



Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

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Save the Date:

2009 Legislative Highlights Program:
Friday morning, November 6, at the
OSB Center. HOD Annual meeting
will follow in the afternoon.

2009 Session Ends:

The 2009 legislative session
adjourned sine die on the evening of
Monday, June 29. Here are links to
three different views of the
legislature's 2009 session:

Governor Kulongoski:

[http://governor.oregon.gov/Gov/pdf/
2009_accomplishments_long.pdf](http://governor.oregon.gov/Gov/pdf/2009_accomplishments_long.pdf)

House Democrats:

[http://www.leg.state.or.us/press_rele
ases/hdo_070109.html](http://www.leg.state.or.us/press_releases/hdo_070109.html)

House Republicans:

[http://www.leg.state.or.us/press_rele
ases/sro_063009.pdf](http://www.leg.state.or.us/press_releases/sro_063009.pdf)

Oregon Legislative Web Site:

Information on legislators, legislative
committees, committee agendas,
budget proposals, the text of all
printed bills, and more are available
on the Oregon Legislature's Web
site at: www.leg.state.or.us

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Judicial Department Budget Sustains Cuts

In light of the dire state of the state's finances for 2009–2011, the Oregon Judicial Department (OJD) came out of the legislative session in good shape relative to the cuts that seemed likely earlier in the year. The department's budget bill for the 2009–2011 biennium cuts roughly 10 percent of the department's general fund allocation from the last budget cycle, but lawmakers hope that some of that shortfall can be made up with funds from HB 2287-B—the court fee bill described below. Using these funds, the legislature intends to restore the OJD budget to no less than a 7.5 percent general fund reduction level—a substantial but manageable cut. After these funds are applied, the department will lose roughly 220 full-time non-judge positions—over 11 percent of its workforce.

In addition to its operating budget, OJD will receive funding to continue implementation of the Electronic Court (eCourt) program, including funds for debt service and proceeds on new bonds for implementation itself.

Additionally, although the funds do not go to OJD, the legislature authorized the Department of Administrative Services to issue lottery revenue bonds for repairs of county court facilities, generating over \$11 million for 32 deferred maintenance projects that can be started and completed quickly.

Increases in Court Fees to Fund Courts, Indigent Defense

In order to deal with short-term budget shortfalls for the courts, indigent defense, and several other legal system agencies, the legislature enacted HB 2287-B. The bill came out of a work group consisting of legislators, the judicial department, plaintiff and defense trial lawyers, the bar, and collection agency representatives.

The bill will raise an estimated \$39.6 million in revenue from various new court fees and court fee surcharges, all of which take effect on October 1, 2009, and sunset on June 30, 2011. Except for fees raised by local Justice, municipal, and county courts, all revenue collected from July 1, 2009, through June 30, 2011, will be placed in a new Judicial System Surcharge Account. Contingent on the availability of funds, \$10 million from this account will be distributed initially, split 65/35 percent between the Judicial Department and the Public Defense Services Commission. Further distributions will require legislative action, most likely in February 2010. Included in those distributions

will be \$52,000 for the Council on Court Procedures and \$223,000 for the Oregon Law Commission.

The bill also creates an Interim Committee on State Judicial System Revenues, which will make recommendations on permanent court fees, fines, and surcharges, and will recommend distribution of the revenue generated in the 2009–2011 biennium.

Measure 57 Implementation Suspended

Few issues in the 2009 session grew to be more contentious than the debate over the implementation of Ballot Measure 57—the measure passed by voters in November, 2008, that increases criminal sentences for persons convicted of certain drug crimes or repeat property crimes and provides incentives for offenders to complete treatment programs. The legislature placed Measure 57 on the ballot as an alternative to a more costly measure brought forward by crime victim advocates. The measure went into effect in December, 2008. Under the Oregon Constitution, a bill that reduces criminal sentences established in a ballot measure requires a two-thirds majority for passage.

From the start of the session in January, the legislature was faced with a steadily deteriorating revenue forecast with a concomitant need to pare agency budgets. Public safety agencies—including Corrections, the State Police, and the Oregon Youth Authority (OYA)—faced significant cuts unless some source of revenue could be identified to backfill budget short falls. Some advocates identified one possible source of funding: use money saved from delaying implementation of Measure 57.

A crime victims' advocacy group and the Oregon District Attorneys Association opposed delaying implementation of Measure 57. They pointed out that over 60 percent of the voters had voted for the measure and disagreed that the implementation cost was as high as projected.

Advocates for the phase-in argued that voters had not anticipated the dire decline in revenues, and that the cuts would be devastating to both the programs affected and to the communities in which the programs are located.

The first version of the bill contained an immediate suspension of most provisions of Measure 57, and some other high-priority crime measures as well. When it failed to pass in the House by the requisite two-thirds majority, it was sent back to committee for further amendments.

The bill that emerged ultimately passed. Among other things, HB 3508-B continues Measure 57 in effect until February 15, 2010, and then suspends it until January 1, 2012. The savings support expansion of state police patrols, continuation of other state police programs, and continued operation of two OYA facilities.

This debate is likely to arise again in the February 2010 session when hard fiscal results on the cost of Measure 57 for its first year of operation will be available.

When Will the Legislature Meet Next?

When it adjourned on June 29, the legislature had not established a definite timeline for one or more special sessions in the interim. The constitution directs the legislature to meet every other year. The expectation is clear, however, that the legislature will reconvene in February 2010 for a second experiment with a short session in the second year of the biennium.

The legislature met for three weeks in February 2008 and received mixed reviews of its work. The agenda was vague and the presiding officers kept a tight lid on the agenda. Among the measures passed were what became Ballot Measure 57 and a bill that regulates the practice of foreclosure consultants and equity purchasers, and requires a plain language notice of foreclosure to the borrower.

The February 2010 session could be dealing with some very difficult budget issues. The budget just passed depends on roughly \$730 million in revenues from new taxes on businesses and wealthy Oregonians. Referral of these measures to the voters seems very likely, and the election would be held on January 26, 2010. If the voters reject these taxes, the 2010 session will be looking at a budget shortfall in at least the amount of lost revenue, plus additional shortfalls that may arise if the economic situation continues to get worse. At that point, the legislature's only choice will be to cut budgets.

Otherwise, the 2010 legislature will be dealing with a number of loose ends from the 2009 session and any important issues that arise between now and then.

If the economic situation gets precipitously worse in the fall, the legislature could hold a special session before February, akin to those of the 2001–2003 interim, to make budget cuts. The next revenue forecast is due in September.

Interim Workgroups Expected to Take Shape

When in doubt, the legislature often forms work groups to work through difficult problems and report back to the next session of the legislature with possible solutions. In the interim prior to the 2009 session, several notable work groups dealt with a review of the land use system ("The Big Look"), tort claims damages, and court facilities. Work groups may be formally established in legislation or more informally formed under the auspices of the bar, the law commission, or other groups.

Among the work groups that will be active in the upcoming biennium include the following:

- Bail bonds. HB 2682 directs the joint interim judiciary committee to take testimony on the feasibility and advisability of reinstituting a commercial bail bond system and to make recommendations to the next session of the legislature.
- Court fees. In addition to increasing existing court fees and establishing new ones, HB 2287 establishes an Interim Committee on State Justice System Revenues with three Senate members and three House members. The interim committee will "conduct a review of all existing Judicial Department fees, fines and surcharges."
- Although SB 16 did not establish a work group itself, it establishes authority for health care representatives to consent to hospitalization of the principal for dementia treatment. This authority expires in January, 2012. This sunset will force the interested parties to the table for a more permanent solution.
- Legislative leadership may ask the Oregon Law Commission to call together a work group to deal with inheritance tax issues, especially relating to natural resource properties.
- Protective proceedings. HB 2883 establishes the Public Guardian and Conservator Task Force to explore all aspects of public guardian and conservator programs and make recommendations to the 2011 legislature.

UTCR Changes Effective August 1, 2009

Chief Justice Paul J. De Muniz has approved changes to the Uniform Trial Court Rules (UTCR) that become effective on August 1, 2009. Changes of particular interest include new rule 2.130 and related forms for protecting confidential information in family law cases. You can find these changes online at <http://www.ojd.state.or.us/programs/utcr/utcrules.htm>.

The UTCR committee's next meeting is scheduled for October 16 (and 17, if necessary), 2009. The committee welcomes proposals for change to the UTCR. Please submit your proposals by September 1, 2009, to utcr@ojd.state.or.us or UTCR Reporter, Supreme Court Building, 1163 State Street, Salem, Oregon, 97301-2563.

Legislature Supports Legal Services

The legislature showed its commitment to civil legal services for low-income Oregonians by passing two measures.

SB 687 requires that abandoned funds in lawyer trust accounts be reported to the Department of State Lands and forwarded to the bar for use in the funding of legal services programs. The bar would be responsible to reimburse a claimant who comes forward after the funds are transferred. The amount this is expected to generate is relatively small—around \$10,000 per year.

On the other hand, included in the close of session budget reconciliation bill (HB 5054) was a general fund biennial appropriation for legal services of \$1 million. Half of this funding will be retained until July 1, 2010, in case budget exigencies require its use on other priorities.

Litigators and Collectors Take Note: New Judgment, Lien Record, and Garnishment Document Requirements Are Now in Effect

A bill that took effect on June 4 limits identifying information that can be included in judgment documents, lien record abstracts, and writs of garnishment. SB 240 requires disclosure of only the debtor's taxpayer identification number, and the final four digits of the debtor's Social Security and driver license numbers. View the specific requirements in this bill at <http://www.leg.state.or.us/09reg/measpdf/sb0200.dir/sb0240.en.pdf>.