

T. G. B.

Memorandum Date: November 3, 2009
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TO: Board of County Commissioners
DEPARTMENT: Administration, Intergovernmental Relations
PRESENTED BY: Alex Cuyler, Intergovernmental Relations Manager
AGENDA ITEM TITLE: Legislative Concept Development – Priorities for February, 2010

I. MOTION

Move to direct County Administrator to oversee appropriate staff involvement in a project intended to result in draft legislation and bill sponsorship in the following arenas:

- A.) Justice Court revenue increases through Oregon Revenue Dept "other agency" collections program.
- B.) Elections cost avoidance through amending provisions of law requiring contiguous precincts.
- C.) Tort law provisions such that counties are not required to indemnify the state beyond the provisions of local government tort caps.
- D.) County inmate transfers (for 2011 regular session).

II. AGENDA ITEM SUMMARY

As part of the lead up to the 75th Oregon Legislature Special Session, the Board is being asked to consider staff development of legislative concepts that are related to bills debated and/or passed during the regular session or which are of immediate financial importance. This procedure will allow the Intergovernmental Relations Manager sufficient authority to engage key legislators and committees on issues of importance to Lane County.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

- The Lane County Board of County Commissioners regularly establishes a list of priority issues related to the Oregon legislature, and actively monitors introduced bills as part of its regular functions.
- The Lane County Legislative Committee has reviewed each of the priority issues outlined in this document and is forwarding this document to the Board as their recommendation.
- Special Sessions of the Oregon Legislature are called for emergency issues that are deemed necessary for immediate attention by the Oregon Legislature. These typically involve addressing unintended consequences of bills passed during the previous session, or addressing budgetary issues that require legislative attention. There are limited opportunities for individual members and committees to introduce "new" legislation.
- The items related to elections and tort claim caps were taken up during the regular session of the 75th Oregon Legislature. The item related to Justice Courts was heard

during the 2003 session, but anticipates further financial constraints for Oregon counties.

- Each of these issues is being considered as part of a broader collaboration. The elections item will be actively worked by the Oregon Association of County Clerks. The tort cap issue will be worked in conjunction with the Oregon County Counsel Association, and the Justice Court item will be worked in conjunction with Linn County specifically, and more broadly the Oregon Justices of the Peace Association.

B. Policy Issues

Each of the items recommended within this document are submitted with the underlying policy assumption that passage of such measures will either result in a direct increase in revenue or will reduce expenses or will reduce risk exposure to Lane County Departments and Divisions.

C. Board Goals

Active involvement with legislative issues

D. Financial and/or Resource Considerations

- The undertaking of any legislative change will require human resources which the County already has in place, and will entail potential commitments within the realm of the legislative session for the Board, for instance hearing testimony and travel time.
- Item A.) Improving Justice Court collections can result in collection of thousands of dollars of fine revenues not otherwise recoverable. Item B.) Amending precinct re-drawing will avoid at least \$42,000 in direct costs to the Elections Division. Item C.) Establishing clear boundaries between state and local tort caps will not result in direct revenue or cost savings but will have implications for future claims and suits enjoined by Lane County.

E. Analysis

Item A.) Improving Justice Court Collections:

The State Department of Revenue operates the Other Agency Account Unit which acts as the state's collection unit per ORS 293.250. Justice Courts currently may take advantage of a limited collection program within that unit to recover fine revenue by deducting it from Oregon tax returns (offset program), but are unable to participate in a more aggressive effort (full service program) that involves expanded collect efforts in collaboration with the Oregon Employment Department. The proposed statutory change would allow Justice Courts to gain access to the full service program, and would result in an increase in the percentage of fines collected. Collection of past due fines burdens Justice Courts throughout Oregon. Lane County has an accumulated balance exceeding \$15 million. A single collection could provide a recovery between \$150 and several thousand dollars. See attachment A for the proposed statute change(s).

Item B.) Voter precincts remaining non-contiguous.

House Bill 3237 passed the Oregon Legislature in 2009 with the primary goal of providing voters with more information about election measures by requiring specific statements to be included on ballots prepared by county clerks. It also included language within the bill requiring precincts to be contiguous in order to make it easier for campaign workers and others to go "door to door". Due to the patchwork nature of the River Road/Santa Clara area

of Eugene, this change will require the Lane County Elections Division to create 400 new precincts by 2012. The bill provided no revenue for the Elections Division to undertake that work. The proponents of the bill understand this issue but were unwilling to work towards amending the bill during the regular session, due to timing constraints. The Senate Majority made a commitment to working with the Secretary of State, and the Association of Oregon County Clerks during the February session. See attachment B for the proposed statute change(s).

Item C.) Establishing clear distinctions between state and local tort caps.

The Oregon Tort Claims Act (SB 311) was passed by the Oregon Legislature in 2009. This bill was developed in response to *Clarke v OHSU* which awarded the plaintiff in excess of damages previously limited by state law. The bill created a two tiered tort cap, one designed to indemnify the state from damages arising from their negligence and the other to indemnify local governments from damages arising from their negligence. The respective caps are now problematic, especially in light of the contracts that are developed for counties and cities with the State. Recent contracts originating from the State suggest that counties and cities may be required to indemnify the state and provide insurance coverage for amounts equal to its (higher) cap. The argument here is that the state has no exposure to local government negligence and thus we should only be subject to the lower cap. This was attempted to be clarified during the 2009 session with SB 305, but the bill did not pass (died for lack of hearing). County counsels are currently objecting to such contract language and are attaching a "signing statement" to contracts outlining their interpretation of the Tort Claims Act, protecting against waiver by the county of the statutory right to the lower cap and stating that the overly broad indemnity and insurance provisions are void. It has not been determined if this kind of action will have any real effect. See attachment C for a copy of SB 305 and other proposed language.

Item D.) County inmate transfers

ORS 137.140 provides for imprisonment in another county when imprisonment in the proper county is not suitable. Lane County has been forced to release certain prisoners due to jail funding issues and seeks to minimize expenses forced onto the Sheriff's Office through state court sentencing guidance referring to this statute. Lane County sought a mandamus by the Oregon Supreme Court regarding the application of this statute. The petition was rejected, but for reasoning that the issues was not yet ripe. Lane County seeks a statutory change (ORS 137.330) such that expenses for transfer and maintenance of a prisoner ordered by a state court in accordance with ORS 137.140 shall be granted only upon concurrence with the County board. The Legislative Committee recommends that this item be continued until the 2011 regular session, as it is not an issue that is well understood by the existing legislative members.

F. Alternatives/Options

- 1.) Direct the County Administrator to develop draft legislative language per the recommendations of staff and through the collaborations outlined within this document.
- 2.) Do nothing

IV. RECOMMENDATION

Staff recommends option 1.

V. TIMING/IMPLEMENTATION

The Legislative Session begins in February, 2010, with interim hearings preparing for the Legislative session beginning in October and November, 2009. Staff would begin to seek a sponsor for potential legislation immediately.

VI. FOLLOW-UP

Staff will continue to update the Legislative Committee regarding the plausibility of a successful effort to amend appropriate Oregon Revised Statutes, and subsequently, the Board of County Commissioners.

VII. ATTACHMENTS

Attachments A, B, and C, provide additional background on each of the priorities.

ATTACHMENT A
Lane County Legislative Priorities
September 29, 2009

Draft of legislation that would allow full DOR collections for justice courts.

Language in bold will be added to statute. [*Language in italics enclosed by brackets will be removed from statute.*]

ORS 137.118 (1) Judgments in criminal actions that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution, may be assigned by the state, by a municipal court or by a justice court for collection. An assignment by the state or a justice court may be to the Department of Revenue or a private collection agency. An assignment by a municipal court [*or by a justice court*] may be to a private collection agency. Nothing in this section limits the right of a municipal court or a justice court to assign for collection judgments in matters other than criminal actions.

{No changes to other Sub-Sections of ORS 137.118}

156.315 (1) A justice court may assign a judgment in a criminal action, as described in ORS 137.305 [*137.118 (1) to (5)*], to the Collections Unit in the Department of Revenue for **collection as provided in ORS 293.250.** [*the following purposes:*

(a) *To determine whether refunds or other sums are owed to the debtor by the department; and*

(b) *To deduct the amount of the debt from any refunds or other sums owed to the debtor by the department.*

(2) *If the Collections Unit determines that refunds or other sums are owed to the debtor, the department shall deduct the amount of the debt from any refunds or other sums owed to the debtor by the department. After also deducting costs of its actions under this section, the department shall remit the amount deducted from refunds or other sums owed to the debtor to the justice court that assigned the judgment.]*

(3) *A debtor whose account is assigned to the Department of Revenue [for setoff] under this section is entitled to the notice required by ORS 293.250 (3)(d) and to the opportunity for payment in ORS 293.250 (3)(c).*

293.250 (1) There is hereby created a Collections Unit in the Department of Revenue.

(2) The Department of Revenue may render assistance in the collection of any delinquent account owing to any state officer, board, commission, corporation, institution, department or other state organization, a **justice court**, or to a county pursuant to a judgment obtained under ORS 169.151, assigned by the agency, **court**, or county to which the delinquent account is owed to the Department of Revenue for collection.

(3)(a) Subject to rules prescribed by the Oregon Department of Administrative Services for collection of delinquent accounts owing to the respective officers, departments, boards and commissions of state government, **justice courts**, and to counties, the Department of Revenue shall render assistance in such collection and shall charge such officers, agencies, **justice courts**, and counties separately for the cost of such assistance, provided that charges shall not exceed the proceeds of collection credited to such officer, agency or county for the same biennium. The Department of Revenue may designate a single percentage to retain from the proceeds of collection as a charge for the cost of assistance. If the Department of Revenue finds that accounts assigned to the Department of Revenue for collection by certain officers, agencies, **justice courts**, or counties, lack sufficient information to properly and efficiently identify the debtor or that the account information must be put into a form usable by the Department of Revenue in order to efficiently provide collection services, the Department of Revenue may establish a separate percentage charge to be retained from collections for the officer, agency, **justice court** or county. The charge must reflect the average of the actual cost to provide collection services for all accounts assigned by that officer, agency, **justice court** or county. In providing assistance, the Department of Revenue shall utilize all means available to collect the delinquent accounts including the setoff of any refunds or sums due to the debtor from the Department of Revenue or any other state agency. The Department of Revenue may offset any refunds or sums due to the debtor from the department or any other state agency against delinquent accounts assigned by a **justice court** or county to the department for collection under this section. The Department of Revenue may prescribe criteria for the kinds of accounts that may be assigned under this section, including a minimum dollar amount owed.

(b) No setoff will be made by the Department of Revenue unless the debt is in a liquidated amount.

(c) When the Department of Revenue has notified the assigning agency or county that a refund or other sum due to the debtor is available for setoff, the debtor may arrange with the Department of Revenue for payment of the debt in full before the setoff is made. However, the assigning agency or county shall not enter into any agreement with the debtor for payment of the debt before the setoff is made.

(d) At the time any setoff is made the debtor shall be notified by the Department of Revenue of its intention to apply sums due from a state agency against the debtor's delinquent account. The notice shall provide that the debtor within 30 days may request a hearing before the claimant agency or county. No issues at the hearing may be considered that have been litigated previously, or if the debtor after being given due notice of rights of appeal has failed to exercise them timely.

(e) All moneys received by the Department of Revenue in payment of charges made under paragraph (a) of this subsection shall be paid into the State Treasury and deposited in a miscellaneous receipts account for the Department of Revenue.

(f) Net proceeds of collections of delinquent accounts shall be credited to the account or fund of the officer, agency, **justice court** or county to which the debt was originally owing.

(4)(a) In providing assistance in the collection of any delinquent account under this section, the Department of Revenue may issue a warrant for the collection of the delinquent account. The warrant may be recorded in the County Clerk Lien Record maintained under ORS 205.130.

(b) A warrant shall not be issued under this subsection unless the debt is in a liquidated amount.

(c) The amount of any warrant issued under this subsection shall include the principal amount of the debt, any added penalties or interest attributable to the delinquent account and any costs associated with recording, indexing or service of the warrant and any satisfaction or release thereof.

(d) A warrant shall not be issued under this subsection before the debtor has been notified that the department intends to issue the warrant and of the collection action that may be taken under the warrant.

(5) Nothing in this section shall prohibit the collection of:

(a) A child or spousal support obligation as provided in ORS 25.610; or

(b) Criminal judgments that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution.

ATTACHEMENT B

Significant Impacts of HB 3237, Section 3, and effective January 1, 2012 Lane County Elections

This law would change the current 83 precincts to **488** precincts if done today and would result in other major impacts:

1. Precincts must be part of the same congressional and legislative district

Notes:

- *This would add 6 precincts if done today: 101439 (24 voters), 101523 (209 voters), 102102 (30 voters), 102304 (3 voters), 102402 (69 voters), 102504 (173 voters)*
- *After redistricting, when precincts are redrawn, the goal is to have zero precincts with split legislative districts. Because city boundaries are often legislative boundaries, as annexations occur within the next decade, those annexations from urban growth boundaries keep their legislative district until the next redistricting, but need to be moved to a city precinct.*
- *City annexations create precinct splits with legislative districts. They often start with one property that can include as little as one voter. This law change would require a separate precinct for that one voter, not only eliminating the possible 3 vote requirement for a precinct committee person, but would make that voter's ballot choices public.*

2. Precincts must be contiguous

Notes:

- *This would add 399 precincts if done today: Santa Clara has many, many islands due to the City of Eugene annexations over the past decades. There are also many pockets of County surrounded by City property throughout the urban areas. It is very likely that some of the 399 are small numbers of voters which would also eliminate the possible 3 vote requirement for a precinct committee person, but would make those voter ballot choices public*
- *A compromise would be if such an area comprised of less than 50 voters, such an area could be associated with the nearest non-contiguous precinct with the same or similar district combination..*

3. If the number of electors in a precinct exceeds 5,000, the county clerk shall divide the precinct into two equal precincts.

Notes:

- *This is too restrictive in that it does not allow the elections official to consider other political and taxing district boundaries. If a precinct is too large, it would be better to consider commissioner boundaries, school boundaries, roads and rivers, and urban growth boundaries that could lead to future growth within the precinct.*

1. **Increased ballot printing costs.**

- a. There is a set plate charge for every precinct/ballot combination. **(Increase of \$6,480)**
- b. For every combination, a minimum of 50 ballots must be produced, even if 1 voter, increasing the total ballots to be printed. **(Increase of \$13,231)**
- c. Every precinct/ballot combination requires a test ballot deck, which would increase the cost by \$25,000. **(Increase of \$10,000)**

ATTACHEMENT B

- d. Additional precinct packaging costs, which is done by precinct/ballot combination.
(Increase of \$2,000)
2. **Increased ballot inserting costs.**
 - a. Every precinct/ballot combination is inserted into mailing packets by their unique combination. An additional 405 precincts adds to the complexity and cost. Many of the additional precincts would result in hand inserting due to small numbers, the difference of \$27.00 per thousand for machine inserting to \$40.00 per thousand for hand inserting. Overtime would be required to meet the 3 day window for inserting with a significant increase in precincts. **(Estimated increase of \$10,000)**
3. **Increased storage requirements.**
 - a. Every precinct/ballot combination must be organized separately to prepare out-of-country, out-of-state, replacement, and ballots on demand. The more precincts, the more storage requirements. Lane County does not have the ability to store 488 individual precinct ballot combinations in a secure and organized manner to conduct elections. Further, at a primary election, that number of precincts is multiplied by 3 due to party ballots. Lane County could need to securely store as many as 3,000 precinct/ballot combinations. **(Cost likely to be significant, requiring major remodeling.)**
4. **Increased staffing requirements.**
 - a. Increasing precincts from 83 to 488 adds to the complexity of the election in ensuring that every voter receives the correct precinct/ballot. Additional staff would be required to prepare ballots.
 - b. Recounts are required to be conducted by precincts. This significant increase in precincts would require ballots to be sorted to as many as 3,000 individual precinct/ballot combinations in a primary election, increasing the risk of sorting and counting errors when required to be done manually. Additional staff would be required to meet the statutory deadlines. **(Cost likely to be significant.)**

To remedy the above concerns, the Oregon Association of County Clerks will be recommend the following legislative change, working with the Oregon Secretary of State and other stakeholders:

ORS 246.410 amended to read:

(1) The county clerk, not later than the [30th] 70th day before an election, [may] shall create, combine or divide one or more precincts[. *The number of electors to be included in a precinct shall not exceed 5,000.*] **as necessary to ensure that:**

[Each precinct is part of the same congressional and legislative districts.]

- (a) Each precinct is contiguous in the same congressional and legislative district.
 - (b) The number of electors included in a precinct does not exceed 5,000.
- (2)** The county clerk shall fix the boundaries of the precincts and designate the precincts by numbers or names.

ATTACHEMENT B

- (3) If the number of electors in a precinct exceeds 5,000, the county clerk shall divide the precinct into two [equal] precincts according to the provisions of subsection (1) of this section.**
- (4) [*Not later than 10 days after a county clerk creates, combines or divides a precinct under this section, the clerk shall notify the Secretary of State.*]**

ATTACHMENT C
Lane County Legislative Priorities Board Packet
September 29, 2009

Lane County Counsel recommended language:

Where a local public body is not acting as the agent of the state in performing a program or service required by statute or intergovernmental agreement, the state may not require a local public body to indemnify or provide liability coverage through insurance or self-insurance or other means for acts or omissions of the local public body, or its officers, employees or agents acting in the performance of duty which exceed the local public body tort limits. In addition, the local public body shall not be required to indemnify or provide liability coverage for the acts or omissions of the state, its officers, employees or agents.

Final Recommendation of the Oregon Tort Task Force
Adopted by the Task Force November 17, 2008

State delegation to local government

Where any local public body acts as the agent of the state performing a program or service required by statute or intergovernmental agreement, and the state retains or exercises substantial control over the hiring, supervision, discipline and discharge of persons performing such work, or provides direction and control over the means and manner of providing the services, either under the terms of the statute or agreement or in practice based on the established customs and ~~practices of the parties, the local public body shall be eligible for indemnity and defense as by~~ the state provided by ORS 30.285(1), and the state tort limits shall apply.

Senate Bill 305

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon Tort Claims Task Force)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Allows public body to enter into agreement with agent that provides that agent waives right to indemnification under Oregon Tort Claims Act if agreement also requires that agent have insurance coverage equal to limitations imposed on recoveries under Oregon Tort Claims Act. Provides that if public body has entered into such agreement, liability of public body for claim arising out of agent's tort is reduced to extent that claim is payable from insurance available to agent.

A BILL FOR AN ACT

1
2 Relating to Oregon Tort Claims Act; amending ORS 30.285.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 30.285 is amended to read:

5 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any
6 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-
7 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the
8 performance of duty.

9 (2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office
10 or willful or wanton neglect of duty.

11 (3) If any civil action, suit or proceeding is brought against any state officer, employee or agent
12 which on its face falls within the provisions of subsection (1) of this section, or which the state of-
13 ficer, employee or agent asserts to be based in fact upon an alleged act or omission in the per-
14 formance of duty, the state officer, employee or agent may, after consulting with the Oregon
15 Department of Administrative Services file a written request for counsel with the Attorney General.
16 The Attorney General shall thereupon appear and defend the officer, employee or agent unless after
17 investigation the Attorney General finds that the claim or demand does not arise out of an alleged
18 act or omission occurring in the performance of duty, or that the act or omission complained of
19 amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney
20 General shall reject defense of the claim.

21 (4) Any officer, employee or agent of the state against whom a claim within the scope of this
22 section is made shall cooperate fully with the Attorney General and the department in the defense
23 of such claim. If the Attorney General after consulting with the department determines that such
24 officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the
25 claim, the Attorney General may at any time reject the defense of the claim.

26 (5) If the Attorney General rejects defense of a claim under [*subsection (3) of*] this section [*or*
27 *this subsection*], no public funds shall be paid in settlement of said claim or in payment of any
28 judgment against such officer, employee or agent. Such action by the Attorney General shall not

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in boldfaced type.

1 prejudice the right of the officer, employee or agent to assert and establish an appropriate pro-
2 ceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the
3 performance of duty, or that the act or omission complained of did not amount to malfeasance in
4 office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be
5 indemnified against liability and reasonable costs of defending the claim, cost of such
6 indemnification to be a charge against the Insurance Fund established by ORS 278.425.

7 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of
8 liability of any public officer, agent or employee under ORS 30.270, or obviate the necessity of
9 compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of any
10 other public officer, agent or employee on any claim arising out of the same accident or occurrence.

11 (7) A public body may enter into an agreement with an agent that provides that the agent
12 waives the right to indemnification under this section if the agreement also requires that the
13 agent have insurance coverage equal to the limitations imposed on recoveries for the public
14 body under ORS 30.260 to 30.300. If a public body has entered into an agreement under this
15 subsection with an agent, the liability of the public body for a claim arising out of a tort of
16 the agent is reduced to the extent that the claim is payable from insurance available to the
17 agent.

18 (8) If a person who claims a right to indemnification under this section assigns or oth-
19 erwise transfers the indemnification claim to another person:

20 (a) The public body against which the indemnification claim is made may require that all
21 issues relating to liability and amount of damages in the underlying tort claim be decided
22 before entry of a judgment on the indemnification claim; and

23 (b) The public body against which the indemnification claim is made is not bound by any
24 admission of liability by the assignee of the indemnification claim, or by any agreement as
25 to the amount of damages entered into between the assignee and assignor of the
26 indemnification claim.

27 [(7)] (9) As used in this section, "state officer, employee or agent" includes district attorneys
28 and deputy district attorneys, special prosecutors and law clerks of the office of district attorney
29 who act in a prosecutorial capacity, but does not include any other employee of the office of district
30 attorney or any employee of the justice or circuit courts whose salary is paid wholly or in part by
31 the county.

32