believed to be disregarded by the marketplace, and SELP focused on projects and regions in Oregon that were to serve other equity purposes, the daydream is the same—-government programs selected by State will right this disparity. Unfortunately, this proved not to be true. By 2012, according to press reports, Oregon taxpayers were going to have to bail out the projects as they proved to be unproductive. In all, it was reported that the SELP project failures will cost Oregon taxpayers and the general fund as much as $20 million over a five year period.[2]

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[1] Dexter A. Johnson LEGISLATIVE COUNSEL, STATE OF OREGON LEGISLATIVE COUNSEL COMMITTEE February 2, 2024

[2] https://www.oregonlive.com/business/2012/01/oregon_taxpayers_must_bail_out.html

3. **EEIP-like programs are not the only types of discriminatory policies that result in actually imposing greater costs that are borne by all classes**

- In the early 1990s, the State, via the Port of Portland, ignored the private sectors' superior investment knowledge and decided to enter the aircraft repair business. The Port of Portland issued $50 million in bonds to help out a start-up company called Pamcorp. Pamcorp's hope was to build facilities in the Port that would provide aircraft maintenance services. Not only was Pamcorp expected to create up to 1,300 jobs, but through an arrangement with junior colleges, train generations of specialist labor in the aircraft maintenance field. When private sector investment support declined involvement, the State turned to the Oregon Public Employee Retirement Fund (OPERF), which hoped to earn $145 million.

- Since I was serving on the investment arm of OPERF (the Oregon Investment Council—OIC) at the time, I voted against the proposal to lend Pamcorp the $50 million it needed, but had not been able to find, in the private sector. I did this because I knew that the industry was awash in aircraft service capacity and was unlikely to attract interest from the airlines. In fact, though the other Council members and the State Treasurer supported the loan, Pamcorp went bankrupt after repairing only two aircraft, according to later press accounts. Although some of the operating costs of the facility have been recovered over the years by leasing the Pamcorp hanger space to private jets and other entities and activities, the press reported in 2015 that the total cost to Oregon taxpayers of the outstanding OPERF debt would be $121 million.[3]

CONCLUSION

The EEIP policy and its proposed expansion likely will fail both as a fair and efficient program. First, it is very likely to fail the race-blind, equal treatment standards of the US Constitution. Second, it tilts policy toward programs and program-management that raise real and tax costs for all Oregonians.

ABOUT THE AUTHOR

This report was authored by Randall Pozdena, President, QuantEcon, Inc., an Oregon-based consultancy—one of two economics and finance consultancies he founded. He received his BA in Economics, with Honors, from Dartmouth College and his PhD in economics from the University of California, Berkeley. Former positions held by the author include professor of economics and finance, and Research Vice President of the Federal Reserve Bank of San Francisco. He also served on numerous Oregon public, non-profit, and private boards and investment committees. He is a member of the CFA Institute and the Portland Society of Financial Analysts.

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[3] Ian Demsky (2007) *Clifff Hangar, Oregon's odd foray into aircraft maintenance is still losing millions,* and the Willamette Week (2015).