



# Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

## Public Affairs Committee

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Among the wealth of information the *Oregon Blue Book* contains is limited demographic data about legislators. Comparing the information from years past to current information one can conclude:

- The legislature is graying. Compared to 1967, the legislature is more heavily weighted to people over 50.
- It's not only lawyers who have become scarce: The numbers of farmers and ranchers has also declined.
- The legislature has gained business owners and people who list their occupations as "legislator." The first time someone claimed "legislator" as an occupation was 1977; in 2005, 23 people did.

(This information originally appeared in "Senate President's Update-July 21, 2006." Thanks to Sen. Courtney and his staff.)

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## Possible New Schedule for the Legislative Session?

The Public Commission on the Oregon Legislature has adopted a recommendation for a legislative schedule very different from the one to which Oregonians have grown accustomed. Under the current system, the legislature convenes in January of odd numbered years and meets until it finishes its business, which must include adopting a two year budget.

Under the commission's recommended system, the legislature would meet for a week in January to organize itself, after which there would be no floor sessions and limited substantive committee meetings until roughly April 1. The budget committees would meet consistently during this hiatus. The session would begin daily floor sessions and committee meetings in April, and would establish maximum session length – probably 120 days from reconvening. The legislature would adopt a two year budget in 2007, but a sixty day session would convene in January of 2008 primarily to consider budget adjustments. The commission's recommendation is based in part on the fact that serious budget negotiations cannot begin until after issuance of the May 15 revenue forecast.

The commission's recommendation would not require any statutory or constitutional change to implement in 2007.

Now that the commission has proposed the plan, what chance does it have of actually going anywhere? While it is too early to tell what will happen exactly, the legislative leadership seems intent on following at least the broad outlines of the recommendation: limiting the length of the session; adopting some kind of ramp up period and hitting full stride before the May 15 revenue forecast; and meeting annually on a regular basis. A majority of legislators in both chambers must approve the changes. It is likely that an outline of a plan will be made public in the early fall. Business as usual using the old schedule has not been ruled out, but an attempt at something new seems more likely.

## Kicker Politics

In his June 2 revenue forecast, state economist Tom Potiowsky projected that state revenue for the current biennium would exceed the close of session forecast, issued in September 2005, by some \$883 million in personal taxes and by \$198 million in corporate taxes. Under

the current “kicker” law, all of the excess revenue would be refunded to taxpayers in the fall of 2007. The personal kicker would result in an astonishing refund of about \$175 for every \$1,000 in personal income taxes paid to the state.

As interesting as the forecast was the reaction of Oregon political figures.

- Governor and Democratic candidate for re-election Ted Kulongoski said that he would ask the legislature to suspend the personal kicker for the next six years and reinvest the money in the state’s economy. He also proposed using the corporate kicker to start a rainy day fund. (Suspension would essentially require a two-thirds vote of both chambers of the legislature, which seems a long shot.)
- Republican gubernatorial candidate Ron Saxton dismissed Kulongoski’s proposal: in his view it would amount to an \$883 million tax increase. His position on the corporate kicker is unclear.
- Sen. Ben Westlund (I.-Tumalo) – an independent candidate for Governor at the time the forecast was released - said that the kicker should be included in a broader discussion about tax reform.
- House Speaker Karen Minnis (R.-Wood Village) is not running for governor, but issued a press release on the issue. She will oppose any effort to suspend the personal kicker, but “would consider working with the business community on directing the corporate kicker into a rainy day fund.”
- Senate President Peter Courtney (D.-Keizer) struck a cautionary note. He pointed out that the revenue forecasts are volatile. “The only thing we have right now is a projection. Show me the money. We don’t have any money yet.”

## Public Defense Services Commission Shortfall

The Public Defense Services Commission (PDSC) is the state agency charged with providing legal representation for financially eligible Oregonians who have a right to counsel under federal and state constitutions and statutes. A division within the PDSC provides representation in most criminal appeals. The PDSC biennial budget is \$175.8 million, all but \$0.9 million of which is general fund.

According to a recent projection, PDSC expenditures will exceed the funds provided by \$7.6 million during the 2005-2007 biennium.

There are three principal reasons for the shortfall:

- The number of appeals the office handles has increased disproportionately, due in large part to the U.S. Supreme Court decision in *Blakely v. Washington* in 2004. *Blakely* called into question enhanced sentences imposed on defendants based on facts not found by juries.
- Death penalty expenditures have increased dramatically, due to the recycling of cases through the system with appeals and post-conviction relief cases. The same cases often churn through the system a number of times in slightly different postures.
- Some costs are increasing in excess of the inflation rate. These include hourly rates in some counties for basic trial level representation in Measure 11 and murder cases, and the hourly rates for death penalty attorneys. In addition, rates for non-attorney forensic and medical experts are increasing dramatically. And lastly, the mileage reimbursement rate has increased significantly.

Specifically, increased appeals are projected to add \$983,600 to the biennial expenses, death penalty expenditures will add \$3.37 million, and costs exceeding the inflation rate \$3.2 million, for a total of \$7.56 million.

## Indigent Defense Eligibility Audit

Another development several months ago may have a detrimental effect on the PDSC budget. *The Oregonian* ran an article on March 30 reporting that a Secretary of State audit found that “a state agency that finances court-appointed lawyers for criminal defendants spends up to \$2.4 million a year representing people who are not financially eligible” and fails to collect \$885,000 a year from defendants who are ordered to pay application fees and contributions.

Although the audit occurred, its subject was the Oregon Judicial Department (OJD), not the PDSC as might be supposed from the article. It is the OJD that has the responsibility to determine the financial eligibility for court appointed attorneys and to collect fees and recoupments from criminal defendants, not the PDSC.

For its part, while not disputing the findings, OJD has questioned whether expanding staff to verify all the cases would be cost effective: the cost for full enforcement would be about \$1.9 million a year.

*The Oregonian* printed a correction on April 1, but the appearance of the original story and the association the public makes between the PDSC and all aspects of the provision of indigent defense services may be difficult to overcome.

## BOG Approves Law Improvement Package

At its May meeting, the Oregon State Bar Board of Governors approved this package of law improvement bills for bar sponsorship in the 2007 Oregon Legislature:

### Bar Governance Provisions (Board of Governors' Public Affairs Committee)

- LC 674 - E-filing committee: Clarify that the Chief Judge is authorized to designate electronic documents as the official record. Co-sponsored with Oregon Judicial Department.
- LC 675 - Allow Client Security Fund to issue a subpoena prior to formal discipline, criminal charge or civil judgment; require a finding of dishonesty.
- LC 676 - Technical changes to conform to federal immigration law statutory name changes.
- LC 677 - Allow OSB employees to participate in Oregon Savings Growth Plan.

### Consumer Law Section

- LC 681 - Amend ORS Ch. 18 to allow exemption for Additional Child Tax Credit.

### Debtor/Creditor Section

- LC 682 - Allow service on occupant by mail and posting in trust deed sales, under certain circumstances and allow publication of sale in newspapers of general circulation.
- LC 683 - Allow normal secured property foreclosure process to proceed against debtor's estate.
- LC 684 - Amend ORS 18.625 to render writ of garnishment ineffective when served on employer after payroll instructions have been issued to a third party payroll company.
- LC 685 - Correct inadvertent omission of definitional cross-reference of “security account” in ORS Ch. 79.

### Elder Law Section

- LC 686 - Amend statute to clarify the sequence of claimants entitled to decedent's assets held in financial institutions.

- LC 687 - Amend ORS Ch. 125 to allow closure of conservatorship by creation of a supplemental needs trust.

Estate Planning and Administration Section

- LC 688 - Technical changes to the Uniform Trust Code.
- LC 689 - Technical changes to the Uniform Principal and Income Act.
- LC 690 - Amend Uniform Probate Code to allow declarations rather than affidavits in probate court.

Family Law Section

- LC 691 - Clarify court discretion regarding reinstatement of spousal support.
- LC 692 - Technical changes to ORS 107.730 and 109.020 to make remedies consistent and language clearer. Includes change to ORS 18.180 (7) regarding expiration of judgments in certain domestic relations matters.
- LC 693 - Standing Committee on Adoption: Repeal sunset on Oregon Adoption Tax Credit.

Indian Law Section

- LC 694 - Clarify Oregon Evidence Code to ensure that treatment of documents provided by tribal governments is consistent with treatment of documents of other governments.

Real Estate and Land Use Section

- LC 695 - Remove state and local road authorities from list of property owners whose consent is necessary for annexation under ORS 222.125.
- LC 696 - Establish a system where title to underlying property vests when a city vacates a public right of way by repealing ORS 271.140 and enacting a version of the system that counties use (ORS 368.366), which creates an alternative to a quiet title action.
- LC 697 - Amend ORS 215.427 to grant counties the authority to determine that a land use application has expired where the applicant does not supply additional requested information within 180 days.
- LC 698 - Amend ORS 275.225(1) to allow counties to sell excess property unsuited for construction under county and city zoning ordinances and building codes. The current statute covers county codes only.
- LC 699 - Amend ORS 93.180 to clarify that a deed to a husband and wife defaults to a tenancy by the entirety.

Procedure and Practice Committee

- LC 700 - Amend ORS 12.160 to apply the existing extension of the statute of limitations for minors' personal injury claims to medical expenses incurred for the minor that may be the parents' responsibility.
- LC 701 - Amend ORS 1.730 regarding voting quorum requirements on Council on Court Procedures.
- LC 702 - Clarify trial court jurisdiction to rule on motions for new trial, motions for judgment notwithstanding the verdict and motions for relief from judgment notwithstanding the filing of a notice of appeal.

**Correction**

The last issue reported that Rep. Brad Avakian (D.-Beaverton) is running unopposed for the Senate in District 17, the seat currently held by Sen. Charlie Ringo. This was incorrect. Although no Republican filed to run for the seat in the primary, Republicans organized a write in campaign for Piotr Kuklinski, M.D.