

## MINUTES OF THE EMERGENCY BOARD

**January 10, 2003**

**State Capitol**

**Salem, Oregon**

Members Present: Representative Simmons, Presiding Chair  
 Representatives Butler, Hayden, Johnson, Minnis, Morgan, Schrader,  
 Westlund and Winters  
 Senators Beyer, Carter, Clarno, Hannon, Hartung, Messerle, Metsger and Yih

Pursuant to the provisions of ORS 291.328 and acting under the authority of ORS 291.326(1)(a), (b), (c), and (d), ORS 291.371, and ORS 291.375, we hereby certify that the Emergency Board, meeting on January 10, 2003, took the following actions:

The meeting was called to order by Representative Simmons at 8:40 a.m. in Hearing Room F of the State Capitol.

### **Minutes**

Representative Simmons moved that the Emergency Board approve the minutes of the November 8, 2002 meeting as mailed, and upon hearing no objections the minutes were approved.

### **Agency Reports**

Representative Simmons requested unanimous consent that the rules be suspended so that the Emergency Board may acknowledge, en bloc, agency reports.

Senator Hannon requested that Item 14, Department of Human Services, be removed from the en bloc motion and considered as a separate item.

Senator Carter concurred with Senator Hannon's request.

Hearing no objections, the rules were suspended.

Representative Schrader moved that the Emergency Board acknowledge, en bloc, receipt of the following reports: Item 4, Judicial Department and Public Defense Services Commission; Item 5, Judicial Department; Items 8 and 10, Department of Administrative Services; Item 18, Oregon Youth Authority; Item 20, Economic and Community Development Department; Item 21, Department of Veterans' Affairs; Item 25, Department of Environmental Quality; Item 40, Department of Consumer and Business Services.

The following is a summary of the request and Subcommittee (Human Services) action:

Nine reports were submitted by agencies in response to statutory requirements, budget notes, or Emergency Board direction. The Committee acknowledged, en bloc, receipt of nine of the reports.

The Department of Human Services report on the status of the reorganization was considered as a separate item (Item 14).

Item #	Agency	Report
4	Judicial Department and Public Defense Services Commission	Status of the transfer of responsibility for the Indigent Defense Program from Judicial Department to Public Defense Services
5	Judicial Department	Status of the implementation of the Collections Account
8	Department of Administrative Services	Effects of budget reductions made to non-governmental units
10	Department of Administrative Services	Changes to the compensation plan
18	Oregon Youth Authority	Deschutes County delinquent youth demonstration project
20	Economic and Community Development Department	Relationship between private enterprises and the State of Oregon for the purpose of beef slaughter and fabrication
21	Department of Veterans' Affairs	Results of a comprehensive Market Rate Study
25	Department of Environmental Quality	Progress of wastewater permit backlog reduction and reducing new application processing time
40	Department of Consumer and Business Services	Workers' Compensation premium assessment rates

The Subcommittee recommended acknowledging receipt of all nine reports.

The following Committee discussion occurred:

Senator Hartung declared a potential conflict of interest in regard to Item 20, Economic and Community Development Department. He reported he has been working with the Madras Meat Packing plant for 10 years and has received no compensation.

Representative Schrader's motion carried with no objections voiced. (Representative Minnis excused)

### **Federal Grants**

Representative Simmons requested unanimous consent that the rules be suspended so that the Emergency Board may approve, en bloc, agency requests to apply for federal grants, and upon hearing no objections the rules were suspended.

Senator Clarno moved that the Emergency Board approve, en bloc, the following requests for approval to apply for federal grants: Item 2, Department of Education; Item 13, Department of Human Services; Item 17, Oregon Youth Authority; Items 22 and 23, Department of Agriculture; Items 26, 27, 28 and 29, Department of Fish and Wildlife; Items 36 and 37, Department of Aviation; Item 39, Department of Transportation, with the understanding that any agency receiving a grant award will return to the Emergency Board or Legislative Assembly for any necessary additional expenditure limitation and position authority.

The following is a summary of the request and Subcommittee (Human Services) action:

Twelve requests for approval to apply for federal grants were submitted by agencies.

Item #	Agency	Grant Application
2	Department of Education	To the National Science Foundation for a five-year grant from the Math and Science Partnership Program to improve K-12 student achievement in mathematics and science. (Retroactive)
13	Department of Human Services	To the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Abuse Prevention for a three-year grant of \$750,000 per year to enhance the state's existing program and extend substance abuse prevention and early intervention to families with children ages zero to six.
17	Oregon Youth Authority	To the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services for a two-year grant of \$400,000 for mental health services for youth in the juvenile justice system.
22	Department of Agriculture	To the Environmental Protection Agency for \$100,000 discretionary funds to support a Watershed-Based Ecological Risk Assessment of Pesticide Use in Western Oregon.
23	Department of Agriculture	To the U.S. Department of Agriculture, National Organic Certification Cost-Share Program for \$165,000 to help offset the costs of Oregon producers who choose to become certified "organic" growers. (Retroactive)
26	Department of Fish and Wildlife	To the Pacific States Marine Fisheries Commission for \$17,115 for reimbursement of the state's staff time to train employees on observing Pacific whiting catches.
27	Department of Fish and Wildlife	To the U.S. Bureau of Reclamation for \$15,000 for information gathering at Crane Prairie Reservoir to identify negative impacts of expanding populations of illegally introduced fish on the existing fisheries.
28	Department of Fish and Wildlife	Two applications to the U.S. Fish and Wildlife Service Landowner Incentive Program for a total of \$1.74 million (\$0.18 million for phase one and an estimated \$1.56 million for phase two). (Retroactive)
29	Department of Fish and Wildlife	To the U.S. Fish and Wildlife Service for \$898,418 for projects relating to fish screening. (Retroactive)
36	Department of Aviation	To the Federal Aviation Administration for \$959,582 for improvements to the Joseph State Airport.
37	Department of Aviation	To the Federal Aviation Administration for \$885,100 for capital improvements to the Condon State Airport.
39	Department of Transportation	To the Federal Highway Administration, on behalf of Multnomah County, for \$1.76 million to replace steel deck grating on the lift span of the Broadway Bridge with a technologically advanced fiber-reinforced polymer composite deck system. (Retroactive)

The Subcommittee recommended approval of all 12 requests, with the understanding that, if the funds are awarded, the agencies will return to the Emergency Board or Legislative Assembly for approval of any necessary additional Federal Funds expenditure limitation and position authority.

Senator Clarno's motion carried with no objections voiced. (Representative Minnis and Senator Beyer excused)

## 1. Secretary of State

Senator Hannon moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Secretary of State by section 3, chapter 62, Oregon Laws 2001, by \$9,186 for development of statewide historical records plans.

The following is a summary of the request and Subcommittee (Education) action:

The Secretary of State received permission from the Emergency Board in April 2002 to apply for a National Historical Publications and Records Commission (NHPRC) federal grant to assist in developing a statewide historical records plan. The Secretary of State has been notified of a grant award in the amount of \$9,186 for the project. There are no state matching funds required.

The NHPRC has given states broad latitude to develop these historical records plans. The plans developed during this project may influence future grant awards from the NHPRC to Oregon. The Archives Division will develop this plan which will address identification, preservation, and access to Oregon's historical records

The Subcommittee recommended approval of the request.

Senator Hannon's motion carried with no objections voiced. (Representative Minnis and Senator Beyer excused)

## **6. Judicial Department**

Representative Westlund moved that the Emergency Board allocate \$5 million from the Emergency Fund established by section 1(1), chapter 878, Oregon Laws 2001, to the Indigent Defense Account established by section 2, chapter 130, Oregon Laws 2001, for the indigent defense caseload, with instructions.

The following is a summary of the request and Subcommittee (General Government) action:

During the several 2002 legislative special sessions, the budget for the Indigent Defense Account was reduced by \$27.5 million (17%) from the legislatively adopted budget. The Judicial Department (OJD) submitted a request at the November 2002 meeting of the Emergency Board for restoration of the \$10 million that was cut in the third special session. A budget report comment from that session noted that "...the intent is to earmark \$5,000,000 of general purpose Emergency Fund moneys for potential caseload increases." The Legislative Fiscal Office (LFO) recommended allocation of the \$5 million in earmarked funds to cover workload needs. However, the Emergency Board deferred any allocation pending a Judicial Department report to the Joint Interim Judiciary Committee. OJD appeared as requested at the December 4, 2002 meeting of Joint Interim Judiciary Committee. OJD attached a transcript of that meeting to its January 2003 Emergency Board request letter.

Caseload growth projections have flattened since the original 2001-03 projections, and some counties are using early disposition programs. This helped the Judicial Department to manage \$12.4 million of the \$27.5 million cut. However, the caseload reduction is not sufficient to offset the remaining \$15.1 million in budget cuts. OJD testified that if none of the cuts were restored, funding for appointment of counsel would be exhausted by April 1, 2003. In order to manage the existing caseload and related costs, OJD would cease appointment of counsel, effective January 13, 2003, for non-person misdemeanor and other case types. The impact on public safety from these reductions was addressed in the LFO analysis of the November 2002 request.

The Subcommittee discussed the effort by the Joint Interim Judiciary Committee and Legislative Fiscal Office staff to develop a system approach for the presentation of public safety issues to the 2003 Legislature and the need to review the multi-dimensional nature of the public safety system. The Subcommittee commended the Judiciary Committee for its work on the public safety system overview. The Subcommittee discussed the role of municipal and justice courts in the public

safety system. While the state courts do not control where cases are filed, the Subcommittee felt that the role of municipal and justice courts in resolving the caseload management crisis should be expanded. OJD indicated that it would work with local prosecutors on the type of charges that are filed and where those charges are filed. The Subcommittee also discussed the effect of reduced funding on the indigent defense case backlog. Cases may be postponed into the 2003-05 biennium, when funds may be available. This increases the backlog and the potential that offenders whose cases are postponed will either re-offend or fail to appear, which increases the risk to public safety.

The Subcommittee recommended allocation of \$5 million from the Emergency Fund, but noted that this \$5 million represents all of the funding available for the remainder of the 2001-03 biennium. The 2003 Legislature needs to maintain ongoing oversight of caseload issues related to the remaining \$10.1 million in reductions. Since this caseload is partially driven by funding for state and local public safety agencies, these partners should be involved in resolving indigent defense issues. The Subcommittee recommended that:

- The Judicial Department and local District Attorneys work with the legislative judiciary committees to identify ways to ensure the effective resolution of cases, within the limitations imposed in the 2001-03 budget; and
- The Judicial Department continue to collaborate in the development of the public safety system overview.

The Subcommittee requested that the judiciary committees, in collaboration with local governments, ensure that criminal cases are filed in the lowest possible jurisdiction, including municipal and justice courts.

Representative Westlund's motion carried with no objections voiced. (Senator Beyer excused)

## **7. Department of Administrative Services**

Representative Schrader moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Department of Administrative Services by section 3, chapter 80, Oregon Laws 2001, by \$209,545 and authorize a four-month extension for one limited duration position (0.17 FTE) for additional work on the Oregon Health Plan 2 (OHP2).

The following is a summary of the request and Subcommittee (Human Services) action:

The Office for Oregon Health Policy and Research (OHPR) within the Department of Administrative Services requested an increase of \$209,545 Federal Funds expenditure limitation and continuation of one limited-duration position (0.17 FTE) for four months.

The Emergency Board previously approved the Department's submittal of grant requests to the federal Health Resources and Services Administration. OHPR has been informed that an additional \$209,545 will be awarded to the state. The grant funding will be used for the continuation of research to identify and refine strategies for health care coverage and to implement the OHP2 waiver.

The Subcommittee discussed the need for the Department to cut OHP2 components into smaller pieces so the incoming Legislative Assembly will have more opportunities to make thoughtful decisions to divide the funding in a way that will best serve Oregonians. The Department responded it has been doing work in smaller communities of interest across the state both to inform and gather input on how to design OHP2 although this grant is not directed to that effort.

The Subcommittee recommended approval of the request.

The following Committee discussion occurred:

Representative Winters noted that the Subcommittee discussed and directed that future discussions between the Department and the Center for Medicaid Services should include allowing the state more flexibility within the OHP2 waiver requirements. Representative Winters commented that at the November 2002 meeting the Emergency Board had little flexibility to make service reductions because of categories of services within the waiver are too rigid; smaller categories need to be developed so that the Legislature has greater flexibility.

Representative Hayden noted that he had a discussion with Legislative Counsel and they have begun to “de-pool” some of the items.

Representative Schrader’s motion carried with no objections voiced. (Senator Beyer excused)

## **9. Department of Administrative Services**

Senator Messerle moved that the Emergency Board acknowledge receipt of a third report from the Department of Administrative Services on actions taken to carry out the Governor’s hiring freeze, with instructions.

The following is a summary of the request and Subcommittee (General Government) action:

The Department of Administrative Services (DAS) submitted a third report in response to a legislative directive that DAS work with agencies to maintain vacancies under the Governor’s hiring freeze to realize additional 2001-03 cost savings and provide reports to the Emergency Board and the 2003 Legislative Assembly. The Department of Higher Education provided the Legislative Fiscal Office (LFO) with additional vacancy information as requested.

The third report from DAS indicates that the number of statewide vacant positions (excluding the Department of Higher Education) has continued to increase since the last report. The report confirmed that there are a total of 4,196 vacancies as of January 1, 2003.

Review of the agency-by-agency list (excluding the Oregon University System) shows that over 80% of the vacancies are in nine agencies, with over 50% occurring in three agencies. Attached to the report provided to LFO was a list identifying all agencies with subject vacancies. Also attached to the report was a printout identifying hiring exceptions on an agency-by-agency basis. The data showed that from November 1, 2002, to January 1, 2003, there were 544 hiring exceptions involving 25 agencies. The primary justification continues to be linked to public safety, health, and welfare.

Data provided to LFO by the Department of Higher Education confirmed that 355 of 10,076 (3.5%) positions subject to the freeze were vacant on November 30, 2002. This is 55 more positions than were vacant as of the end of September 2002. As of November 30, 2002, 270 positions had been filled as exceptions to the hiring freeze.

The Subcommittee requested DAS find out more about recent hiring decisions made by the Department of Human Services (DHS) to determine whether local field personnel have been hired to provide centralized services and whether personnel scheduled for layoff continue to receive training.

DAS confirmed that it would collect information and provide it to LFO. The Subcommittee recommended the Emergency Board acknowledge receipt of the report.

The following Committee discussion occurred:

Representative Morgan reiterated the concerns she had expressed in Subcommittee based on reports she had received indicating that the Department of Human Services was pulling field personnel into centralized management positions.

Senator Messerle commented that Subcommittee concerns were also created when the vacancy report confirmed that DHS was responsible for about half of the 544 new hires occurring between November and December 2002.

Representative Westlund explained that DAS was asked by the Subcommittee to identify the new DHS Salem hires that came from local field staff that were providing mental health and/or alcohol and drug treatment services. He indicated that he did not understand why local staff would be laid off so that more bureaucracy could be created in Salem.

Senator Messerle's motion carried with no objections voiced. (Representative Schrader excused)

## **11. Department of Administrative Services**

Representative Westlund moved that the Emergency Board allocate \$50,000 from the Emergency Fund, established by section 1(1), chapter 878, Oregon Laws 2001, to supplement the appropriation made to the Department of Administrative Services by section 10, chapter 582, Oregon Laws 2001, and increase the Other Funds expenditure limitation established for the Department of Administrative Services by section 11, chapter 582, Oregon Laws 2001, by \$90,000, for the continued operations of the Oregon Progress Board, with instructions that the Board may seek gifts, grants, and donations, or other sources of revenue to continue operations beyond the two months anticipated to be provided by the Emergency Fund allocation.

The following is a summary of the request and Subcommittee (General Government) action:

During the 2001 regular session, the Oregon Progress Board was moved into the Department of Administrative Services. House Bill 5100 from the fifth 2002 special session eliminated the balance of the General Fund appropriation for the Progress Board. The budget report also reflected the elimination of the Progress Board's three positions. The Governor did not restore funding to the Board through use of the line item veto authority. Despite these actions, the Progress Board has been able to continue operations through the end of January 2003 with Other Funds cash. The Department of Administrative Services (DAS) requested additional funding from the Emergency Fund to continue operations of the Progress Board through the end of the 2001-03 biennium.

The Subcommittee discussed the value of measuring the effectiveness of services provided to the public by state agencies and the ability of the Progress Board to find alternative sources of funding. Representatives of the Governor-elect presented testimony to the Subcommittee indicating his interest in continuing the functions of the Progress Board during the remainder of the current biennium.

The Subcommittee recommended allocating \$50,000 from the Emergency Fund to provide at least two months of continued operations beyond the end of January. The Subcommittee also

recommended increasing the Progress Board's Other Funds expenditure limitation by \$90,000 to allow the Board to spend existing Other Funds cash and any additional funds it may be able to obtain from other sources to continue operations through the end of the biennium. This action will provide the Progress Board with the ability to develop the 2003 Performance Report and to assist with review of agency performance measures. Restoration of positions will be done either through the filling of current vacant positions within the Department or through administrative action.

The following Committee discussion occurred:

Representative Westlund commented that the Legislature moved the Progress Board from the Economic and Community Development Department to the Department of Administrative Services during the 2001 regular session with the goal of integrating performance measure data collection into budget reports and with the help of DAS and the Legislative Fiscal Office this has largely occurred. Representative Westlund added that the Board's products are a fundamental tool to help better manage state government.

Senator Yih stated her belief that all agencies present their performance measures when justifying their budget and funding requests and that the Department of Administrative Services only needs to gather the information and summarize. Senator Yih also commented that the Progress Board's information often lags what the agencies are actually doing and is often out of date and indicated that it was time to eliminate the duplication of effort by the Progress Board.

Representative Butler explained that performance measures may measure the current production and capacity of state agencies in meeting their actual mission and goals, but that the benchmarks demonstrate more of how the state is moving toward long-term goals and that the Progress Board has been instrumental in providing this service.

Representative Westlund commented that this is not just a measure of the benchmarks and agency goals, but also a measurement of the Legislature's goals and appropriations.

Representative Westlund's motion carried with Senators Yih and Beyer voting "no."

## **12. Department of Higher Education**

Representative Johnson moved that the Emergency Board establish an Other Funds Capital Construction [Article XI-F(1) Bonds] expenditure limitation, for the Department of Higher Education, for Lillis Business Complex/Gilbert Hall, phase 2, at the University of Oregon, and transfer \$5,300,000 from the Other Funds Capital Construction [Other Revenues (Including Federal Funds)] expenditure limitation established for the Department of Higher Education by section 2(4)(d), chapter 845, Oregon Laws 2001, for the same project, to the newly established expenditure limitation.

The following is a summary of the request and the Subcommittee (Education) action:

Because of rising enrollments, the University of Oregon has a shortage of classroom space. Enrollment at the university is expected to increase by 13% this biennium alone. In the 2001 regular session, the Legislature approved a \$33 million, 105,000 sq. ft. expansion of Gilbert Hall, to enlarge the Lundquist College of Business and to provide badly-needed classroom space.

This project was to be fully financed by donations – and pledges have been received for the full amount – but donations are coming in at a rate slower than expected. As a result, the Department is requesting authority to use \$5.3 million of Article XI-F(1) bonds to expedite completion of this project.

The university would substitute these bonds for an equal amount of donations. This will allow the facility to be completed on schedule. The university wants to open the facility by Winter Term 2004, but the timing of the pledge payments will delay opening by at least two more years if the bonds are not used. The university will pay the debt service costs from pledge collections for the project, or from other donations to the University of Oregon Foundation. Income is expected to be sufficient from these sources, but in the event that it is not, the university will pay the debt service from funds in its unrestricted operating budget.

The Subcommittee recommended approval of the request.

Representative Johnson's motion carried with Senator Yih voting "no."

#### **14. Department of Human Services**

Senator Hannon moved that the Emergency Board consider this item separately from the en bloc consideration of agency reports, and direct the Department of Human Services to report to the Joint Committee on Ways and Means and the 2003 Legislature within 30 days on proposals to address reductions in the Oregon Health Plan for mental health and chemical dependency benefits.

The following is a summary of the request and Subcommittee (Human Services) action:

The Department of Human Services (DHS) reported on its departmental reorganization efforts, as required by House Bill 2294 (2001). The Subcommittee recommended acknowledgement of receipt of the report as part of an en bloc acknowledgement of agency reports.

The following Committee discussion occurred:

Senator Hannon expressed concern that the Subcommittee did not revisit reductions to the Oregon Health Plan (OHP) approved by the Emergency Board in November 2002 and scheduled to take effect March 1, 2003. His motion would direct DHS to bring the issues to the 2003 Legislature early in the session because of the significant impact of the reductions.

Senator Clarno stated that local mental health directors have already made cuts in their operations, and that it was necessary to look at efficiencies at the state level before implementing further service reductions. Senator Carter noted that it was critical that police be trained in how to deal with mentally ill individuals. Representative Hayden suggested having DHS also provide a companion report on emergency oral surgery, and Senator Hannon concurred. Representative Winters said she believed DHS needs to look to ensure that it is maximizing resources to get the best return for Oregon, citing potential for increasing federal matching funds for county expenditures. She commented that funding should go to providers rather than keeping it within DHS' internal administrative structure.

Representative Schrader stated the Emergency Board had a chance to adopt an alternative to the OHP reductions at its November 2002 meeting, an alternative he felt was still feasible. He stated support for an early legislative review of the reductions. Representative Westlund indicated the alternative proposal considered in November would have significant impact on the Staley settlement agreement for developmentally disabled persons and could result in litigation. He suggested the

newly-created House Committee on Audit and Human Services Budget Reform that he will chair would be an appropriate forum for the report that Senator Hannon was seeking. Representative Morgan discussed the difficulty of reaching the decisions that were made during the five special sessions and in the Emergency Board in November, and expressed her support for the 2003 Legislature to revisit the issues.

Chair Simmons invited State Senator Avel Gordly to present testimony. Senator Gordly expressed concern for the effect of the reductions to OHP mental health, chemical dependency and dental services, and stated a particular concern that no hope was being given to the people who would be losing services March 1. She expressed appreciation for the encouraging comments made by members.

Senator Hannon indicated that he expected hospitals to respond to the increase in emergency room workload resulting from the OHP reductions without requesting additional funding.

Senator Hannon's motion carried with no objections voiced. (Representative Minnis excused)

## **15. Department of Corrections and Department of Administrative Services**

Representative Hayden moved that the Emergency Board acknowledge receipt of a report on the plan for sale or lease of property in Salem owned by the Department of Corrections for the benefit of the Trust for Cultural Development and for the Department of Public Safety Standards and Training; and instruct the Department of Corrections and the Department of Administrative Services to report to the 2003 Ways and Means Committee by May 1, 2003 with information relating to the development of the property including staffing needs of state agencies, infrastructure needs, options for infrastructure financing, and a timeframe for development after discussions with the City of Salem.

The following is a summary of the request and Subcommittee (Education) action:

The Department of Corrections was required by the 2001 Legislature to report on the development of a plan and the identification of property for the DPSSST training facility and property for sale for the benefit of the Cultural Trust. The property for the training facility has been identified. Previous Emergency Board discussions raised the issue of the equitable division of the remaining property between the Cultural Trust and Oregon Correctional Enterprises (OCE). The Departments notified the Emergency Board in April 2002 that they would contract with a consultant to identify the property's estimated value, its development potential, and a process for disposition of the property.

The consultant's report and the agencies' submitted material describe a number of factors that affect future development and sale of this property including:

- It is very difficult to divide the property in an equitable manner. If the property is divided, the future value will change depending on the development plans of one or both of the parties.
- The property is of significant industrial/commercial value since it is one of a very few larger tracts (more than 100 acres) with the proper mixture of freeway access, topography, market accessibility, available workforce, and quality of life.
- If the property was sold now its use would be limited to agricultural related purposes. The City of Salem will likely require a comprehensive planning process and a detailed infrastructure needs assessment prior to approving zoning changes.
- The comprehensive planning process for industrial/commercial development for this site is estimated to take between five and ten years before the property will be ready to sell to a developer and the funds could be available to the Trust and OCE.

The consultant's report outlined two general options. The first is to divide the property and sell it now. The estimated value under this option is roughly \$5 million since it would be limited for agricultural uses under current zoning. The second option is to work with the city in developing the property for commercial and industrial purposes as a single tract and it could be sold for an estimated \$27 million.

The Subcommittee recommended the Departments identify the staff resources they will need to pursue the second option and to begin discussions with the City of Salem on the infrastructure needs of the property, potential financing alternatives for the infrastructure, and a more detailed timeframe for this option. The Departments are to report back to the 2003 Joint Committee on Ways and Means by May 1st on these discussions.

The Subcommittee recommended acknowledging receipt of the report.

Representative Hayden's motion carried with no objections voiced. (Representative Winters excused)

## **16. Oregon State Police – State Fire Marshal**

Representative Johnson moved that the Emergency Board allocate \$1,296,965 from the Emergency Fund, established by section 1(1), chapter 878, Oregon Laws 2001, to establish a General Fund budget category for the Department of State Police, Office of the State Fire Marshal, and authorize, within the Federal Fund expenditure limitations established for the Department of State Police by section 3, chapter 776, Oregon Laws 2001, the transfer of \$3,199,782 from subsection (4) Human Resources to subsection (5) Fire Marshal activities and operations, for the cost of fighting fires during the summers of 2001 and 2002 under the Emergency Conflagration Act.

The following is a summary of the request and Subcommittee (Education) action:

ORS 476.510 to 476.610, referred to as the Emergency Conflagration Act, authorizes the Governor to order local fire agencies to provide assistance in fighting fires in other communities across the state when structures are threatened. The State, through the Office of State Fire Marshal, is required to reimburse costs of those fire agencies incurred between leaving their home base until they return after fighting the fire. These costs include fuel, wages of firefighters, food, lodging, and any damage/repair to equipment during the period the Conflagration Act is in effect. During 2001 and 2002, the Governor initiated the order 14 times for fires in Southern and Eastern Oregon. Total cost of these actions was \$4.6 million with the federal government paying for roughly 75% of these costs and the State and private parties paying the remainder.

Subcommittee members discussed specific issues relating to the practice of federal agencies in fighting forest fires. They expressed concern that some of the federal rules and practices led to greater fire damage than what might have occurred. With this in mind, the Subcommittee included the following instructions as part of its recommendations:

1. The Fire Marshal and the Oregon Department of Forestry are to work with the State's Congressional delegation in exploring changes to federal rules and practices that inhibit effective and efficient means of fighting forest fires.

2. The Fire Marshal, along with the Governor's Office and the Oregon Department of Forestry, is to examine the possibility of the State assuming responsibility for fighting fires in National Forests and on other federal lands within the State.

The Fire Marshal is to report to the 2003 Joint Committee on Ways and Means on the results of these two actions.

The Subcommittee recommended acknowledging receipt of the report.

The following Committee discussion occurred:

Representative Schrader asked whether recent newspaper articles regarding reimbursement of fire related costs referred to federal or state costs, and whether it was part of the Subcommittee's discussion.

Representative Johnson stated that most of the Subcommittee's discussion dealt with the inefficiencies of the federal government's practices in fighting fires.

Legislative Fiscal Office staff responded that the article was regarding federal reimbursement, and the Fire Marshal's office had a specific price schedule for eligible costs.

Senator Hannon commented on the federal practices of fighting fires in Southern Oregon. He outlined the reasons for instructing the State Fire Marshal and the Oregon Department of Forestry to work with the State's Congressional delegation in exploring changes in federal fire fighting practices.

Senator Messerle asked whether the Subcommittee discussed the federal practice of calling upon local fire agencies to assist in fire fighting and releasing them just before the 24 hour time limit when they would have to be reimbursed.

Representative Johnson responded that it had not been discussed specifically but that the Subcommittee had asked the Fire Marshal to take a close look at federal and state practices and costs in fighting fires.

Representative Morgan commented that western states and the federal government were discussing bringing federal and state fire fighting policies in line to more effectively fight fires. She also commented that the funding for fighting fires will be an issue next session given the increasing costs and the uncertainty in the insurance industry. She also stated her support for this item given the cost savings of utilizing the local fire agencies.

Senator Hartung asked whether logging on land that had been burned was discussed and Representative Johnson responded that it had not been discussed.

Representative Johnson's motion carried with no objections voiced. (Representatives Schrader, Winters and Simmons and Senator Clarno excused)

## **19. Economic and Community Development Department**

Senator Carter moved that the Emergency Board increase the Other Funds expenditure limitation for the Arts Commission established by section 2(3), chapter 771, Oregon Laws 2001, by \$103,333 for a Ford Family Foundation grant.

The following is a summary of the request and Subcommittee (Education) action:

The Ford Family Foundation, which is located in Roseburg, Oregon, requested the Arts Commission to assist in a program to fund artist residencies for rural schools, and provided a grant of \$310,000 over a three-year period. The Ford Foundation sought assistance from the Arts Commission because of its existing Network of Regional Arts Education programs.

The Arts Commission requested that the Emergency Board increase the Other Funds expenditure limitation in order to implement this private grant. The grant will provide up to 90% of the cost for a two-week artist residency for rural schools. This means that rural schools will pay only \$120 on the estimated \$1,200 two-week cost for an artist-in-residence. The Arts Commission will receive up to \$5,000 per year to administer the grant.

The Subcommittee commended the Arts Commission on its excellent working relationship with community schools on arts education programs, and recommended approval of the request.

Senator Carter's motion carried with no objections voiced. (Representatives Schrader, Winters, Johnson and Simmons and Senator Clarno excused)

#### **24. Department of Environmental Quality**

Representative Morgan moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Environmental Quality by section 2(4), chapter 774, Oregon Laws 2001, Cross Media, by \$179,986 to accommodate additional revenue from application fees in the pollution control tax credit program, with the understanding that the Department of Administrative Services will unschedule the limitation until the funds have been received.

The following is a summary of the request and Subcommittee (General Government) action:

Under the state's pollution control tax credit law, the Department of Environmental Quality (DEQ) is required to review applications for tax credits and make recommendations for action to the Environmental Quality Commission (EQC). The application review process is entirely funded by fee revenue collected through a charge equivalent to 1% of the claimed facility cost, with a \$50 minimum and \$15,000 maximum. Half of the fee is refunded to the applicant if the application is denied by the EQC.

DEQ reported that the number of pollution control tax credit applications it has received increased dramatically during the last quarter of 2002. The program does not currently have enough expenditure authority to process this increased number of applications.

The Subcommittee recommended approval of the request.

Representative Morgan's motion carried with no objections voiced. (Representatives Schrader, Johnson and Simmons and Senators Yih and Clarno excused)

### 30. Department of Geology and Mineral Industries

Representative Butler moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Geology and Mineral Industries by section 2, chapter 15, Oregon Laws 2001, by \$266,000 for a grant from the Oregon Watershed Enhancement Board to complete work on river bank and dike renovation on the Rogue River.

The following is a summary of the request and Subcommittee (General Government) action:

The Department of Geology and Mineral Industries received a \$283,000 grant from the Oregon Watershed Enhancement Board in August 2002 to complete river bank stabilization and dike renovation work on a section of the Rogue River north of Medford. At its October 2002 meeting, the Emergency Board approved an Other Funds expenditure limitation increase of \$17,000 to accommodate the agency's anticipated expenses related to grant oversight. The agency assumed the remaining grant amount would be treated as revenue transfers. Subsequent to Emergency Board approval, the agency discovered all of the \$283,000 grant amount must be accounted for in its budget as expenditures, not revenue transfers. A limitation increase of \$266,000 will allow the agency to properly account for all grant expenditures.

The Subcommittee recommended approval of the request.

Representative Butler's motion carried with no objections voiced. (Representatives Schrader, Johnson and Simmons and Senators Yih, Clarno and Metsger excused)

### 31. Department of Geology and Mineral Industries

Representative Butler moved that the Emergency Board authorize application for a federal grant to mitigate pollution on abandoned mined lands and increase the Federal Funds expenditure limitation established for the Department of Geology and Mineral Industries by section 4, chapter 15, Oregon Laws 2001, by \$50,000, with the understanding that the Department of Administrative Services will unreschedule the limitation pending award of the grant.

The following is a summary of the request and Subcommittee (General Government) action:

The Department of Geology and Mineral Industries requested authorization to apply for a \$200,000 grant from the Environmental Protection Agency to locate and mitigate pollution concerns associated with abandoned mined lands. The agency anticipates that \$50,000 of the grant will be expended in the current biennium, with the remainder expended in the 2003-05 biennium.

The Department also requested an expenditure limitation increase of \$20,000 Other Funds to accommodate work on three contracts scheduled to begin this biennium. The Subcommittee denied this request because the Emergency Board previously approved a \$50,000 increase for one of the contractual agreements, at its September 2002 meeting, which was unrescheduled pending receipt of funds. The Subcommittee directed the agency to request that the Department of Administrative Services reschedule \$20,000 of this Other Funds limitation to accommodate expenditures for all three contracts.

The Subcommittee recommended approval of the request.

Representative Butler's motion carried with no objections voiced. (Representatives Schrader and Johnson and Senators Clarno and Metsger excused)

### **32. Division of State Lands**

Representative Hayden moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Division of State Lands by section 3(2)(b), chapter 208, Oregon Laws 2001, South Slough Estuarine Sanctuary capital improvement, by \$185,000, to expend grant funds from the National Oceanic and Atmospheric Association for construction projects at the South Slough National Estuarine Research Reserve.

The following is a summary of the request and Subcommittee (Education) action:

In April 2002, the Division of State Lands received approval from the Emergency Board to apply for grant funds from the National Oceanic and Atmospheric Association (NOAA) for construction projects at the South Slough National Estuarine Research Reserve. Grant funds are to be used to revise the Reserve's 1991 Physical Facilities Master Plan, upgrade access roads for emergency vehicles, make trail system improvements, build a public canoe landing at Hinch Road, and plan and design an administrative office site in Charleston. The Legislative Fiscal Office noted in its April 2002 analysis that the Division would return for any necessary expenditure limitation if the grant application was approved. NOAA has notified the Division that the grant has been awarded.

In 2001-03, the Division plans to expend approximately \$185,000 of the total project funds (\$335,000 federal funds plus \$143,572 matching funds). This will allow the Division to contract for revision of the 1991 Physical Facilities Master Plan, provide for asbestos abatement at the Spruce Ranch facility, pay for architectural fees for the paddling launch and a storage facility, and enter into an agreement with the Charleston Merchants Association to begin a feasibility study for co-locating a visitor center and administrative offices.

The Subcommittee recommended approval of the request.

Representative Hayden's motion carried with no objections voiced. (Representatives Schrader and Johnson and Senator Metsger excused)

### **33. Division of State Lands**

Senator Carter moved that the Emergency Board increase the Other Funds expenditure limitation established for the Division of State Lands by section 2(3), chapter 208, Oregon Laws 2001, Common School Fund programs, by \$1,236,000, for legal and other expenses incurred for the Coos County trial and continuing litigation over the grounding and removal of the New Carissa, with the understanding the Department of Administrative Services will un-schedule \$144,000 of the limitation until the costs are actually incurred.

The following is a summary of the request and Subcommittee (Education) action:

The 639-foot New Carissa ran aground on the southern coast of Oregon on February 4, 1999. After an attempt to burn the ship's fuel oil to stop its leakage, including setting the entire ship ablaze, the stern section split from the bow. Efforts to tow the bow out to sea initially appeared successful but, amid severe winter weather conditions, the bow broke loose from the towline and eventually ran

aground again - this time near Waldport. The bow ultimately was towed out to sea and sunk by a Navy submarine's torpedo. The stern remains on the beach at the Coos Bay North Spit. The state sued the owners of the ship to have the stern removed. In November 2002, jurors found that the owners should pay the state for removal of the wreckage that remains on Oregon's coast. The ship's owners filed an appeal in December 2002.

The Division of State Lands has incurred extraordinary costs as a result of the trial. In one month alone, over 37,000 documents from 18 state and federal agencies were produced and required review by the state. More than 70 depositions were taken in Salem, Portland, Eugene, Coos Bay, Charleston, Los Angeles, London, and the Netherlands. The defendants' attorneys also routinely filed multiple motions often more than 100 pages in length. There were more than 100 boxes of trial and discovery documents for use during the trial. The state's trial team set up a temporary office in Coos Bay and stayed from the end of September 2002 until the verdict was rendered on November 13, 2002. The amount of work to participate and respond to the requests and requirements of the defense attorneys as well as the court resulted in extraordinary legal and other trial-related expenses for the Division. The agency expects additional costs will be incurred this biennium as a result of the appeal.

The Division's costs to date are approximately \$1.5 million. The agency concurred with the Legislative Fiscal Office analysis that a portion of these costs can be absorbed within the limitation already approved for 2001-03. The Subcommittee recommended approval of a \$1,236,000 increase in the Other Funds expenditure limitation for the Division's Common School Fund programs, with the understanding that the Department of Administrative Services will unreschedule \$144,000 until the costs are actually incurred.

The following Committee discussion occurred:

Representative Winters asked if there was any hope of recovering these costs.

Senator Carter replied that the timing of that, if it occurs, is unknown.

Senator Carter's motion carried with no objections voiced. (Representatives Schrader and Johnson and Senator Metsger excused)

#### **34. Parks and Recreation Department**

Senator Hannon moved that the Emergency Board increase the Other Funds expenditure limitation established for the Parks and Recreation Department by section 1(2), chapter 210, Oregon Laws 2001, Grant programs, by \$1,718,657 to fund a grant for the acquisition of land by Morrow County for camping and riding areas for All-Terrain Vehicle usage.

The following is a summary of the request and Subcommittee (Education) action:

The Department requested an expenditure limitation increase to cover the costs of a new all-terrain vehicle (ATV) riding park in Morrow County. The park will consist of 6,200 acres of land that was partially harvested for timber. The harvested area is an ideal riding and camping area. The County believes creation of the park will stabilize local retail businesses and import dollars to the community by bringing people into the region for ATV recreation and camping purposes.

Funding for the grant comes from the All-Terrain Vehicle Account which is dedicated to acquisition, development, and maintenance of ATV recreation areas; education and safety training for

ATV trainers and operators; provision of first aid and police services in ATV designated use recreation areas; and administration of the program.

The Subcommittee recommended approval of the request.

The following Committee discussion occurred:

Senator Messerle asked for clarification about whether the land is currently in private ownership and Senator Hannon advised that it is. He expressed concern about taking private forest land out of production and off the property tax rolls noting that approximately 51% of land ownership in the state is held by public entities. Senator Messerle stressed the importance for Morrow County to insure that they have the resources to manage the property so that the state is not asked to provide assistance in the future.

Representative Simmons noted that he is not a proponent of converting private land to public ownership and for that reason would be voting no.

Senator Hannon's motion carried with Representatives Winters and Simmons and Senators Yih and Beyer voting "no." (Representative Schrader excused)

### **35. Oregon Watershed Enhancement Board**

Senator Yih moved that the Emergency Board acknowledge receipt of a progress report on research in the Newberg Pool of the Willamette River.

The following is a summary of the request and Subcommittee (Human Services) action:

The Oregon Watershed Enhancement Board awarded a research grant to Oregon State University to study the Newberg Pool section of the Willamette River. The research project will try to explain why there are more skeletal deformities in fish from the Newberg Pool compared to upstream sites.

During the 2002 field season, chemical and physical characteristics of water from the Newberg Pool and three upstream sites were measured. Over 4,000 juvenile fish were examined, scored, and entered into a database. Observations made from the data collected found fish collected in the Newberg Pool had higher numbers of skeletal deformities than fish collected upstream. Also, higher concentrations of components of the chemicals DDT and PCB were found in the Newberg Pool than were found in upstream water samples. No bacteria or viruses were found, but a parasite was identified with enough frequency to warrant further investigation.

During 2003 the research project will evaluate the effect of the parasitic and toxic contaminants identified during the first year of research. The work is expected to be completed and a final report issued by June 2004.

The Subcommittee raised concerns on whether the contaminants and parasites found to date pose a human health concern. The professor overseeing the research advised their findings would be shared with downstream water treatment plants who could then adjust treatment of Willamette River water as needed. The Subcommittee also discussed the need to identify early this year whether the project will need to be expanded so funding could be addressed while the Legislature is in session.

The Subcommittee recommended approval of the request.

Senator Yih's motion carried with no objections voiced.

### **38. Department of Transportation**

Representative Johnson moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Transportation by section 2(15), chapter 643, Oregon Laws 2001, by \$774,648 to fund an excursion-style train service between Portland and Astoria, commemorating the Lewis and Clark Expedition.

Representative Johnson stated for the record that she is the chair of the Lewis and Clark Bicentennial Commission for the State of Oregon.

The following is a summary of the request and Subcommittee (Education) action:

The Oregon Department of Transportation (ODOT) reported working with the City of Astoria and other communities to operate an excursion-style train on a seasonal basis between Portland and Astoria during three years of the Lewis and Clark bicentennial celebration. The Department originally requested \$924,648 to purchase train equipment, fund the remaining track and station improvements, and cover two months of operating subsidy.

This is a short-line that currently operates between Portland and Astoria. The line serves two major industrial sites and a number of industrial customers including bringing wood chips into the Boise Mill, serving one of the last remaining private forest product companies in Columbia County, and hauling rock for a construction company. There is an additional possibility of carrying sand from the channel deepening project and river dredging maintenance. Senator Smith and Congressman Wu have successfully sought federal support for track improvements that are now completed. This has raised the speed limit on the short-line and has made future industrial and economic development possible. One of the factors motivating Congress to help find these funds was the possibility of leveraging additional freight improvements by capitalizing on the influx of historic visitors coming to Oregon for the Lewis and Clark commemoration.

The Subcommittee supported a commitment to get the communities to underwrite the purchase of one of the three cars at a cost of \$150,000 reducing the initial commitment required from the state to \$774,648. The service will provide access to a number of historically significant sites, and is expected to be a major attraction to tourists from all over the country. There is support for the train service from Amtrak, the Lewis and Clark Bicentennial Organization, and the local communities along the proposed route.

The Subcommittee recommended approval of the request.

The following Committee discussion occurred:

Senator Hartung asked if the Oregon Economic Development Department had been approached for funds since this would be an important economic development activity.

Representative Johnson advised that Oregon Economic and Community Development provided information to the Subcommittee specifically of the need to have the short-line leverage industrial development all along the route. Financial participation in this project has not been requested at this point.

Representative Winters asked where the resources would come from if there was an inability to repay the loan.

Representative Johnson advised that the operating portion is at risk because the rail cars have intrinsic value and could be sold or leased.

Legislative Fiscal Office (LFO) staff clarified that the request from the Department is not a loan but an allocation of resources to subsidize the purchase of rail cars and train operations. The Department believes that there will be some opportunity to lease the trains to pay some of that money back when the train is not in service.

Senator Beyer asked if the track improvements are complete as far as the industrial value for the short-line is concerned.

Representative Johnson replied that the track improvements are a work in progress. Senator Smith and Congressman Wu secured \$2 million in federal appropriations that yielded a certain number of track improvements. Congressman Wu has been intrigued by the possibility of using the Lewis and Clark passenger train to continue to leverage congressional investment in the freight improvements. Any improvement to the track assists both freight and passenger service, so there is a continuing federal appropriations request to continue to make improvements.

Senator Beyer asked staff to clarify that these funds could be used to offset General Fund in next session.

Legislative Fiscal Office staff explained that the Transportation Operating Fund can be used to operate current passenger rail and public transit services where General Fund is currently subsidizing operations, freeing up the General Fund for other legislative priorities.

Senator Messerle asked if it is possible for this to be a loan and what the implications of a loan would be. He also asked for a breakdown of the cost of operations stating that \$492,000 for two months seemed like a sizeable amount of money for a three-year operation.

Representative Johnson explained that the train and equipment cost is \$380,000; a need to make improvements to the Astoria platform is \$15,000; converting a freight shed to a passenger shelter is \$35,000; constructing a platform in Rainier is \$5,000; and building some track in Astoria to allow for safe separation of train and trolley operations and spot tie replacements is \$185,000. A loan is possible to the degree that there could be a commitment to repay the fund from the sale of the rail cars if service is discontinued.

Rep. Winters asked if there is a timing issue.

Representative Johnson explained that ODOT had identified three rail cars coming out of service in British Columbia and that the province of British Columbia is waiting to determine whether or not to release the cars that they are tentatively holding for our opportunity to buy based on the pending Emergency Board decision.

Representative Butler noted that a number of the letters supporting the request characterize this proposal as a loan and expressed concern that the request has gone from a loan to, in large part, an outright grant.

Representative Johnson explained that in the beginning the concept was designed to be a grant and that the character of the request is changing. She further explained that she believes that there needed to be a demonstration of community participation which is why she offered a commitment to raise \$150,000 in Columbia and Clatsop Counties through the efforts of the Lewis and Clark Bicentennial Organization. Currently it is structured as a grant. Representative Johnson noted that there is a willingness to try to reframe the proposal in the terms of some kind of structured repayment to the fund. She stressed that the difficulty is one of timing because British Columbia is waiting for our decision on whether or not to proceed. Representative Johnson stated that there also exists the opportunity to refine the total amount requested and an opportunity to restructure the request to characterize a repayment source.

Representative Butler asked if economic development funds, federal grants, and other historic dollars have been tapped and worked to finance the train operation.

Representative Johnson replied that they have not. She explained that the purpose of the Lewis and Clark Bicentennial Organization in Oregon is to go out and look for all sources of money, including Federal grants, economic development grants, park service grants, and to look to the philanthropic community. The Lewis and Clark Bicentennial Organization has a \$1 million request pending before the Meyer Memorial Trust. The Lewis and Clark Bicentennial Organization has not gone to the philanthropic community much at all. Only one grant has been received to underwrite public participation in the creation of the Lewis and Clark plan for the State of Oregon. The philanthropic community, the business community, and, in large measure, the federal sources have not even begun to be tapped.

Representative Butler explained his concern that if the rail service does not generate the level of interest in tourism dollars locally, there is a possibility some of the responsibilities for other kinds of financial commitments could be shifted to local governments that they didn't previously have.

Representative Johnson responded that in the context of Astoria, the home of Fort Clatsop, the community is aggressively going after money to help support Lewis and Clark activities. The whole community is gearing up to see the influx of these tourists with Lewis and Clark as an economic opportunity. She explained that massive preparations are underway in Clatsop County and to a lesser degree in Tillamook and Columbia Counties to try to accommodate these visitors. Representative Johnson noted that the City of Astoria remembers its experience when the USS Missouri docked there and 100,000 visitors paralyzed the north coast.

Senator Clarno noted that the last sentence of the analysis states that at the end of the Lewis and Clark service, ODOT plans to sell the equipment unless some other need is determined. She asked if the committee discussed what ODOT might do with this equipment, what the resale value is, and what other needs might be determined.

Representative Johnson responded that one of the possibilities is in support of the Talgo train now operating between Eugene and Portland. The Talgo runs at \$50,000 a month to provide that service. The Talgo or parts of it may have to go down for maintenance and these cars could be substituted for that service as well as maintaining their intrinsic value if they are sold.

Senator Clarno stated a belief that the two things that will need to be done this next budget cycle is to stimulate the economy and cut budgets. She expressed support for those who are working to see that the Lewis and Clark Bicentennial is a success for Oregon noting that it is an opportunity to stimulate the economy. Senator Clarno expressed anticipation that if this is not successful in the long run, that a time to terminate the service will be determined so that we don't continue if it doesn't work.

Senator Metsger questioned the costs for operating the train and amount of subsidy required. He expressed concern that there is no business plan to deal with how the train is going to be subsidized after the first two months if enough ridership is not generated or, even with 100% ridership, enough money can be generated to recover the costs of operations. Senator Metsger added that he would be more comfortable if there was a plan for picking up the service after the first two months and if funds were identified to provide the subsidy so that the investment in fact did materialize in a manner that we want to operate.

ODOT staff admitted that an ongoing subsidy for the three years of operations would be needed and that it is anticipated in a budget request for the next biennium.

Senator Metsger asked Representative Johnson for clarification.

Representative Johnson stated that she had anticipated a subsidy only to determine whether or not the excursion train would be a marketable plan wherein fees generated from ridership would help decrease the subsidy.

ODOT staff advised that the agency needed to establish a minimum level of subsidy in order to insure a sustainable program. Whether or not the service gets to a self sustaining point will drive whether ODOT continues the operation. ODOT staff also advised that communities along the route determined that the ticket prices needed to be economically accessible to school children, senior groups, and those people who cannot afford to pay for a \$65 to \$100 ticket, and that ODOT is committed to finding other revenue raising options such as selling advertising and looking for corporate underwriting.

Senator Beyer stated that he could be convinced to support the proposal if it were only a request to purchase the rail cars because there is a timing problem with the cars. He expressed concern with the ongoing subsidy and noted that improvements in the local cities should be handled at the local level. Senator Beyer explained that the \$387,000 cost for the rail cars can be recovered from their resale if the service proved not to be feasible. Senator Beyer shared Senator Metsger's concern that the operating portion of the rail service is not well thought out yet as to what would happen on the 62<sup>nd</sup> day. Senator Beyer suggested purchasing the rail cars as a possible alternative to this entire proposal.

Representative Schrader suggested a friendly amendment to Senator Beyer's suggestion to alter the funding allocation to represent the cars and capital improvements because they have a long term value for the community in terms of economic development but not the operating expenditures.

Senator Beyer explained that the community has already raised \$37,000 that would pay most of the cost for those capital improvements.

Representative Johnson clarified that the community commitment was specifically for the acquisition of a car not for community improvements and explained that she would have to go back and amend the request if the money raised by the community would be directed to pay the cost of capital improvements.

Representative Simmons gave Representative Johnson an option of finishing up the discussion and moving to the vote or a brief recess of this discussion, proceeding with the final two items on the agenda to allow an opportunity to consult with ODOT on the direction to take the proposal.

Representative Johnson accepted the option to consult with ODOT before proceeding.

Representative Simmons explained his intention to temporarily recess the discussion of item 38 and proceed with items 40 and 42 and then come back to item 38.

Representative Johnson returned with an amended motion that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Transportation by section 2(15), chapter 643, Oregon Laws 2001, by \$442,000 with the understanding that \$387,000 will come from the Transportation Operating Fund and \$55,000 from other sources, and with the understanding that the \$387,000 will be repaid to the Transportation Operating Fund when the rail cars are sold or with any lease revenue if the cars are leased. Representative Johnson explained that this will cause the purchase of the cars to come from the Transportation Operating Fund with the cars as the source of repayment and the community improvements to be paid by the communities. Representative Johnson was hopeful that the generous individuals who have stepped up and offered to pay for the cars would shift their funds over to these other improvements.

Senator Messerle stated for the record that he is very supportive of short-line railroads. He noted a concern that purchasing the train may raise expectations for future requests to subsidize operating the train if resources could not be raised. Senator Messerle expressed support if assurances could be made that there is not an expectation to come back for subsidy funds in the future.

ODOT staff explained that the initial work with the communities did not anticipate any state money going into this at all beyond purchasing equipment, and that once the state has the rail cars in hand it will be relatively easy to find alternate sources of funds.

Representative Westlund asked for clarification regarding what the process and timeline would be for making a determination as to whether this is a successful venture or not.

ODOT staff explained that in April 2003 if at least 50% of the tickets are not sold it would not make business sense to proceed. ODOT staff further explained that the Department would report to the Legislature and provide options on how best to handle the equipment at that point. In addition to reselling the equipment, the rail cars could be used in revenue service within the Cascades Corridor relieving the state of about \$55,000 a month in General Fund subsidy.

Representative Johnson's amended motion carried with Representatives Minnis and Morgan voting "no."

#### **41. Board of Nursing**

Representative Schrader moved that the Emergency Board increase the Other Funds expenditure limitation established for the Board of Nursing by section 1, chapter 38, Oregon Laws 2001, by \$337,146 to cover the expected cost of Certified Nursing Assistant testing and expected Attorney General services through the end of the biennium.

The following is a summary of the request and Subcommittee (Human Services) action:

The State Board of Nursing licenses nursing professionals and certifies Nurses Aides, commonly called CNA's. There is a critical shortage of nursing assistants and the number of applications for certification testing has been increasing and is expected to continue expanding. The number of certificates issued to CNAs completing examination jumped 29% in fiscal year 2001-02 to almost 2,600. The Board receives adequate revenue for testing and issuance of certificates, but lacks

the expenditure limitation for the additional costs to administer the increased number of tests. The Board adjusted its request after reviewing year-end expenditures and now expects needing \$72,990 additional Other Funds expenditure limitation than originally requested, for a total increase of \$257,146 to accommodate testing costs through the end of the biennium.

The Board also regulates the practice of nursing and may take administrative action against a licensee to restrict an individual's privilege to practice nursing in Oregon. These actions are usually resolved without litigation, but during this biennium, two plaintiffs have appealed Board decisions to the courts. At its April 2002 meeting, the Emergency Board increased the Board of Nursing's expenditure limitation to pay bills associated with the first case. The second case is now working its way through the courts and has already resulted in almost \$50,000 of legal expenses. The Subcommittee discussed whether the Board had offered to settle these two cases and learned that offers had been made and rejected by the plaintiffs.

The Subcommittee also discussed whether the Board uses the hearings panel for its cases and whether using the panel is costing more or less. The Board's director reported that the second case that has been appealed was originally heard by the hearings panel and they now use the panel for their cases. Anecdotally, it appears the hearings officer panel is less costly for the initial hearing, but Attorney General costs for representing the agency for the initial hearing then rewriting the proposed order are greater for the hearings panel. The Board requested an Other Funds expenditure increase of \$80,000 to pay unanticipated attorney general expenses through the end of the biennium. The Board has sufficient funds on hand to pay these expenses without increasing fees, but needs a total of \$337,146 Other Funds expenditure limitation to do so.

The Subcommittee recommended approval of the revised request.

The following Committee discussion occurred:

Representatives Butler and Schrader discussed the nature of the cases now on appeal and agreed to obtain information from the agency at a later time.

Representative Schrader's motion carried with no objections voiced.

#### **42. Legislative Counsel Committee**

Representative Butler moved that the Emergency Board allocate \$42,875 from the Emergency Fund established by section 1 (1), chapter 878, Oregon Laws 2001, to supplement the appropriation made to the Legislative Counsel Committee, by section 8, chapter 879, Oregon Laws 2001, to purchase replacement computers.

The following is a summary of the request and Subcommittee (General Government) action:

Legislative Counsel Committee (LC) requested the Emergency Board allocate \$87,450 from the general purpose Emergency Fund to purchase 51 replacement computers. The 2001-03 legislatively adopted budget for LC included \$53,300 for expendable property, the category within which replacement computers would be purchased. LC originally planned to spend approximately \$40,000 of these funds to replace approximately one-half (28) of its 60 personal computers (PCs). One-time reductions totaling \$116,983 made in the 2002 second special session temporarily eliminated the \$40,000 budgeted for PC replacement. During the last several months it has become apparent to LC that it cannot wait to replace some of its computers, since operating system upgrades recently

implemented by Legislative Administration confirmed that most of its PCs did not have adequately sized hard drives and memory and did not operate efficiently. Utilizing remaining expendable property funds and prioritizing other expenditures, LC was able to replace nine of its oldest PCs. This request would provide funds to replace the remaining 51 PCs.

Analysis confirmed that, in addition to replacing nine PCs, LC was also able to upgrade the memories and hard drives on 26 of its PCs that are still under warranty. This leaves 25 PCs that are not efficient to operate, over four years old, not covered by any warranty, and not cost effective to upgrade. Review of expenditures to date and projected operational expenditures in the remaining months of this biennium confirmed that LC does not have budgeted funds that could be redirected toward additional PC replacements this biennium. The estimated cost to replace each PC is \$1,715.

The Legislative Fiscal Office recommended that \$42,875 be allocated so that 25 PCs can be replaced this biennium. This will ensure efficient LC operations during the 2003 regular session, allow LC to continue its current practice of replacing approximately half of its PCs each biennium, and eliminate the need for LC to pursue additional funds for PC replacement that are currently in a 2003-05 policy option package.

The Subcommittee concurred with the Legislative Fiscal Office recommendation.

Representative Butler's motion carried with no objections voiced.

Representative Simmons moved that the rules be suspended so that the Emergency Board may consider a non-agenda item. Upon hearing no objections the rules were suspended.

### Non-Agenda Item

### **Department of Human Services – Seniors and Persons with Disabilities Services**

Senator Yih moved that the Emergency Board acknowledge receipt of her report on state operated group homes for persons with developmental disabilities.

The following is a summary of the request and the Subcommittee (Human Services) action:

The November Emergency Board approved a motion that stated, “. . . an oversight committee be appointed to review a Department of Human Services (DHS) Request for Proposals for services to medically fragile persons with developmental disabilities as well as the bidding process to provide their services. The oversight committee is to report to the January 2003 meeting of the Emergency Board on its work.” Although an oversight committee was not appointed by Legislative Leadership, there was general support for Senator Yih to gather further information and report her findings at the January 2003 Emergency Board meeting.

The report made three main points. First, there are savings that can be generated by improving efficiency in the state operated group home system. The state operates its homes at a monthly rate of \$19,000 per client and the private provider monthly rate is \$10,000 per client. The report states that there is a potential biennial savings of \$13 million General Fund.

Second, there are clear opportunities for improving efficiency in the state operated group homes—even if they were not completely privatized. In one particular home, staffing ratios appeared

to be excessive. Likewise medication costs were significantly higher than the market rate. The state operated homes were also providing enhanced services such as “excursions to the Columbia River Gorge” for clients required under Oregon’s federal waiver. The report questioned why the Department hadn’t requested an exemption from this requirement during the current budgetary constraints.

Third, the report compared Oregon’s costs to other states’ costs. A table included with the report, from a University of Minnesota study, shows that Oregon’s average daily ICF/MR (Intermediate Care Facility for the Mentally Retarded) of \$582 is twice that of the national average.

The Human Services Subcommittee thanked Senator Yih for her work and recommended acknowledging receipt of the report.

The following Committee discussion occurred:

Senator Yih indicated that she had spoken with the new interim director of DHS. The director, Senator Yih stated, was receptive to reviewing the report and making recommendations to the next Legislature and new Governor.

Representative Winters stated that Senator Yih had been very diligent in bringing this report forward. She noted that Senator Yih had stressed agency performance measures and accountability and had reminded other committee members that it was important to be vigilant. She thanked Senator Yih for her hard work.

Senator Clarno added that Senator Yih had indicated some frustration over a lack of responsiveness by DHS to the questions she had raised with respect to the issue. She pointed out that the interim DHS director had promised better cooperation in the future. Senator Clarno stated that she had submitted the motion at the November Emergency Board to appoint an oversight committee and was glad Senator Yih had continued to do the investigative work on the program. She thanked Senator Yih for her efforts.

Representative Westlund offered reassurance to Senator Yih that the audit and budget committee which he would chair during the 2003 Legislative Session would review the report and work on the issues.

Senator Yih’s motion carried with no objections voiced. (Representative Schrader excused)

Representative Simmons moved that the rules be suspended so that the Emergency Board may consider a non-agenda item. Upon hearing no objections the rules were suspended.

#### Non-Agenda Item

#### **Legislative Administration Committee**

Representative Simmons moved that the Emergency Board, allocate \$291,836 from the Emergency Fund established by section 1(1), chapter 878, Oregon Laws 2001, to supplement the appropriation made to the Legislative Administration Committee by section 1(1), chapter 879, to partially restore funding for committee administrators and committee assistants, and increase the Other Funds expenditure limitation established by section 2, chapter 879, by \$555,000, to fund shift the costs of custodial staff and a building coordinator.

The following is a summary of the request:

An allocation of \$291,836 from the Emergency Fund was requested to partially restore funding for committee administrators and committee assistants who will provide support to budget and policy committees during the 2003 regular session. This amount will cover the costs of six committee administrators and five committee assistants. With this allocation, there will be funds for a total of 22 committee administrators and 18 committee assistants. This represents a slightly lower service level than in prior sessions. In the event there are more than 22 committees, some administrators will be required to split their time between two committees. Committee assistants will be required to split their time once more than 18 committees are established. Legislative Administration expressed interest in having some flexibility in how these funds will be used, since it may be more efficient and effective to hire more than five committee assistants and fewer than six committee administrators.

A \$555,000 Other Funds expenditure limitation increase was requested to fund shift the personal services costs directly related to Capitol Building custodial staff and a building coordinator position. A one-time reduction of the General Fund support for these positions was made based on actions taken during the 2002 second and third special sessions, with the understanding that revenue derived from facility rental and publication sales could be substituted. Specifically, this amount is to cover the personal services costs of 12 custodial staff and one building coordinator.

The following Committee discussion occurred:

Representative Simmons moved that the Emergency Board allocate \$291,836 to the Legislative Administration Committee to partially restore funding for committee administrators and committee assistants who will provide support to budget and policy committees during the 2003 regular session.

Representative Butler asked if there was a breakdown of how the \$291,836 would be used.

Representative Simmons explained that this amount will cover the costs of six committee administrators and five committee assistants. He also confirmed that with this allocation there will be funds for a total of 22 committee administrators and 18 committee assistants, which is a slightly lower service level than in prior sessions. He advised that if there are more than 22 committees, some administrators will be required to split their time between two committees and that some committee assistants will be splitting their time between committees after 18 committees are appointed. He also indicated it was his belief that the tasks before the 2003 Legislature warrant this allocation.

Senator Hartung stated he would support the motion and indicated that the Legislature has a real opportunity to develop partnerships between the executive and legislative branches and be much more productive, based on his understanding of how the new Governor plans to proceed.

Representative Simmons stated he needed to amend his motion to include a portion of the Legislative Administration's original Emergency Board request that was not heard in the Subcommittee on the prior day.

Representative Simmons moved that his motion also include a \$555,000 Other Funds expenditure limitation increase, so that facilities maintenance and operating fund revenue could be utilized to cover the costs of custodial staff and a building coordinator.

Representative Simmons asked Legislative Fiscal Office (LFO) staff to provide the Committee with some additional background. LFO staff confirmed that General Fund reductions were made

during the second and third special sessions, with the understanding that a portion of the reductions would be offset by one-time use of Other Funds revenue from a facilities maintenance and operating fund. LFO also indicated this action was necessary since the Other Funds limitation increase was not provided at the time the General Fund appropriation was reduced.

Senator Clarno asked when the Emergency Board found out about this request. LFO staff indicated that this issue was one of two requests contained in a Legislative Administration letter to the Co-Chairs. Staff also indicated that it would have been discussed in the General Government Subcommittee the prior day, but the entire Legislative Administration request was dropped from the agenda. LFO staff stated that this portion of the Legislative Administration request was contained in the LFO analysis sent to all Emergency Board members the prior week.

Representative Johnson asked for more information about how the \$555,000 Other Funds would be used. LFO staff advised that this one-time shift would cover the costs of 12 custodians and one building coordinator through the rest of the biennium. LFO also confirmed that these positions were initially supported by General Fund in the 2001-03 legislatively adopted budget.

Representative Westlund summarized his understanding of what created the need for the \$555,000 Other Funds expenditure limitation increase. LFO staff confirmed that his understanding was correct.

Representative Simmon's motion carried with Senator Beyer voting "no." (Representative Schrader excused)

The meeting was adjourned at 11:15 a.m.

EMERGENCY BOARD:

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Representative Mark Simmons, Chair

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Representative Ben Westlund, Secretary

ATTEST:

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Ken Rocco, Legislative Fiscal Officer