



Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

Public Affairs Committee

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Notable Oregonian

Mathew Deady
(1824-1893)

Prior to being elected to the Oregon legislature in 1851 Mathew Deady taught and practiced law in Lafayette (Yamhill County). He was appointed associate judge of the Territorial Supreme Court and served from 1853 to 1859. Deady advocated establishing six year terms for judges, four year terms for state officers, and biennial legislative sessions while he presided over the 1857 State Constitutional Convention.

Deady moved to Portland in 1859 when he was appointed U.S. District Judge for Oregon. He founded the Multnomah County Library, served as president of the University of Oregon from 1873-1893, and compiled and annotated the *General Laws of Oregon* in 1866. The "Deady Code" was replaced by the Oregon Revised Statutes in 1953.

June 30, 2004

Lawmakers Approve Some Funding for PDSC

At its June 25th meeting, the Emergency Board allocated a total of \$7 million to the Public Defense Services Commission to deal with a significant budget shortfall for the 2003-2005 biennium.

The Emergency Board took this action to address a budget shortfall due in part to an increase in projected caseloads. This increase was the result of the Chief Justice's order to defer action on certain types of cases into the 2003-05 biennium due to budget cuts from the 2001-03 biennium. In addition, the failure of Ballot Measure 30 triggered a \$9.9 million reduction to the PDSC budget. This funding gap of approximately \$14 million would result in the depletion of all funds for PDSC by May 2005. This, in turn, would result in the suspension of appointment of counsel from that point on until July 1, 2005, and delay prosecution of new criminal cases.

In January 2005, the PDSC is to report back to the Emergency Board on its caseload levels and caseload projections, and request the balance needed to maintain indigent defense services during the rest of the biennium.



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OSB 2005 Legislative Proposals

The following OSB section and committee legislative proposals were approved by the Board of Governors and have been submitted to Legislative Counsel's office for legislative drafting:

2005 Section and Committee Legislative Proposals
Summary
OSB BOG
BOG Election 30 Day Timeline Change
Administrative Law
Resubmit HB 2058 from 2003 session regarding modifications to the operation of hearing officer panel: Procedural rules for contested cases, discovery and ex parte communications
Awarding attorney fees, access to agency decisions, final orders, mental and physical exams
Consumer Law
Increase homestead and automobile exemptions
Create an exemption for child care tax credit
Debtor-Creditor
Require sheriffs to accept cashier's or official bank checks at judicial sales; sheriff to deliver property upon check clearing
Allow recording notice of bankruptcy by trustee or debtor in county in which the debtor has real property, instead of requiring petition to be recorded
Allow for payment of remaining proceeds of sale of personal property in possessory lien foreclosure
Elder Law
Amend small estates statute to allow supplemental affidavit to be filed on newly discovered property after the 4 month time period passes
Enlarge the time for filing estate and conservator accountings from 30 to 60 days
Allow a trustee to file an elderly abuse petition for an abused trustor or trustor's spouse

Estate Planning
Uniform Trust Code
Amendment to Trustee Powers Act, adds to the trustees' power a power to split a single trust into two separate trusts under certain conditions
Uniform Transfers to Minors Act edit; substitute the word "beneficiary" for the word "minor"
Family Law
Termination of beneficiary designation upon divorce
Health Law
Permit disclosure of some protected health information concerning decedents and incapacitated persons
Provide for public hearings on DHS applications for waivers of federal statutory or regulatory requirements prior to submission
Change the administrative rules for workers compensation subpoenas for medical information to require subpoenas to comply with ORCP 55H
Real Estate & Land Use
Sale of county property
Final plat approval
Annexation approval by road authorities
Taxation
Allow limited liability companies wholly owned by one or more nonprofit corporation to qualify for property tax exemption
Oregon State inheritance tax fix necessary in light of Oregon's disconnect from Federal tax system
Workers Compensation
Workers Compensation Board amendment to "Own Motion" jurisdiction
Procedure and Practice
Suspension of statute of limitations for 180 days upon attorney death

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June Special Session

Last month's edition of the Capitol Insider contained an article previewing the June special session that ended with this: "Who shows up in Salem next month and what they do when they get there is very much an open question."

Now that question can be answered: House Republicans showed up, but no session was held for lack of a quorum.

The session had originally been scheduled by an act of the 2003 session and was intended to deal with tax reform proposals developed by a Joint Interim Committee on Tax Reform. The interim committee met and conducted hearings, but was unable to reach consensus on a proposal to place before a special session.

The House Republicans on the committee were interested in pursuing what came to be called the "bucket plan": a proposal to cap state spending and create a rainy day fund. This plan did not have bi-partisan support. Since it would have required amending the Oregon Constitution, the plan would have required a two-thirds majority in both chambers. Given the split in the House of 35 Republicans and 25 Democrats and the 15-15 tie in the Senate, the passage of the plan was a long shot.

Due to the failure of the Joint Interim Committee to reach a consensus, House Speaker Karen Minnis (R, Wood Village) appointed a House Revenue Committee. The House Committee drafted a bucket plan bill for the consideration at the special session, and called the House into session for June 1. However, Senate President Peter Courtney (D, Keizer) refused to

call the Senate into session based on a poll of the Senators his office conducted. House Democratic Leader Jeff Merkley (D, Portland) announced that members of his caucus who had previously voted for the session in 2003 had withdrawn their support.

On June 1 all the House Republicans and two Democrats were present when the Speaker attempted to convene the House. Since 40 members are required for a quorum and only 37 were present, no special session was held. No one attempted to convene the Senate. Since the House did not convene, the members present received no payments for expenses or *per diem*.

In a foreshadowing of the fall elections, Republicans characterized the Democrats as unwilling to follow through on the commitment they made to meet and do the people's business. Republicans believe that a spending limit has substantial support among their party's base and perhaps more broadly in the electorate. Democrats countered that convening a special session without bi-partisan support for a specific plan would be a waste of time and taxpayer money that could only end in more legislative dysfunction and bitterness.

In spite of the theatrics of the special session that wasn't, there are indications that the original Joint Interim Committee on Tax Reform will reconvene to build on its work, and to explore measures to propose in the 2005 session.

Legally Trained Legislators

The presence of Legislators with legal training is rapidly diminishing from the Oregon Legislature. This is of great concern to the bar since legally trained

individuals are specially qualified to serve as legislators due to their education and professional experiences. Every month the Capitol Insider will be spotlighting a different legislator with legal training.

Senate President Peter Courtney has served in the Oregon Legislature for 20 years making him the most seasoned member of the Legislature. He served in the Oregon House from 1981-84 and 1989-98 and was elected House Democratic Leader for four straight sessions. In 1998 Senator Courtney was elected to the Oregon State Senate. Senator Courtney represents the citizens of Salem, Woodburn, and Gervais. He was unanimously elected as Senate President in January 2003.

Senator Courtney is committed to consensus building among the Senate members, a difficult task when the Senate Chamber is evenly split 15-15. During the 2002 special session he worked across party lines to rebalance the state's budget. Senate President Courtney chairs the Emergency Board with House Speaker Minnis. He also is a former and seasoned member of the Judiciary.

Senator Courtney earned his law degree from Boston University and received his Bachelor's and Master's degrees from University of Rhode Island. Senator Courtney is a professor at Western Oregon University.

Economic Forecast

The state economist's quarterly revenue forecasts are of utmost significance in the making of public policy in Oregon. These forecasts predict the amount of revenue the state will have for the balance of the current biennium and for biennia to come.

During the legislature's regular sessions, the May forecast is the basis for the next biennial budget. When subsequent forecasts reduce this revenue projection, the legislature ultimately must deal with the shortfall through tax increases, spending cuts, borrowing, or a combination. When revenue exceeds the projections by more than 2%, the excess is returned to taxpayers in the form of the kicker.

The forecast released at the end of this May contained some good news: a surge in lottery profits and corporate profits will increase the state's general fund from \$10.2 to \$10.3 billion for the 2003-2005 biennium. The effect will be to increase the ending balance - amount the state is projected to have left in reserve at the end of the biennium on June 30, 2005 - from \$21 million to \$108 million. This money cannot be spent without legislative approval. It could come into play when the legislature meets in the 2005 session to deal with issues like the shortfall in funds for indigent defense services.

Although the May forecast was the fourth in a row to show an increase - after eight projecting decreases, capitol insiders are cautiously optimistic about the long term impact on the state economy. While corporate taxes are projected to increase substantially, personal income taxes, which account for 87% of the general fund, are flat. The personal income tax kicker will almost certainly not be in play this biennium, since revenues would have to increase by more than \$700 million before revenues exceed the projection. (The projection was based on income from a revenue bill that ultimately became Measure 30, which was defeated by voters.)