



Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

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New Legislation:

Changes to the Oregon Rules of Civil Procedure and almost all of the legislation passed in 2009 not already in effect take effect on January 1, 2010. Summaries and effective dates of legislation relevant to the profession are contained in 2009 Legislation Highlights, available for purchase for \$85. For more information, contact Public Affairs at pubaff@osbar.org, or call 503.431.6376.

OJD Launches eCourt Website

The Oregon Judicial Department has launched a new Oregon eCourt website, designed to provide the general public, courts, lawyers and the public safety community with up to date information on the eCourt Program. Reach the new website at:

<http://courts.oregon.gov/oregonecourt>.

You may also reach the site by clicking the Oregon eCourt link on the OJD website at <http://courts.oregon.gov/OJD> (You may note that the URL for OJD has changed recently.)

The website educates visitors on the value of electronic court technology in providing greater access to the courts and in helping courts deliver justice expeditiously. The website also provides information on the history, vision, and development of the Oregon eCourt.

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Revenue Forecast: Flat

While making his December economic and revenue forecasts to the legislative revenue committees on November 19, state economist Tom Potiowsky played a country Western song called "Been Down So Long That It Looks Like Up To Me." After a year of dire news about job losses and crashing state revenues, the economic outlook has, over the past two forecasts, become somewhat less dispiriting.

Not that Mr. Potiowsky was popping champagne corks. While the recession has ended, or is about to, Mr. Potiowsky described the state's economy as "bouncing along the bottom." For the foreseeable future, the economy will not produce many new jobs until the second quarter of 2010, and won't return to pre-recession job levels until 2013.

Forecasts of state revenue were basically flat. The state's tax and lottery revenues were off by \$30 million since the last forecast in August, and down \$212 million from the figure on which the legislature based its \$14 billion general fund and lottery budget for the 2009–2011 biennium. Barring further declines in revenue, the state's ending balance is sufficient to cover the current shortfall.

The huge unknown in the current budget is the fate of the two tax referenda that will be on the ballot in a January special election. Together, these measures would raise \$733 million in the current biennium. If these measures are voted down, the legislature will need to make cuts in general fund programs in that amount, unless the economy unexpectedly takes a substantial turn for the better. In light of this forecast, that seems unlikely.

HOD Meets: Bar Takes No Position on Tax Referenda

The OSB House of Delegates met on November 6 to consider a number of resolutions on a broad array of subjects. A summary of the results is available at:

<http://www.osbar.org/docs/leadership/hod/2009/09HODResults.pdf>.

Of the five resolutions that passed, two were of some relevance to public affairs: the HOD encouraged payment of fair compensation for state legislators, and supported adequate funding for legal services for low-income Oregonians.

A resolution failed that would have placed an aspirational standard for pro

bono services for all active members into the Rules of Professional Conduct. (Currently, OSB Bylaw 13.1 contains such a standard: see <http://www.osbar.org/docs/rulesregs/bylaws.pdf>.)

From a public affairs perspective, however, the most interesting resolution would have opposed repeal of the state tax measures the legislature enacted last spring. Proponents argued that the repeal of the tax measures would inevitably lead to cuts in the judicial branch and other justice system budgets, and that the bar is directly interested in the health of the justice system. Opponents argued that the bar should not take positions on hot-button public policy issues about which there is great disagreement among bar members. Ultimately the resolution was amended simply to recognize the detrimental effect of repeal of the taxes on the justice system. The resolution as amended died on a tie vote. For more information supporting and opposing the tax measures go to <http://voteyesfororegon.org/> (supporting the measures) and <http://www.stopjobkillingtaxes.com/> (opposing the measures).

Effect of Measures 66 and 67 on Judicial Branch Budgets

Regardless of your position for or against Measures 66 and 67, failure of these measures will have a direct effect on the viability of the judicial branch and other justice system services. According to the most recent revenue forecast, the state's projected ending balance reserves available is \$191.6 million. Despite the relatively flat December forecast, it is unlikely that the legislature will want to cut into this slim reserve to fund ongoing state services.

Failure of the tax measures would result in a projected loss of \$733 million—roughly 5 percent of the total projected general fund and lottery resources for the 2009–2011 biennium. No one seems to be considering an attempt to enact new tax increases in February if the measures fail. Unless the legislature is willing to spend all its reserves, or the economy takes an unexpected turn for the better, the lost \$733 million will have to come out of the general fund budgets of state entities. Although income that would be lost is roughly 5 percent of the general fund, the legislature asked state entities to submit plans on reducing their budgets by 10 percent, since the budget cuts would not take effect until a substantial part of the biennium has passed.

The projections are sobering.

The Oregon Judicial Department submitted reductions at both the 5 percent and 10 percent levels. As a preamble, the document points out that about 30 percent of the department's budget is fixed costs for judicial compensation, debt service, and other non-reducible charges. At a 5 percent general fund reduction, OJD would lose over 15 percent of its available workforce (186 positions) from May 2010 through the end of the biennium. These staff reductions would force courts to close one day a week and would severely affect trial court operations. At a 10 percent reduction, the department would lose over 32 percent of its staff (400 positions) and would close trial courts "at least two days per week."

The summary concludes: "These levels of General Fund reductions dissolve a unified statewide court system, close trial courts, derail the Oregon eCourt program, and invite constitutional challenges to the state's obligation to administer justice 'completely and without delay.'" For additional detail, go to http://www.leg.state.or.us/budget/budget_reduction_options/JUD_OJD.pdf.

The Public Defense Services Commission also submitted 5 and 10 percent budget reduction packages: a 5 percent reduction would mean that trial level representation would be suspended for the last 36 days of the biennium, and a 10 percent reduction would result in suspension of representation for the last 72 days of the biennium.

And while not part of the judicial branch, elected district attorneys are another key component of the public safety system. They would suffer direct salary reductions of 5 or 10 percent. Elected district attorneys are not able to reduce their hours or take furlough days.

Projected general fund reductions for all state agencies are available at <http://www.oregonbudget.gov/>.

A spokesman for the opponents of the tax measures downplayed the projected loss in revenues as political rhetoric. Oregonians Against Job-Killing Taxes website says that the legislature did not really have to raise taxes in order to balance the state budget: the legislature will decide what if any budget reductions will be required from an array of options if the measures are defeated. See <http://www.stopjobkillingtaxes.com/faq/>

Parties to Medical Malpractice Debate Encouraged to Search for Common Ground

The House and Senate Judiciary Committees met together on November 19, and among other things conducted a short informational hearing on medical malpractice issues. Representatives of the Oregon Medical Association (OMA) presented testimony from a historical perspective and called for a number of reforms to the civil justice system. A representative of the Oregon Trial Lawyers Association (OTLA) gave testimony that countered the OMA proposals, but left some room to search for common ground on insurance reform issues.

In bringing the discussion to an end, Senate Committee Chair Floyd Prozanski (D Parts of Lane, Douglas, and Coos Counties) noted that in the 2009 session, he had made a commitment to take another look at medical malpractice issues in light of some changed dynamics. He asked both sides to submit their priorities for legislative changes in writing and said that these documents would be provided to all members of both House and Senate Committees. He and House Judiciary Chair Jeff Barker (D Aloha) will meet individually with the parties to search for possible common ground. He assured members that he would not waste their time if it appeared that the parties were not really willing to come to the table. If there is no common ground, however, Senator Prozanski invited the parties to consider whether they want the legislature to impose reforms about which they may have little input.

In any event, this project is not likely to lead to legislation in February 2010.

Keep the Courts Open Act

Kevin Mannix, Ross Day and former Lane County District Attorney Doug Harclerod have filed Initiative Petition 64, which they call the "Keep the Courts Open Act." The act would set aside 3 percent of the state's general fund as dedicated funding for "traditional judicial department operations," specifically defined to exclude the Public Defense Services Commission and debt service on capital projects. The act is intended to insulate the judicial branch from interference by the legislative and the executive branches and to ensure that the judicial branch has funding to make good on the constitutional guarantee that justice be administered "completely and without delay."

For lawyers and others who depend on the viability of the judicial branch, this initiative may have great appeal. Currently, the judicial department receives about 2.25 percent of the state's general fund budget; this measure would increase that by a third. The department is currently underfunded, and the additional funds could be well-used for basic court services as well as any number of court programs.

The measure raises a number of questions, however. Perhaps most significant, is it wise to make state budgetary policy through the initiative process? The legislative budget process is designed to coordinate resources among related agencies. Out of which budget would the extra 0.75 percent for the judicial branch come? While the courts' budget may become larger, other public safety partners might have to cut back.

Unanswered in the measure is whether the judicial branch would be able to accumulate a reserve of its own to fall back on during recessions. Usually, unused general fund appropriations revert to the

ending balance. If the branch cannot accumulate its own reserve in prosperous times, it will remain subject to the boom/bust cycle that has affected state government for decades.

If a measure like this is good for the courts, might similar measures benefit other agencies? While the legislature is limited to spending no more than 100 percent of the state's general fund, the authors of ballot measures are not.

BOG Creates Sustainable Future Section; Requires Further Study of Senior Lawyers Division

At its meeting on October 31, the Board of Governors approved the establishment of a new Sustainable Future Section, but decided that a proposed Senior Lawyers Division needed further study. Each arose from the recommendations of special task forces that had been formed to address emerging issues in the profession.

The Sustainable Future Section is organized around the overarching societal goal of sustainability. The task force that recommended its creation suggested the following initial scope of work for the section: monitor pertinent developments in sustainability; share information with sections where sustainability is pertinent to substantive law; publicize sustainability tools available for use by the law office; provide recognition for sustainability efforts by law offices and lawyers; monitor operations and programming by the OSB; and keep abreast of developments in law to protect the rights of future generations.

The Senior Lawyers Division (SLD) would automatically include all OSB members age 55 and older. The SLD would be similar to the Oregon New Lawyers Division (ONLD), providing resources for lawyers nearing the end of, rather than just starting out in, the practice of law. The SLD would identify and coordinate opportunities for senior lawyers to share their expertise and would organize educational and social opportunities targeting senior lawyers. The division would be the voice of senior lawyers within the bar, and like ONLD, would have a liaison to the Board of Governors. The board decided to study formation of the division further to assess whether it would actually interest the senior cohort of the OSB membership.

Public Comment Period Opens for Proposed UTCR Changes

The Uniform Trial Court Rules committee met on October 16, 2009, to review proposals to amend the UTCR and to make preliminary recommendations to the chief justice of the Oregon Supreme Court. A description of the proposals and action taken by the committee is posted at:

<http://courts.oregon.gov/OJD/programs/utcr/utcrrules.page> and will be published in Oregon Appellate Courts Advance Sheets No. 2, January 12, 2010.

Proposals of special note include a new rule on expedited civil jury trials, amended rules on appearances by telephone, and a revised uniform support affidavit.

The committee encourages all interested parties to submit comments on these proposals. Comments can be posted at the web address mentioned above or sent to the UTCR Reporter at the Office of the State Court Administrator, Supreme Court Building, 1163 State Street, Salem, Oregon 97301-2563 or utcr@ojd.state.or.us.

The committee will make final recommendations on these proposals at the next UTCR meeting on April 9, 2010, 9:00 a.m., Office of the State Court Administrator in Salem. Those proposals approved by the Chief Justice will become effective August 1, 2010.