
Report of Oregon's 76th Legislative Assembly
Regular Session 2011

Overview

The Cultural Advocacy Coalition approached the 2011 Session with three legislative concepts to pass and several funding fronts to protect. At adjournment, two of the bills had become law, critical budgets were reduced, but at levels proportionate to other state agency reductions, and a very real threat to Oregon's Percent for Art program was avoided. For cultural interests overall, the session can be summed up as having done no harm - which is actually a good session outcome, considering the revenue headwinds that chiseled away budgets, statewide.

The 2011 Legislature adjourned on June 30, exactly hitting its self-imposed deadline and keeping faith with voters and their freshly minted approval of a constitutional amendment requiring annual sessions. Although the session convened in January, it recessed after three "organizational" days until February, when work resumed at a screaming pace.

Each session develops its own character, and this one was unique in several ways: an unprecedented third-term governor occupied the center office, an historic 30-30 party split in the House of Representatives that led to an untested "co-governance" leadership model, and budget-driven timelines that were the shortest in decades - coupled with an extreme shortfall in projected revenues.

Melt down potential, to be sure.

However, credit goes to all for a steady, focused, workman-like session that passed budgets, negotiated policy and mostly avoided highly partisan, divisive and dramatic moments. In contrast to 2009 and the ugly debates over funds sweeps (including from the Cultural Trust) and the tax increases that became Ballot Measures 66 and 67, no serious tax increase proposals were considered. And, in an early February package of bills required to rebalance the current 2009-11 budget, a repeat performance stealing funds from dedicated programs to backfill general programs did not occur.

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CULTURAL ADVOCACY COALITION

Strengthening the Cultural Trust: HB 3387 & HB 2744

In an effort to reinforce statutory language with respect to the use of monies donated to the Cultural Trust, the CAC introduced legislation to strengthen the Trust from future funds sweeps by declaring a contractual obligation of the state to use contributions only for arts and cultural purposes and not for transfers out of the account for other uses. This bill was sponsored by Representative Kennemer (R-Canby), and Reps Esquivel, Huffman, Parrish, Weidner, Witt and Senator Girod.

In the same vein, Representative Debbie Boone (D-Cannon Beach) independently introduced HB 2744, to provide that all assets of the Trust are held in trust for the exclusive benefit of the Cultural Trust and that the State of Oregon has no proprietary interest in the assets of the account and may not reclaim payments made to the account.

Since neither bill proposed a constitutional amendment and vote of Oregonians (the only fail-safe way to carve out any program), all parties recognized the legislation served more as a peace offering by the legislature and a vote of confidence for building the endowment moving forward. And frankly, the language did serve to strengthen existing statute to better position the Trust for legal action in the event of any future funds sweep.

Committee Co-Chairs, Reps Gene Whisnant (R – Sunriver) and Paul Holvey (D-Eugene), directed the CAC to select one of the two bills to move forward. Pro-bono legal analysis provided by Greg Chaimov, Davis Wright Tremaine LLP, led to the selection of HB 3387, and Rep Boone graciously agreed to join these efforts.

To provide some context, in 2009 over \$81 million in “other funds” were swept from their designated purposes to balance the state budget. These sweeps

included fees paid by food processors for food safety recalls, taxes paid by phone users for emergency-911 enhancements, accounting licensing fees... the gamut. Consequently, dozens of bills similar to the Trust bill were introduced to protect different funds and programs. Additionally, Senator Chris Edwards (D-Eugene) introduced SJR 40, a proposed constitutional amendment to protect all “other funded” programs. Only three of the “sweep” bills even received a hearing; one of those was HB 3387. None moved out of committee.

Despite tremendous personal effort by Reps Kennemer and Boone, and despite support of Co-Chair Whisnant and the majority of committee members, HB 3387 died in committee on the last day during its second public hearing. Co-Chair Holvey refused to move to work session and adjourned the committee without further action on the bill. The end was disappointing, but not surprising. HB 3387 served an important purpose, though, in continuing the conversation about sweeps and building support for the Trust, including several pledges by legislative leadership to pay back the Trust at some future date.

Thank you to those who came to the Capitol and met with your legislators! Your grassroots lobby efforts on behalf of this issue were noted in Salem. The Cultural Advocacy Coalition will continue to build on this advocacy point and revisit the issue in 2011.

Oregon Heritage Vitality Task Force: HB 3210

HB 3210 was developed by the Heritage Commission to establish a 14-member Task Force on Oregon Heritage Vitality charged with studying, assessing and making recommendations to encourage coordinated efforts at state, county and city levels to improve heritage tourism, history education, historic preservation, funding, and related economic development.

At the same time, Representative Nancy Nathanson (D-Eugene) also introduced HB 2859, establishing a task force on State Historical Resources to develop

plans for coordination among agencies and institutions dedicated to preserving Oregon history. Again, the CAC was directed by committee leadership to “pick one” and not create two task forces.

After several meetings that included Rep Nathanson and folks representing the Heritage Commission and State Libraries, language was developed to amend HB 2859 from a task force into a policy bill that adds the Coordinator of the State Historical Records Advisory Board to the Heritage Commission as a non-voting member, and specifically includes the development of plans for coordination among agencies and organizations dedicated to preserving Oregon historical records to the duties of the Oregon Heritage Commission.

HB 3210 was then considered by the committee as a task force on its own merits. The bill moved with a number of split votes in both the House and Senate due to some members’ philosophical opposition to task forces, but ultimately was signed into law.

One of the duties of the task force will be to report back to the legislature and make recommendations for future legislation. These recommendations will be reported back no later than October, 2012 and presumably may become the foundation of 2013 legislation.

Smoking Onstage: HB 3457

In 2009, the Oregon Shakespeare Festival received an interpretation of the Oregon Indoor Clean Air Act from the Multnomah County health department that specified smoking of any smoking instrument was not in compliance with state law. While this information came late into the 2009 Session, the CAC made an attempt to gut-and-stuff an amendment into an otherwise dead bill to resolve this issue. The Oregon Department of Human Services was adamantly opposed, however, and there was not enough time to work the bill out prior to adjournment.

In 2011, the CAC came forward with its own legislation to allow performers in scripted stage, motion picture and television production to smoke in a pub-

lic place or a place of employment. The bill was sponsored by Representatives Mike Schaufler (D-Happy Valley) and Peter Buckley (D-Ashland) and by Senator Alan Bates (D-Ashland).

The Department of Human Services was initially un-supportive of this bill, based on a new agency legal opinion that the Oregon Indoor Clean Air Act actually does not prohibit the use of herbal cigarettes for performance purposes.

Since this verbal opinion was so different from the 2009 opinion, which in itself was a reversal of understanding from 2007, the CAC decided a statutory clarification was, indeed, the prudent way to move forward. By adding an amendment to limit the applicability of the bill to non-tobacco items, only, DHS agreed to not oppose HB 3457, which then sailed through both the House and Senate.

Thank you in particular to Paul Nicholson with the Oregon Shakespeare Festival for extensive research on laws in other states, and to Tom Haygood with Portland Center Stage and Dan Murphy with Broadway Rose Theatre for their assistance with testimony and agency negotiations.

AGENCY BUDGETS

The last time the legislature faced revenue projections as dire as those facing the 2011 Assembly, radical cuts were contemplated to balance the budget, including an effort to eliminate the Oregon Arts Commission, altogether. While that outcome was averted, final cuts remained deep and significant. Approaching this session with that in mind, the CAC set a goal to protect the budgets of cultural partner agencies to the extent that cuts would be recognized as necessary, but kept in proportion to other reductions experienced by other agencies.

To that end, the 2011 Session produced reduced but responsible budgets, including a General Fund appropriation to the Oregon Arts Commission, through the

budget of the Oregon Business Development Department in SB 5528, to the tune of \$3,852,524 General Funds. The Oregon Film and Video Office was provided operational funds in the same budget through a Lottery Fund expenditure limitation of \$1,207,893. These amounts were in line with all other agencies that were required to take overall “allotment” reductions, and then were funded at reduced levels from that new baseline, including a 5.5% Personal Services reduction, 6.5% Services and Supplies reduction, and the elimination of standard inflation adjustments.

It is important to note the cuts taken by the Oregon Arts Commission were not targeted or disproportionate. All agencies funded with General Fund dollars experienced the same recommended reductions in Personal Services, Services and Supplies, and inflation. Most importantly, the Oregon Arts Commission maintained its current level of grant funding, despite these reductions. One small surprise was the disapproval of an expenditure limitation to add a part-time, other-funded, limited duration position with the Cultural Trust. This position is anticipated to be revisited in the February 2012 short session.

The Heritage Commission, Oregon Main Street and State Historic Preservation Office are all funded through the State Parks and Recreation Department budget, SB 5534, which relies exclusively on Lottery Funds. Lottery funded agencies were subject to the same proportionate reduction percentages.

Unfortunately, the Oregon Historical Society does not enjoy a recurring budget line in any state budget. Rather, funds secured for the state’s largest repository of Oregon’s unique and irreplaceable treasures has enjoyed varying levels of state funding as “pass through” dollars, and starts from a zero base level of funding, each session. Fortunately, OHS is greatly supported by many legislators, including Senator Betsy Johnson (D-Scappoose). Kerry Tymchuk, OHS Executive Director, came to Salem many times and made a persuasive case about dedicating a portion of lottery bonding capacity to OHS for the purpose of debt retirement at the Gresham facility. Rather than requesting general funds for operational support, the request for bonding provided the Legislature a partnership

opportunity to make a longer-term investment in OHS. While the Capitol Construction Subcommittee did not include this request in its final agency budget, the story is never over until the gavel falls! (See “Budget Add Backs”)

Budget Add Backs....

You cannot adjourn a session without the famous, last-minute, dead-of-night “Christmas Tree Bill” that adds back funding to pet projects. Although the budget situation was so spare that the anticipated bill came to be known as the “Twig” it still contained some choice ornaments for the cultural community including;

- \$2.5 Million Lottery Bond authority for Oregon Historical Society (debt retirement Gresham facility);
- \$1.2 additional Lottery Funding through the Oregon Business Development Department for the operations of the Oregon Film & Video Office; and
- \$100,000 General Fund allocation as a pass through to the Department of Administrative Services for the Confluence Project.

TAX CREDITS

Review of tax credit programs took center stage in 2011, as the Legislature grappled with how to evaluate the first of three waves of tax credit programs automatically programmed to expire in 2012. A new budgeting formula presumed every tax credit program set to sunset actually would sunset - in effect, requiring the extension of any credit program to be “added back” to the budget. With this new review process came a new committee, the “Joint Committee on Tax Credits,” where the omnibus tax credit bill, HB 3672, was ultimately developed.

Included in the first wave of program expirations was the Oregon Production Investment Fund (O-PIF), a program that generates direct spending in Oregon through tax credits sold by the film office. The credits, totaling \$15 million in the 2009-11 biennium,

pay for rebates to productions based on expenses and labor costs, using audited receipts. Governor Kitzhaber had recommended in his budget to extend and expand the program, but the Co-Chairs Budget allocated nothing for the extension of any tax credit.

Vince Porter, Oregon Film Executive Director, did a superb job of winding through the new and untrampled path of policy committee hearings (on several iterations of an O-PIF extension), ways and means discussions, revenue committee scrutiny and ultimately the joint tax credit committee.

More than 45 pieces of legislation addressing a total of 20 income tax credit programs were up for review along the circuitous route which ultimately developed the omnibus tax credit bill, HB 3672. Of the 20 credit programs set to expire, 9 credits did expire. One credit expiration date was accelerated. 9 credits were extended and modified, and one was divided into three smaller, separate programs.

HB 3672 was a dramatic reduction in tax credit programs, overall. Calculations from the Legislative Fiscal Office show the cumulative estimated cost to the state in lost revenue next biennium to have moved from a projected \$40 million to \$10 million, with these savings rolling forward and growing in the future. To quote Rep Jules Bailey in his floor speech on HB 3672, “colleagues, this is a different kind of growth, an exponential growth in savings...” O-PIF was one of the fortunate programs to be extended, although at a reduced level of \$6 million a year (and with a modified tax credit sales mechanism).

2013 ALERT !! *The second of the three waves of tax credit program reviews will occur during the next legislative session. 13 tax credit programs are set to expire in 2014. This includes the tax credit for qualified donations to the Cultural Trust. Competition for survival among the tax credit programs will be fierce and include the earned income tax credit, the energy manufacturing tax credit, and the political tax credit, to name a few.*

OTHER NOTEWORTHY LEGISLATION

Arts Education

HB 2220: The 2008 Oregon Education Roundtable Report identified proficiency-based teaching and learning as the practice that can impact student learning the most, at the least cost. Education reform efforts are shifting the current paradigm away from seat-time and instructional hours, to focusing on ensuring that students graduate high school with the proficiencies necessary to ensure success in career and college. HB 2220 changes existing law to emphasize attainment of grade level proficiency in a continuum of knowledge and skills.

Stellar examples of credits by proficiency were provided by the Springfield Academy of Arts and Academics. The Oregon Arts Commission and the Arts Education Congress share a mission of developing sustainable improvement to Oregon’s K-12 systems so that the arts play a key role in the education of every child. This mission is clearly advanced through the passage of HB 2220.

HB 2750: Current law prohibits providing alcoholic beverages to individuals under the age of 21 with the exception that parents or guardians may do so in a private residence. HB 2750 adds an exception for secondary school student participants in culinary arts classes, and culinary competitions or demonstrations. The measure allows school districts to adopt policies that specify limited circumstances in which alcohol may be used, with required adult supervision, secured storage, and written parental permission. Students whose parents do not consent are provided an alternative project.

Events and Performing Arts

SB 635: ORS 181.875 outlines the qualifications for private security professionals. These individuals are subject to a range of requirements including the completion of training requirements approved by the Board on Public Safety Standards and Training. ORS 181.871 details the classes of individuals exempted from this training requirement, which include attorneys, insurance adjusters and persons performing security services at a facility regulated by the United States Nuclear Regulatory Commission. Senate Bill 635 adds two exemptions to ORS 181.871: first, an exemption for persons who provide security services as volunteers for an event operated for the benefit of a not for profit corporation; and second, an exemption for students enrolled at community colleges engaged in non-confrontational activities contributing to campus safety under the supervision of a law enforcement or certified private security professional, provided the community college has conducted a criminal background check on the student.

SB 669: Current law allows alcoholic beverage manufacturers and wholesalers to advertise in venues with a fixed seating capacity of more than 10,000 seats. Only two Oregon venues fit these criteria - the Rose Garden and Memorial Coliseum. SB 669 expands the types of venues that can sell advertising to alcohol manufacturers and wholesalers to venues that hold a full on-premises sales license or limited on-premises sales license and the venue either has at least one room or area with a maximum capacity of at least 3,000 persons or is owned by a government body; or the licensee is an Oregon-based or out-of-state nonprofit corporation that possesses either a certificate of authorization or certificate of existence as required under nonprofit corporation statutes. SB 669 also applies to licensees who hold a temporary sales license and are a state-registered nonprofit or charitable organization, state agency or local governmental entity. The advertising space or time can only be purchased in connection with events that are held under the licensed premises, and the licensee must serve other brands of alcoholic beverages beyond the brands that are being advertised at the event.

Public and Fine Art

HB 2708: This proposal came from the Oregon Law Commission in response to an opinion in a New York case that pointed out an error in Oregon law. In deciding *Zucker v. Hirschl & Adler Galleries, Inc.*, 170 Misc.2d 426 (1996), the New York court surveyed existing laws in other states, including Oregon, and discovered the error. As currently written, Oregon's law protects an artist's work not only from a gallery's creditors, as intended, but from the artist's creditors as well. HB 2708 allows an artist's creditors to reach art work to satisfy an artist's debt, but not a gallery's creditors to satisfy a gallery debt.

HB 3352 and SB 242: Every session, Oregon's Percent for Art law resurfaces in various versions – to eliminate, to reduce, to make voluntary. This session was no different with the introduction of HB 3352, which would have changed the mandatory 1% to a voluntary program. Thanks to committee leadership, that bill did not even receive a public hearing. However, the issue did arise as a very real and imminent threat in SB 242, the giant legislation forwarded by higher education to change the governance structure of higher education by moving from a state agency to a public university system with greater authority and independence to manage affairs, obligations and operations.

SB 242, in the version passed by the Senate, completely exempted the new public university system from the percent for art program, altogether. Despite hours and hours of public testimony, no specific attention or testimony was even paid to the program, but it was written out of the bill, along with several other “administrative overhead” charges, in a slick move to quietly kill the program behind the scenes. Intense lobby efforts by the Cultural Advocacy Coalition, joined by tremendous support, particularly from Representative Michael Dembrow (D-Portland), and leadership by Chancellor George Pernsteiner, served to reinstate the program in the final bill that moved out of the House of Representatives and then received concurrence in the Senate. SB 242 was an uncomfortable, very close call.

License Plates

Two new specialty plates were approved by the Legislature, one designed to raise funds supporting children and the second to promote wine and culinary tourism. Both good causes; but both competition for customers with the Cultural Trust license plate.

HB 3684 adds Keep Kids Safe registration plates to current statutes regarding specialized license plates and stipulates that net proceeds generated by related surcharges are to be deposited into an account designated by the Children's Trust Fund of Oregon Foundation for child abuse prevention programs.

SB 442 establishes a wine country license plate program, with net proceeds to be distributed through the Oregon Tourism Commission. The bill requires the Commission, after deducting its cost of production and administration related to marketing the plate, to distribute one-half of the funds as matching grants to tourism promotion agencies to promote wine and culinary tourism and one-half of the funds to tourism promotion agencies in amounts proportional to the amount of acreage in each region used for wine and grape production. Grantees are required to show a one-to-one funds match from sources other than the Oregon Business Development Department or Commission programs.

MEMORIALS

Several outstanding cultural leaders were recognized and received tribute from the 76th Legislative Assembly for their tremendous contributions to Oregon.

HCR 23 Memorializes Ben Westlund, (1949-2010).

Ben Westlund, of Tualo, Oregon, was elected to the House of Representatives in 1996 and served in the House from 1997 until his appointment to the Senate in 2003. Westlund served in the Senate from 2003 until his inauguration as Oregon State Treasurer in 2009. He was the State Treasurer until his death on March 7, 2010. Westlund was a key figure in the creation and passage of the Cultural Trust for Oregon.

HCR 41 Memorializes Harold J. Schnitzer, (1923 – 2011).

Harold Schnitzer's charitable donations focused on the arts, health care, and education in Oregon. Schnitzer was awarded a Doctor of Humane Letters by Portland State University, the Distinguished Service Award by the University of Oregon, the Aubrey Watzek Award by Lewis & Clark College, the Portland First Citizen Award for 1995, the Outstanding Philanthropist Award from the National Society of Fundraising Executives, and an honorary doctorate degree from the Pacific Northwest College of Art.

HCR 20 Memorializes William Patton, (1927-2011).

William Patton was the first general manager and executive director of the Oregon Shakespeare Festival. After earning a degree in drama from Stanford University, Mr. Patton began volunteering at the Oregon Shakespeare Festival in 1948, and was appointed in 1953 as General Manager of the Oregon Shakespeare Festival, holding the position until his retirement in 1995. During his tenure, Mr. Patton oversaw the construction of three theatres; won a Tony Award for regional theatre; and received the Oregon Governor's Award for the Arts. He led the Oregon Shakespeare Festival to become the largest regional theatre in the country, growing from 29 performances in 1953, to 752 performances in 1995.