



# Capitol Insider

OSB Public Affairs Newsletter for Bar Leaders

## 2012 PUBLIC AFFAIRS COMMITTEE

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## Legislative Web site

The legislative Web site will be useful during the 2012 session, with the complete text of all measures introduced and amended and agendas for committee hearings and work sessions:  
[www.leg.state.or.us](http://www.leg.state.or.us)  
All of the bills that will be introduced should be posted on the Web site on Saturday, January 28.

## Measure Limitations for 2012

The number of measures introduced in the 2012 session will be limited as follows:

- 2 measures per member
- 5 measures per interim committee
- 5 measures by the executive branch at the request of the governor
- 5 measures by the judicial branch at the request of the chief justice

## New Members in 2012

When it convenes on February 1, the legislature will have two new members to replace Rep. Ben Cannon (D SE Portland) and Sen. Suzanne Bonamici (D Beaverton/NW Portland), both of whom resigned to pursue other opportunities. The new legislators are Rep. Alissa Keny-Guyer (D) and Sen. Elizabeth Steiner Hayward (D).

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## 2012 Session to Convene February 1

Oregon's first constitutionally mandated short session convenes on February 1 and will adjourn on or before March 6. The session is expected to focus mainly on balancing the state's biennial budget, which is already more than \$300 million in the hole. The revenue forecast due out on February 8 will likely predict that the hole continues to get deeper. A calendar showing deadlines for legislative action is available at [http://www.leg.state.or.us/bills\\_laws/February2012Calendar.pdf](http://www.leg.state.or.us/bills_laws/February2012Calendar.pdf).

The party caucuses in the two chambers have their own agendas, published during the week of January 16. The Democratic caucuses emphasize support for middle class and lower-income Oregonians and investments that will create jobs. The Republican caucuses also prioritize job creation and emphasize the importance of reducing government regulation. To see the published caucus priorities, go to:  
[http://www.oregonlegislature.gov/senatedemocrats/2012\\_OSD\\_Agenda.pdf](http://www.oregonlegislature.gov/senatedemocrats/2012_OSD_Agenda.pdf)  
[http://www.leg.state.or.us/press\\_releases/sro\\_011812.pdf](http://www.leg.state.or.us/press_releases/sro_011812.pdf)  
[http://www.leg.state.or.us/housedemocrats/HouseDemActionPlan\\_Jan2012.pdf](http://www.leg.state.or.us/housedemocrats/HouseDemActionPlan_Jan2012.pdf)  
[http://www.leg.state.or.us/press\\_releases/hro\\_011812.html](http://www.leg.state.or.us/press_releases/hro_011812.html)

Given the short timelines in the February session, significant substantive legislation seems a long shot without bipartisan consensus. To some extent the substantive agendas of the caucuses are best viewed in light of the political effect they may have on the 2012 election cycle.

## Coalition Supports Court Funding

The bar has organized a coalition of legal groups, businesses, and business associations to join with the judicial branch to oppose any further cut to the judicial branch budget for 2011–13. The legislature in its February session will be considering ways to balance the state's biennial budget, which is anticipated to require more cuts.

The legislature held back 3.5 percent of most executive agency budgets, as well as the same portion of the judicial branch budget, as a hedge against further deterioration in the state's fiscal condition. If the revenue forecasts continue to decline, the held-back funds will be applied against the shortfall; if revenues meet or exceed expectations, the judicial branch and executive department agencies will be able to spend the amounts held back.

The coalition is advocating that the legislature authorize the judicial branch to spend its full appropriation, including the held-back 3.5 percent. Further, the coalition maintains that the branch should not be subject to any other cuts during this biennium.

The coalition argues that the judicial branch is a core function of government that businesses rely on for the prompt resolution of disputes, families rely on to work out difficult issues, and the public relies on for maintaining safety. The courts are constitutionally required to resolve cases completely and without delay, but they have

no mechanism by which to regulate the number and complexity of the cases presented for resolution. In addition, under the state constitution and statutes a substantial part of the branch budget including judicial salaries, juror payments and interpreter fees cannot be reduced.

Background information, talking points and sample letters to legislators are available at <http://courtfunding.homestead.com/Court-Funding.html>.

The legislature will make the ultimate decision on court funding in the February session based on the revenue forecast that will be released on February 8. The courts of course are just one of the government entities attempting to resist further budget cuts.

## Justice Balmer Elected Chief Justice

The seven justices of the Oregon Supreme Court have chosen Justice Tom Balmer to succeed Chief Justice Paul De Muniz, effective May 1. Chief Justice De Muniz has decided not to seek re-election to the court and will serve out his term after May 1 as an associate justice through January 7, 2013.

Chief Justice –Elected Balmer has served on the Supreme Court since 2001, when he was appointed by Governor John Kitzhaber. He was in private practice in the Portland Ater-Wynne firm and its predecessors from 1982 through 2001, except for a stint as deputy attorney general at the Oregon Department of Justice under then Attorney General Ted Kulongoski from 1993 to 1997.

Justice Balmer grew up in Portland and attended Portland Public Schools. He graduated from Oberlin College in 1974 and from the University of Chicago Law School in 1977. Between his graduation from law school and his move back to Oregon in 1982, he was in private practice in Boston and Washington, D.C. and spent two years in the anti-trust division of the U.S. Department of Justice. He is 59 years of age.

Justice Balmer has been active in many different community and law related activities, serving on the boards of Multnomah County Legal Aid Service (1989-1993), the Classroom Law Project (1999 to present), and the Oregon Law Institute (2004-2011). For a more complete biography, see <http://courts.oregon.gov/Supreme/BioBalmer.page>

The Chief Justice is responsible for the operation of the Supreme Court and for the general budget and management of the judicial branch.

## Commission on Public Safety Issues Report

In July 2011 Governor John Kitzhaber created the Commission on Public Safety to take a fresh look at Oregon's sentencing and public safety system. Appointed to the commission were Chief Justice Paul De Muniz, Chair, former governor Ted Kulongoski, Salem businessman Dick Withnell, and four legislators: Sens. Floyd Prozanski (D Parts of Lane and Douglas Counties) and Jackie Winters (R Salem), and Reps. Chris Garrett (D Lake Oswego) and Andy Olson (R Albany).

The commission met four times and published its report on December 31, 2011. [http://www.oregon.gov/CJC/docs/CPS\\_report\\_to\\_Governor\\_12\\_30\\_11.pdf](http://www.oregon.gov/CJC/docs/CPS_report_to_Governor_12_30_11.pdf) The report makes a number of findings:

- While property and violent crime is at its lowest rate since the 1960s, the public perception is that crime has leveled off or is increasing.
- Over half the states have reduced their crime rate while reducing their incarceration rate.
- The expansion of Oregon's prison system is a component of the reduction in crime, but the corrections budget is expensive and needs to be reviewed.
- The state needs to expand services to the 93 percent of the prison population that will be released to communities after serving their sentences.

The commission also established a number of principles to guide future work:

- Savings from sentencing reform should be used to pay for cost-effective methods to reduce crime.
- Use a rational cost-benefit analysis to determine the best return on the public's investment in public safety.
- Restore some judicial authority to impose appropriate sentences.
- Provide more complete information about offenders to judges at sentencing to enable the judges to assess the risk of recidivism.

- Examine the juvenile justice system in light of these principles.
- Dedicate a portion of the savings from sentencing reforms to programs that help crime victims.

The commission recommended that it be continued through June 2013 to allow it to develop and propose to the 2013 legislature “revisions to Oregon’s sentencing guidelines and policies that would optimize the use of Oregon’s most expensive corrections resource—prisons.” In continuing its work, the commission intends to engage all parts of the public safety community as well as the broader community in the project of modernizing sentencing laws.

The commission’s report has generated controversy already. In an *Oregonian* article dated January 7, Sen. Betsy Johnson (D Scappoose) makes the point that the commission did not include any on-the-ground public safety participants, and raises the suggestion that the commission’s findings were preordained.

[http://www.oregonlive.com/opinion/index.ssf/2012/01/oregon\\_public\\_safety\\_panel\\_wer.html](http://www.oregonlive.com/opinion/index.ssf/2012/01/oregon_public_safety_panel_wer.html)

Sen. Johnson casts doubt on the commission’s use of statistics and the statistics themselves, and ends with this: “Prison isn’t the only way to waste money. In its pre-ordained rush to embrace more cost-effective alternatives to incarceration, the commission might want to keep that in mind.”

## **Oregon Law Commission Sets its Agenda**

At a meeting on December 12, the Oregon Law Commission adopted a number of proposals for consideration over the next few years.

Of perhaps most broad interest to the legal community was a proposal from Chief Justice Paul De Muniz to study Oregon’s procedure for the selection and retention of appellate judges. Currently appellate judges are elected at large. When a position becomes open during a term, the governor appoints a replacement who must then run in the next election cycle. The Chief Justice pointed out that so far Oregon has not endured a big-money campaign for an appellate court position, but he suggested studying whether a preemptive measure would be appropriate.

More immediately, the commission authorized a work group that has already been formed to submit proposed amendments to Article 9 of the Uniform Commercial Code to the 2012 session. Article 9 deals with secured transactions involving personal property, and is codified at ORS chapter 79. The proposed amendments are brought forward from the Uniform Laws Commission and are targeted to take effect on July 1, 2013. The amendments are largely technical.

The commission authorized formation of a work group to develop legislation for 2013 dealing with a broad array of issues arising in adoption proceedings: informed consent to adoption, revocation of consent, notice of pending adoption to putative fathers, advertising and solicitation of adoptions, the role of the Department of Human Services in independent adoptions, and the enforcement process for postadoption contact agreements. The commission emphasized the need to address adoption records in the context of Oregon eCourt in the 2013 session.

In the area of criminal law, the commission will form a work group to study adoption of the Uniform Laws Commission’s Uniform Collateral Consequences of Conviction Act and to expand it to apply to juvenile proceedings as well. The gist of this act is to provide information to those charged with crimes about the consequences of convictions beyond the direct criminal penalties in sentences. The commission directed the work group to consider proposing legislation in the 2014 or 2015 sessions.

The commission also authorized formation of work groups on two other uniform laws: the Unsworn Foreign Declarations Act and the Revised Law on Notarial Acts.

## **Proposed Changes to the UTCRs: Request for Public Comment**

The Uniform Trial Court Rules committee met on October 14, 2011, to review proposals to amend the UTCRs 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/utcrules.page>.

Proposals of special note include new and amended rules addressing Oregon eCourt remote electronic access and electronic service; amended rules regarding termination of attorney-client relationship, custody of biological evidence, and certain family law procedures; and revised small claim forms.

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

The committee will make final recommendations on these proposals at the next UTCR meeting on April 20, 2012, 9:00 a.m., Office of the State Court Administrator, Salem, Oregon. Those proposals approved by the chief justice will become effective August 1, 2012.