

## MINUTES OF THE EMERGENCY BOARD

**November 8, 2002**

**State Capitol**

**Salem, Oregon**

Members Present: Senator Derfler, Presiding Chair  
Representatives Butler, Johnson, Minnis, Morgan, Schrader, Simmons,  
Westlund, Wilson and Winters  
Senators Beyer, Clarno, Hannon, Messerle and Metsger

Members Excused: Senators Carter 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 November 8, 2002, took the following actions:

The meeting was called to order by Senator Derfler at 8:35 a.m. in Hearing Room 50 of the State Capitol.

### Minutes

Senator Derfler moved that the Emergency Board approve the minutes of the October 4, 2002 meeting, and upon hearing no objections the minutes were approved.

### Agency Reports

Senator Derfler requested unanimous consent that the rules be suspended so that the Emergency Board may acknowledge, en bloc, agency reports, and upon hearing no objections the rules were suspended.

Representative Westlund moved that the Emergency Board acknowledge, en bloc, receipt of the following reports: Item 4, Department of Justice and Construction Contractors Board; Item 6, Legislative Fiscal Office; Item 11 Board of Nursing; Item 15, Department of Administrative Services; Items 20, 21 and 23, Department of Education; Items 32, 35 and 36, Department of Human Services; Item 46, Economic and Community Development Department; Items 48 and 49, Employment Department; Item 58, Department of Fish and Wildlife; Item 61, Department of Parks and Recreation; and Items 67 and 68, Department of Transportation.

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

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

Item #	Agency	Report
4	Department of Justice and Construction Contractors Board	Status of the joint enforcement program

6	Legislative Fiscal Office	Resources that have been awarded to Community Learning Centers
11	Board of Nursing	Performance measures development
15	Department of Administrative Services	Debt service savings as a result of recent refunding issues
20	Department of Education	Debt service savings as a result of recent refunding issues
21	Department of Education	Certificate of Advanced Mastery
23	Department of Education	Development of the State School Fund current service level budget
32	Department of Human Services	Status of the assessment of the Temporary Assistance for Needy Families (TANF) program
35	Department of Human Services	Development and implementation of the urinalysis testing of alcohol and drug treatment clients
36	Department of Human Services	Strategies to increase the percentage of Oregon Health Plan clients enrolled in managed care
46	Economic and Community Development Department	Expenditure of lottery bond proceeds for local community infrastructure projects
48	Employment Department	JOBS Plus program
49	Employment Department	Outcome of the federal dollars receive for Child Care Resource and Referral agencies
58	Department of Fish and Wildlife	Financial status
61	Department of Parks and Recreation	Port of Brookings Harbor's Sporthaven Beach
67	Department of Transportation	Transportation Program Development expenditure limitation
68	Department of Transportation	Transportation Program Development expenditure limitation

Three items were discussed in Subcommittee (Items 21, 32 and 35).

The Department of Education was asked to summarize activities relating to the Certificate of Advanced Mastery (CAM) in Item 21. Department representatives indicated that the State Board of Education has made CAM its highest priority and, over the last two and a half years, CAM has moved from a high school pilot to a policy integrating CAM into the curriculum and a requirement of graduation. CAM represents a shift from focusing on school programs to individual achievement and preparation for life and is expected to be fully implemented throughout Oregon in the 2005-07 biennium. In addition, the Department meets almost weekly with representatives of community colleges and higher education to make the CAM experience a seamless move from high school to college which may include obtaining college credit for some activities while still in high school. The Department is also building partnerships with business groups, but acknowledged this area needs more attention at the local level. One example is in Washington County where businesses provide business experience opportunities not only for students, but also for teachers to work summers in a business environment and better incorporate that experience into the classroom. When asked how the federal 'No Child Left Behind' regulations will impact CIM/CAM programs, the Department referred the Subcommittee to Item 24 and briefly explained that the new federal regulations will require schools to be more accountable for students' progress and require more frequent testing to measure that progress.

The Subcommittee requested the Department of Human Services to expand on the status report received as Item 32 regarding Temporary Assistance for Needy Families (TANF). The agency described the fading hope for renewal of the state's waiver from federal regulations regarding TANF. This means there will be substantial changes to conform with federal direction emphasizing work activities with little regard for individual issues or needs. The Subcommittee suggested the Department describe what has been working under Oregon's waiver as well as changes to meet federal requirements in the upcoming regular session.

Finally, the Subcommittee asked the Department of Human Services to summarize the report provided for Item 35 and describe the pros and cons of requiring physical evidence that persons in treatment have stopped substance use and the legal issues surrounding requiring such evidence. The Department responded that it is working with its community partners to determine how best to measure successful program completion. The Subcommittee reminded the Department that in a time of limited budgets, there must be good evidence clients are being held accountable for recovery, and unless there is a serious attempt by the agency to conduct urinalysis on clients when they appear before this body in the regular session, it may be difficult to maintain the existing program. The Subcommittee pointed out the report had just been provided and, as a result, no members had a chance to review it. The Subcommittee directed the agency to submit reports to the Emergency Board in a more timely fashion so that committee members could review them prior to the meetings.

The Subcommittee recommended acknowledging receipt of all 17 reports.

Representative Westlund's motion carried with no objections voiced. (Representative Minnis and Senators Yih, Clarno and Carter excused)

## Federal Grants

Senator Derfler 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 Messerle moved that the Emergency Board approve, en bloc, the following requests for approval to apply for federal grants: Item 22, Department of Education; Item 30, Department of Human Services; Item 55, Department of Environmental Quality; Items 57 and 59, Department of Fish and Wildlife; and Items 63 and 64, 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:

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

Item #	Agency	Grant Application
22	Department of Education	To the U.S. Centers for Disease Control and Prevention in the amount of \$1,285,000 for improving the health education and well-being of youths through coordinated school health programs. (Retroactive)
30	Department of Human Services	Two to the National Institute of Mental Health and the Substance Abuse and Mental Health Services Administration (Retroactive), and three to the Health Resources and Services Administration, U.S. Department of Health and Human Services; and acknowledge receipt of a report that the agency has received grant funds from the U.S. Department of Justice for an application that was authorized by the Emergency Board at its April 2002 meeting.
55	Department of Environmental Quality	To the U.S. Environmental Protection Agency in the amount of \$119,600 to finance development of a streamlined multi-media permit for sediment re-handling facilities.
57	Department of Fish and Wildlife	To the U.S. Fish and Wildlife Service in the amount of \$51,967 to survey the pygmy rabbit under the Endangered Species Act.
59	Department of Fish and Wildlife	To the U.S. Fish and Wildlife Service in the amount of \$350,572 for cooperative activities with state and federal land management agencies to provide information associated with maintenance and enhancement of Oregon sagebrush/shrub-steppe ecosystems. (Retroactive)

63	Department of Transportation	To the Federal Highway Administration in the amount of \$10 million for the Surface Transportation Security and Reliability Information System Model Deployment. (Retroactive)
64	Department of Transportation	To the Federal Highway Administration in the amount of \$200,000 for On-the-Job Training/Supportive Services Program funding.

The Subcommittee recommended approval of all seven 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 Messerle's motion carried with no objections voiced. (Representative Minnis and Senators Yih, Clarno, Carter and Metsger excused)

## 1. Judicial Department

Senator Messerle moved that the Emergency Board deny the request to allocate \$84,957 of the \$121,520 Emergency Fund reservation established for the Judicial Department to pay health plan benefits for retired judges who are providing pro tem services.

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

The 2001 Legislature provided a special purpose appropriation to the Emergency Board of \$275,000 for health plan benefits for retired "Plan B" judges who are actively fulfilling their pro tem service requirements. The Legislature directed, by budget note, that the Judicial Department convene a work group to evaluate judicial retirement benefits, including the cost and benefit to trial courts from the use of pro tem versus "Plan B" judges; conduct a comprehensive review of the PERS benefit structure available to judges, including specific judicial retirement needs; identify any retirement gaps; and develop long-term recommendations to resolve retirement and other benefits-related issues.

The special purpose appropriation for "Plan B" judge benefits was reduced by \$9,936 in the 2002 fifth special session. The Emergency Board, at its October 4, 2002 meeting, deferred action on a request for allocation of the special purpose appropriation pending receipt of the required report, and established a reservation of \$121,520, in the general purpose Emergency Fund.

The Judicial Department submitted the report and requested allocation of \$84,957 of the reservation. The report identified a number of recommended adjustments to the judges' retirement system, and also identified a biennial savings through the use of "Plan B" versus pro tem judges. The Subcommittee felt that it was difficult to justify implementation of a new judicial benefit when courts are reducing staff and court hours as a result of current budget cuts, and recommended that benefit adjustments be considered in the context of any legislative action on the Public Employees Retirement System and the overall statewide budget situation.

The Subcommittee recommended denial of the request, pending legislative action on retirement issues.

Senator Messerle's motion passed with no objections voiced. (Representative Minnis and Senators Yih, Clarno and Carter excused)

## 2. Judicial Department

Senator Messerle moved that the Emergency Board allocate \$178,239 from the amount reserved in the Emergency Fund, established by section 1(1), chapter 878, Oregon Laws 2001, to supplement the appropriation made to the Judicial Department by section 3(2), chapter 823, Oregon Laws 2001 for workload related to three new judgeships, and authorize the establishment of 9 permanent positions (1.80 FTE).

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

The 2001 Legislature established six new circuit court judicial positions that were to be effective January 1, 2003, and provided three staff positions for each new judicial position. The Legislature established a special purpose appropriation in the Emergency Fund of \$369,842 for the remaining support staff, but did not authorize establishment of the positions. Instead, the Legislature directed by budget note that the Judicial Department develop a permanent plan for the allocation of all staff and resources funded as part of the staffing package for new judicial positions. In the 2002 second special session, three of the judicial positions were deferred until June 30, 2003. The special purpose appropriation was reduced to \$184,921 to reflect the deferral of staff support for these positions to June 30, 2003. The special purpose appropriation was further reduced by \$6,682 in the fifth special session. The Emergency Board, at its October 2002 meeting, deferred action on a request for allocation of the special purpose appropriation pending receipt of the required plan, and established a reservation of \$178,239 in the general purpose Emergency Fund. The reservation was established since the remaining special purpose appropriation expired on November 1, 2002.

The Judicial Department submitted the required plan, which identified the allocation of positions to the most understaffed courts based on the staffing workload study and model developed in conjunction with the National Center for State Courts. The Judicial Department requested allocation of the reservation and establishment of 18 positions (1.8 FTE). Nine of the requested positions are related to the establishment new judgeships on January 1, 2003, and 9 are related to the establishment of new judgeships on June 30, 2003. The Subcommittee felt that only the 9 new positions (1.8 FTE) related to the judgeships that become effective in January should be authorized and that action on the 9 positions related to the new judgeships that become effective in June should be deferred. The remaining positions could be established as part of the 2003-05 budget process.

The Subcommittee recommended the establishment of 9 new positions related to the judgeships that become effective in January and allocation of the Emergency Fund reservation to support these 9 positions.

Senator Messerle's motion passed with no objections voiced. (Senators Yih, Clarno and Carter excused)

## 3. Judicial Department

Senator Messerle moved that the Emergency Board defer allocation from the general purpose Emergency Fund, for the indigent defense caseload, to the January 2003 meeting of the Emergency Board, with instructions.

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

The Indigent Defense Account has been reduced by \$27.5 million (17%) from the legislatively adopted budget. Caseload growth has slowed, and some counties are using early disposition programs,

which helped the Judicial Department to manage \$12.4 million of this cut. The 2003 Legislature will need to address caseload management issues related to the remaining \$15.1 million in reductions.

The Judicial Department requested that the \$10 million reduction taken in the 2002 third special session be restored. 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 recommended that the \$5 million in earmarked funds be allocated to cover workload needs. The Subcommittee recommended deferral of any allocation pending a Judicial Department report to the Joint Interim Judiciary Committee.

Since the indigent defense caseload is partially driven by funding for state and local law enforcement and prosecution, the Subcommittee felt that these partners should be involved in assessing funding requirements. The Judicial Department agreed to the Subcommittee recommendations. The Department will work with state and local officials to identify the impact of statewide public safety funding on the indigent defense caseload, and develop recommendations for funding through the remainder of the 2001-03 biennium. The Department will present the recommendations to the Joint Interim Judiciary Committee prior to the January 2003 meeting of the Emergency Board, and will provide the Emergency Board with the recommendations of that Committee. The Department will also provide the judiciary committees with caseload estimates for the 2003-05 biennium early in the next legislative session. The estimates will be reviewed in the context of overall funding for the public safety system. The Subcommittee recommended that allocation of resources from the Emergency Fund be deferred pending the report to the Joint Interim Judiciary Committee and any recommendations from that committee.

The Subcommittee also recommended that during the 2003 regular session the judiciary committees provide an assessment of caseload requirements to the Joint Committee on Ways and Means in the context of the statewide public safety system.

Senator Messerle's motion passed with no objections voiced. (Senators Yih and Carter excused)

## **5. Legislative Counsel Committee**

Senator Hannon moved that the Emergency Board increase the Other Funds expenditure limitation established for the Legislative Counsel Committee by section 10, chapter 879, Oregon Laws 2001, by \$74,999, so revenue derived from charges to agencies and officers for drafting services can be used to offset costs of providing these services, with the understanding that the fiscal policies surrounding how the new revenue is used will be discussed in greater detail by the Joint Committee on Ways and Means during the 2003 regular session.

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

Legislative Counsel (LC) requested a \$74,999 Other Funds expenditure limitation increase to allow it to utilize revenue derived from charges to agencies and officers for drafting services performed to offset costs of providing these services. When the 2001 Legislature adopted the 2001-03 biennial budget for the LC, it approved a \$1 Other Funds expenditure limitation as a placeholder for potential bill drafting revenue and directed LC to develop a plan and fee schedule for charging state agencies and other state offices for bill drafting services. LC has developed a plan and fee schedule; notified agencies of its intent to exercise its authority under ORS 173.130(2) to charge officers and agencies in the executive and judicial branches for drafting services performed in preparation for the 2003 legislative session; and started collecting fees.

During this interim, the Legislative Counsel Committee asked LC to charge for services beginning with requests for the 2003 regular session. LC anticipates it will collect a total of \$90,000 in fee revenue this biennium. LC plans to utilize \$47,594 (53%) to offset the additional accountant, receptionist, software, and training costs being incurred to charge for bill drafting services; and \$27,405 (30%) to offset additional costs for paper, envelopes, printer supplies, and copier charges. The remaining \$15,000 (17%) would be carried over to the 2003-05 budget period.

The Legislative Fiscal Office recommended the Emergency Board approve the request, with the understanding that when the Joint Committee on Ways and Means reviews and adopts a 2003-05 biennial budget for LC, it will need to discuss fiscal policies surrounding how the new revenue will be used.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

The following Committee discussed occurred:

Senator Hannon asked if the Subcommittee discussed whether the charges for services were reducing the number of requests from agencies.

Representative Westlund confirmed that this was discussed, but LC was not yet able to quantify the impact due to other variables.

Senator Hannon asked if there was any mechanism in place for the agency to scrutinize the number and type of bills requested, since agencies have been known to submit bills without knowledge or input from the incoming Governor.

Representative Westlund responded that the Subcommittee did not discuss this policy issue, as its deliberations were limited to the expenditure limitation needs of the agency.

Senator Hannon's motion carried with no objections voiced. (Senators Yih and Carter excused)

## **8. Secretary of State**

Representative Minnis moved that the Emergency Board allocate \$250,000 from the amount reserved in the Emergency Fund, established by section 1(1), chapter 878, Oregon Laws 2001, to supplement the appropriation made to the Secretary of State by section 1, chapter 62, Oregon Laws 2001 for the development of a centralized voter registration system.

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

HB 2002 directs the Secretary of State to develop a centralized voter registration system. Federal legislation has been adopted by the U.S. Senate and the U.S. House of Representatives (H.R. 3295) that mandates election reform including a centralized voter registration system. President Bush has signed the bill.

The current total estimated cost of developing the centralized voter registration system is approximately \$10 million. The federal legislation indicates the federal government will pay 95% of these costs leaving the state's share at about \$500,000. The Secretary of State requested the Emergency Board allocate \$500,000 from the reservation.

The allocation of \$250,000 will allow the Secretary of State to begin work on the project even though the federal funding has not been appropriated, but is expected to be in the near future. Failure to allocate this funding would delay the project start-up.

The Joint Legislative Committee on Information Management and Technology (JLCIMT) reviewed this request at the November 6, 2002 meeting and recommended the Emergency Board allocate \$250,000.

The Subcommittee concurred with the JLCIMT and recommended allocation of \$250,000.

Representative Minnis' motion passed with no objections voiced. (Senators Yih and Carter excused)

## **9. Secretary of State**

Senator Clarno moved that the Emergency Board allocate \$1,368,689 from the special purpose appropriation made to the Emergency Board by section 10(1), chapter 1, Oregon Laws 2002 (third special session), to supplement the appropriation made to the Secretary of State by section 1, chapter 62, Oregon Laws 2001 for expenditures related to the September 17, 2002 special election.

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

HB 4059, adopted during the 2002 third special session, referred to the voters of Oregon a proposed amendment to the constitution that would rename the Education Endowment Fund as the Education Stability Fund at a special election on September 17, 2002. The bill also appropriated \$1.5 million to the Emergency Board for the Secretary of State for costs associated with the special election. The Secretary of State requested the Emergency Board allocate \$1.5 million.

The fiscal impact statement issued during the third special session estimated the costs of a special election would be approximately \$1.7 million. The special election expenditures are not included in the 2001-03 legislatively adopted budget for the Secretary of State. Actual costs to the Secretary of State are \$199,132 and the costs to be reimbursed to counties for the special election are \$1,169,557.

The Subcommittee recommended approval of a total allocation of \$1,368,689.

Senator Clarno's motion carried with no objections voiced. (Senators Yih and Carter excused)

## **10. Treasurer of State**

Representative Westlund moved that the Emergency Board establish an Other Funds expenditure limitation of \$168,215 for the Treasurer of State, approve the establishment of one permanent position (0.25 FTE), and approve the reclassification of one position, with the understanding that the Department of Administrative Services will unschedule \$90,010 General Fund for the operation of the Oregon Qualified Tuition Savings Program.

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

The Treasurer of State requested a \$172,287 Other Funds expenditure limitation increase, the establishment of one permanent position (1.0 FTE), approval of the reclassification of one position,

and that the Department of Administrative Services (DAS) unschedule \$90,010 General Fund for operations of the Oregon Qualified Tuition Savings Program.

The Oregon Qualified Tuition Savings Program was established by the 1999 Legislative Assembly; however, no funding for implementation was provided to the Treasurer. During the 1999-2001 interim, the Emergency Board provided General Fund support and authorized the Treasurer to establish one permanent position to allow the program to be initiated. Position authority and General Fund support continued with the Treasurer's 2001-03 adopted budget. It was expected that the program would become self-sustaining by the end of the 2001-03 biennium. The program would then repay the General Fund for the support it received to the point it became self-sustaining.

The program has now grown to the point that it can support the Treasurer's administrative expenses. The Treasurer requested additional Other Funds expenditure limitation to replace \$90,010 General Fund and that DAS unschedule \$90,010 of the Treasurer's General Fund appropriation that was to be used for the Oregon Qualified Tuition Savings Program. The \$90,010 will revert to the General Fund and be available for use in the 2003-05 biennium. Additionally, the Treasurer's 2003-05 budget will include additional expenditure limitation for repayment of prior General Fund support.

In addition to the Other Funds limitation requested to supplant General Fund, the Treasurer requested additional expenditure limitation for increased marketing expenses. Also requested was position authority for an administrative support person for the program and a substantial reclassification of the existing program manager's position (from PEM D to PEM G).

Due to the growth of the program and additional duties of the program manager, the services of an administrative assistant are needed. With respect to the position reclassification, the DAS Human Resources Management Division has reviewed the methodology followed by Treasury and concurs with the reclassification. While DAS does not make recommendations on the Treasurer of State's budget or personnel actions, it is responsible for setting personnel classification standards for the state. To that end, the Legislative Fiscal Office (LFO) asked for DAS review of the reclassification.

The Other Personnel Expenses (OPE) factor used for the additional staff and reclassification had a factor for PERS contribution based on anticipated 2003-05 employer contribution rates instead of the 2001-03 employer contribution rates. Also, the Treasurer included PERS contributions for the new position when new employees are not covered during the first six months of employment. These adjustments resulted in a net reduction of \$4,072. Further, because the new position is expected to be effective January 1, 2003, it represents 0.25 FTE instead of 1.0 FTE included in the request.

Keeping track of the program's expenses has been fairly easy because it has been supported with General Fund while the rest of Treasury operations are Other Funds. The Oregon Qualified Tuition Savings Program is uniquely different from the Treasurer's other responsibilities and it should be budgeted separately from other Treasurer activities. A new Other Funds expenditure limitation for the program should be established to accomplish this.

For these reasons, LFO recommended that the Emergency Board establish a new \$168,215 Other Funds expenditure limitation for the Oregon Qualified Tuition Savings Program, authorize the establishment of one permanent position (0.25 FTE), and approve the reclassification of the program manager's position from PEM D to PEM G, with the understanding that DAS will unschedule \$90,010 General Fund from the Treasurer of State's 2001-03 budget.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

Representative Westlund's motion carried with no objections voiced. (Senators Yih and Carter excused)

## **12. Department of Administrative Services**

Representative Westlund moved that the Emergency Board acknowledge receipt of a report from the Department of Administrative Services on state agency reduction plans developed in response to partial funding of compensation plan changes.

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

In October 2002, the Department of Administrative Services (DAS) submitted a report to the Emergency Board outlining agency plans for managing to the \$22.7 million employee salary and benefits compensation funding reduction. The initial report confirmed that agencies equitably distributed the under funding amounts consistent with the legislative expectations, with a couple of exceptions. The Emergency Board discussed its concerns with the under funding plan, focusing primarily on the Department of Human Services (DHS) plan to make disproportionate reductions to Oregon Project Independence and Centers for Independent Living. The Emergency Board allocated \$531,234 General Fund to continue the two DHS programs through November 2002, when a DHS budget rebalance plan would be reviewed, and directed DAS to submit a follow-up report in November identifying other ways for agencies to manage to the salary and benefit under funding.

The legislative expectations as to how agencies would manage the salary/benefit plan funding shortfall were expressed through budget notes contained in the budget report for HB 5091. In general, the expectations were that agencies would realize savings by maintaining vacancies under the Governor's hiring freeze; by eliminating the second-year cost-of-living salary adjustment for all management/unrepresented employees in all three branches of government, excluding Judicial Branch unrepresented employees; and by distributing the shortfall in the General Fund distribution for employee compensation adjustments as equitably as possible within each appropriation category.

The Governor considered the Legislature's expectation that all management/unrepresented employees not receive their second cost-of-living adjustment, and decided to grant those salary increases to all Executive Branch management/unrepresented employees in salary ranges below range 38. The Judicial Branch reported that it plans to grant the cost-of-living adjustments in the same manner as the Executive Branch. As a result of these decisions, only in the Legislative Branch will all management/unrepresented employees not receive the 3% salary increase on February 1, 2003.

DAS provided the Legislative Fiscal Office with a follow-up report on November 6, 2002 which summarizes legislative compensation plan funding actions, directions provided to agencies by the Governor, and agency actions. Attached to the report is a list of agency actions that are being taken to manage to the salary/benefit plan funding shortfall. Review confirmed that it has not changed since the prior Emergency Board report. In response to the Emergency Board's concerns with the various program reductions, DAS indicates that it will continue to direct agencies to offset program impacts with other savings, if possible.

The Subcommittee recommended acknowledging receipt of the report.

Representative Westlund's motion passed with no objections voiced. (Senators Yih and Carter excused)

### 13. Department of Administrative Services

Representative Johnson moved that the Emergency Board acknowledge receipt of a report on the use of state-owned aircraft and instruct the Department of Aviation to report to the 2003 Legislature on the progress of improving the effectiveness and efficiency of the use of state-owned aircraft by state agencies.

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

The Department of Aviation (DOA) was directed by budget note to establish a panel of representatives of the Department of Administrative Services (DAS) and state agencies that operate aircraft. Representatives of the Oregon State Police, Forestry, and Aviation departments comprised the panel. The panel was to comprehensively analyze the use of state-owned aircraft and develop a plan for making efficient and effective use of Oregon's aviation assets. The plan was to include recommendations for standards for aircraft use including use of state-owned aircraft, aircraft charter and rental, and regional scheduled airline service. DAS was to report to the Emergency Board on the plan.

DAS has received and reviewed the panel's "Oregon Aircraft Use Task Force Final Report." The report recommends that:

- the three aircraft-owning agencies explore bidding a single contract for all aircraft maintenance;
- these agencies explore the benefits of moving from numerous individual hangars into consolidated, multi-agency hangars; and
- these agencies work collectively, actively, and frequently to inform potential state government users of the availability, capability, and costs of chartering state-owned aircraft.

DAS is in total support of these recommendations.

The report also recommends that an Aircraft Working Group, representing aviation interests in the Departments of Aviation, Forestry and State Police, be established immediately, and meet at least quarterly to "continually seek out improvements and efficiencies." DAS concurs and urges that the DOA Director actively chair the Working Group. DAS also urges Forestry and State Police to appoint high level officials familiar with their agencies' aviation activities to the Working Group, and recommends that the Aircraft Working Group report annually (with the first report due December 2003) to DAS regarding state-owned aircraft-related improvements and efficiencies that have been achieved.

The report does not recommend that any of the three agencies cross-train its pilots so as to be able to fly other agencies' aircraft, and does not recommend that agencies cross-utilize aircraft. DAS, however, urges that the newly formed Aircraft Working Group at least annually examine whether there are opportunities for agency savings in these areas.

The task force reports that it evaluated continuing to operate state government's aircraft population through three separate agencies, but using one centralized dispatch system. A centralized dispatch system would require establishing new positions, changing existing positions, and implementing a common user-fee structure. The report included no recommendation on a centralized dispatch system. DAS urged that the Aircraft Working Group's first annual report thoroughly examine and make recommendations on this issue.

The Subcommittee felt that the Aviation Department should return to the 2003 Legislative Assembly with a report on improvements made in aircraft operations and recommended

acknowledging receipt of the report with directions to the Aviation Department to report to the 2003 Legislative Assembly.

Representative Johnson's motion carried with no objections voiced. (Senators Yih and Carter excused)

#### **14. Department of Administrative Services**

Representative Morgan moved that the Emergency Board acknowledge receipt of a second 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 second report in response to a legislative directive that the Department of Administrative Services 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 second 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. A table in the LFO analysis summarized statewide vacancy experience since the hiring freeze was implemented in June 2002. The report confirmed that there are a total of 4,142 vacancies as of November 1, 2002.

Review of the agency-by-agency list (excluding the Oregon University System) shows that over 93% of the vacancies are in 14 agencies, with nearly 60% occurring in four agencies. The LFO analysis provided details about the four agencies with the most vacancies. The LFO analysis also included a table showing the hiring exceptions on an agency-by-agency basis. The table showed that from June 1 to September 1, 2002, there were 633 hiring exceptions involving 13 agencies and that, from September 1 to November 1, 2002, an additional 713 hiring exceptions involving 25 agencies occurred. 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 304 of 10,076 (3%) positions subject to the freeze were vacant on September 30, 2002. This is 20 more positions than were vacant as of the end of July 2002. Most of the vacant position growth was due to turnover that occurred on two campuses. As of September 30, 2002, 184 positions had been filled as exceptions to the hiring freeze. The Department reports that it has adopted the same exception criteria as was adopted and previously reported by DAS. There have been 127 hiring exceptions since the end of July 2002 primarily related to significant enrollment growth experienced for fall term.

LFO recommended the Emergency Board acknowledge receipt of the report, with the understanding that DAS will require agencies to report the General Fund and Lottery Funds vacancy savings resulting from the hiring freeze; un-schedule all such amounts identified that exceed the salary under funding amounts to which the agencies are required to manage; and notify LFO of any exceptions. This is being done so that these savings can be available to assist with statewide reductions that will be necessary if the January 28 tax referral fails or be available for 2003-05 budget balancing actions if the tax referral passes.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

Representative Morgan's motion carried with no objections voiced. (Senators Yih and Carter excused)

## **17. Government Standards and Practices Commission**

Representative Winters moved that the Emergency Board allocate \$89,818 from the Emergency Fund established by section 1(1), chapter 878, Oregon Laws 2001, to supplement the appropriation made to the Government Standards and Practices Commission, by section 1, chapter 129, Oregon Laws 2001, for extraordinary Attorney General costs, prevailing party attorney fees, and base expenditures, with the understanding that the Department of Administrative Services will unschedule \$30,000 of the allocation for Attorney General costs until bills requiring use of the funds are received.

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

The Government Standards and Practices Commission (GSPC) 2001-03 legislatively approved budget has been reduced by several legislative actions, and to meet the shortfall created by the reductions, the agency has reduced its program level. Effective November 1, 2002, investigative staff were reduced to half-time, leaving the agency with three-fourths of its staff. At the same time, a few cases have created extraordinary Attorney General and prevailing party attorney costs. Current and projected expenditures for all categories for the biennium are higher than budgeted revenues. And, action in the 2002 fifth special session applied an across-the-board reduction of nearly \$30,000 which will become effective if the temporary tax increase referral fails in January 2003.

This allocation will enable the agency to continue with reduced operations, but its operational viability for the rest of the biennium is subject to the outcome of the January election.

Legislative Fiscal Office analysis also pointed out that it has been almost 10 years since the last major policy discussion about GSPC, and suggested that next session, a substantive committee take a complete look at the agency's responsibilities, processes, and funding stream.

The Subcommittee commented that the agency has a statutory responsibility to fulfill and although the Legislature may not like funding these costs, the agency would be out of compliance if it did not meet its statutory obligations.

The Subcommittee recommended that \$89,818 be allocated from the Emergency Fund for extraordinary Attorney General costs, prevailing party attorney fees, and base expenditures, with the understanding that the Department of Administrative Services will unschedule \$30,000 of Attorney General costs until bills requiring use of the funds are received.

The following Committee discussion occurred:

Representative Westlund stated that he has legislative concepts being drafted that will allow the next legislature to look at the agency and its issues of authority, processes and funding.

Representative Winter's motion carried with Senator Beyer voting "no". (Senators Yih and Carter excused)

## 18. Public Employees Retirement System

Representative Butler moved that the Emergency Board increase the Other Funds expenditure limitation established for the Public Employees Retirement System by section 1(4), chapter 277, Oregon Laws 2001, Other administrative expenses, by \$2,275,507 and approve the establishment of six limited duration positions (1.74 FTE) for the implementation of new mortality tables for the calculation of retirement benefits beginning January 1, 2004.

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

The Public Employees Retirement System (PERS) Board has approved a change to the mortality tables used to compute retirement benefits. Effective January 1, 2004, newer mortality tables will be used. The mortality tables are converted into what is called actuarial equivalency factors (AEF) which are then used to compute retirement benefits. PERS is requesting funding and position authority for six limited duration positions (\$190,399) and funding for reprogramming of the Retirement Information Management System (RIMS) benefit calculations programs (\$2,085,108).

The Board has also directed PERS to incorporate a “look-back” provision when using the new tables. The “look-back” requires calculating retirement benefits accrued at December 31, 2003 and comparing them to retirement benefits calculated using the new mortality tables. The retirement benefit can be no less than the benefit accrued at December 31, 2003. This “look-back” provision is designed to conform the benefit to IRS regulations. Also, the Board is still seeking clarification on the Judge Lipscomb decision which directs the Board to implement the new mortality tables immediately and fully. It should be noted that decision has not yet been finalized.

The six limited duration positions are in the Customer Service and Processing and Data Quality Divisions of PERS. These divisions are responsible for preparing and verifying retirement benefit and purchase calculations and interacting with members and employers. The limited duration staff are necessary to backfill existing positions that will be devoted to developing operating policies, procedures, and quality control programs for the new AEF requirements. They also will be used to help identify data fields, formulas, business rules, and administrating rules (among other things) to deal with the various benefit calculation processes impacted by the new AEF.

The reprogramming costs are staff estimates of contracting for the programming expertise needed. The two principal subsystems to be reprogrammed are benefit estimates and benefit calculation routines. PERS staff believe these significant subsystems can be reprogrammed with the new AEF without requiring significant problems with other subsystems. Further, the reprogramming of these subsystems can be done in such a way to be of use/value when the new system is developed.

The Joint Legislative Committee on Information Management (JLCIMT) also reviewed this request and recommended that the Emergency Board approve the request. The Subcommittee concurred with the JLCIMT and recommended approval.

The following Committee discussion occurred:

Senator Derfler asked for confirmation of the number of staff needed.

Representative Butler responded that six limited duration positions are needed.

Representative Butler’s motion carried with no objections voiced. (Senators Yih and Carter excused)

## 19. Public Employees Retirement System

Representative Butler moved that the Emergency Board increase the Other Funds expenditure limitation established for the Public Employees Retirement System by section 1(4), chapter 277, Oregon Laws 2001, Other administrative expenses, by \$2,321,307 and approve the establishment of six permanent positions (1.74 FTE) for information technology needs and initiatives, with the understanding that the Department of Administrative Services will unreschedule the funds until its Information Resources Management Division recommends rescheduling.

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

The Public Employees Retirement System (PERS) is currently undertaking a comprehensive plan for transition from its current Retirement Information Management System (RIMS) to a new technology platform. The Emergency Board approved use of funds for related elements of this undertaking at its April, June, and October 2002 meetings. This included elements to extend the useful life of the current system, further develop its organizational capability, maintain the current infrastructure, and provide funding for an architectural component. This architectural component will ultimately identify a "blue print" for the longer-term systems development effort.

The expenditure limitation and position authority in this request is expected to allow PERS to maintain RIMS and make progress under its new initiatives through the end of the current biennium. Because of the long-term nature of the systems initiatives, permanent positions instead of limited duration positions are warranted. The agency is expected to report on progress at the next Emergency Board meeting and to the 2003 Legislative Assembly. As the project plan is further defined, and long-term cost estimates fleshed out, PERS will submit additional requests for funding to the Legislative Assembly and/or Emergency Board.

The request was also reviewed by the Joint Committee on Information Management and Technology (JLCIMT). That Committee recommended approval of the request, with the understanding that the Department of Administrative services (DAS) will unreschedule the funds until its Information Resources Management Division recommends they be rescheduled. This is consistent with JLCIMT and Emergency Board direction in October. DAS and PERS have developed a process for submission of requests to reschedule funds so that PERS operations and systems development are not jeopardized, but oversight is maintained. PERS is expected to return and report on progress at the next meeting of the Emergency Board.

The Subcommittee concurred with the JLCIMT and recommended approval of the request.

The following Committee discussion occurred:

Senator Derfler asked for confirmation of the number of staff needed.

Representative Butler responded that six permanent Information Systems staff are needed.

Representative Butler's motion carried with Senator Derfler voting "no". (Senators Yih and Carter excused)

## 24. Department of Education

Senator Hannon moved that the Emergency Board acknowledge receipt of a report on the use of federal education funds; and authorize transfers of General Fund appropriations, and authorize transfers and approve increases in Federal Funds expenditure limitations, per the attached schedule, with the understanding that the Department of Administrative Services will unschedule \$3.6 million Federal Funds expenditure limitation, until the agency documents the need for it (as follows: IDEA, \$1 million; Title 1 Low-Income, \$1.6 million; and All Other Federal Programs, \$1 million).

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

The Department provided a Federal Funds report, a request for Federal Fund expenditure limitation rebalance, and a request for a General Fund transfer.

### Federal Funds Report

The 2001 Legislative Assembly approved a budget note directing the Department of Education to report to the Emergency Board, after adoption of the federal fiscal year 2002 budget, with a proposal for using federal funds to implement the Department's policy initiatives for dropout prevention and recovery, teacher/administrator mentoring, support to low-performing schools, and English as a Second Language (ESL) training for teachers. The Department proposed the first three of these initiatives in policy option packages during the 2001 legislative session and requested General Fund support. The Legislature did not appropriate the General Fund but expressed its desire to have the Department identify existing and proposed federal funds that could be used for these programs. Additionally, the Department was to examine the roles and duties of education program specialists and managers to determine if a realignment of priorities for these staff would help the agency achieve the goals of its initiatives.

The Department reported that it has been successful in clearly identifying approximately \$11.8 million of federal funds that support projects related to the initiatives as follows: \$8,179,137 for support to low-performing schools; \$2,345,000 for teacher/administrator mentoring; \$709,000 for ESL training for teachers; and \$578,559 for dropout prevention and recovery.

Major sources of these funds include federal special education dollars and funding under the reauthorized Elementary and Secondary Education Act (the "No Child Left Behind Act of 2001"). Some of these funds have been used to expand activities, but resources also have been used to maintain previous efforts or to mitigate the loss of General Fund from 2002 special session actions. It is difficult to determine precisely how much funding is in each of these categories. This is primarily because base funding for activities related to these specific initiatives has not been well-documented but also because the agency is still in the process of internal budget rebalancing due to special session actions that reduced its General Fund budget. However, the Department has made substantial progress in identifying and documenting all of its federal revenue sources, which should help in identifying future use of federal funds for the initiatives.

The Department anticipates that funding for no fewer than 10.0 FTE of education program specialists will be shifted from General Fund to Federal Funds for activities related to the policy initiatives. Additionally, the Department reports that two education program managers (2.0 FTE) have been shifted from General Fund to Federal Funds due to new federal requirements and funding.

### Federal Funds Rebalance

Based on current revenue and expenditure forecasts, the Department requested a rebalance of its Federal Funds expenditure limitations for various programs. The details were provided in the Legislative Fiscal Office analysis. The adjusted amounts requested were as follows: Operations, -\$6

million; Special Schools, \$0.5 million; Individuals with Disabilities Education Act (IDEA), \$4.4 million; Title I Low-Income, \$5.4 million; Title 1 Migrant Education, -\$1.5 million; Title II Vocational Education, \$0.7 million; Other Federal Programs, \$12.1 million; and Nutrition Programs, -\$37.7 million. Initially, the Department believed it had excess limitation for these programs but, upon further analysis, it appears the entire limitation in the 2001-03 LAB will be necessary.

### General Fund Transfer

The Department is responsible for providing educational services to children while they are in certain hospital and long-term care and treatment settings. Due to the closure of Ward A at the Oregon State Hospital, a number of children have been transferred to community long-term care and treatment (LTCT) programs. Thus, the Department requested a transfer of \$475,887 General Fund from its Hospital Program to its LTCT Program since these have separate appropriations.

The Legislative Fiscal Office recommended the Emergency Board acknowledge receipt of the federal funds report; approve a transfer of \$7.5 million Federal Funds expenditure limitation from Operations (-\$6 million) and Title 1 Migrant Education (-\$1.5 million) to All Other Federal Programs (+\$7.5 million); approve an increase totaling \$15.6 million in Federal Funds expenditure limitations (as follows: Special Schools, \$0.5 million; IDEA, \$4.4 million; Title 1 Low-Income, \$5.4 million; Title II Vocational Education, \$0.7 million; and All Other Federal Programs, \$4.6 million); approve the transfer of \$475,887 General Fund from the agency's Hospital Program to its Long-Term Care and Treatment Program; and request the Department of Administrative Services to unschedule \$3.6 million Federal Funds expenditure limitation, until the agency documents the need for it (as follows: IDEA, \$1 million; Title 1 Low-Income, \$1.6 million; and All Other Federal Programs, \$1 million).

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

Senator Hannon's motion carried with no objections voiced. (Senators Yih and Carter excused)

## **25. Department of Higher Education**

Representative Johnson moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Higher Education by section 2, chapter 891, Oregon Laws 2001, for education and general services, by \$38,880,000, and increase the Other Funds expenditure limitation established for the Department of Higher Education by section 3, chapter 891, Oregon Laws 2001, for fee remissions, by \$12,750,000.

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

The Oregon University System requested permission to spend \$52 million of Other Funds. Revenues from tuition, fees, indirect cost recoveries, and sales and service charges are higher than projected, and the campuses need legislative approval to spend these revenues on education services and on fee remissions. The Department requested this authority to address the costs of unexpectedly high enrollment levels, and to reduce the impact of General Fund reductions that have been made to address the state's budget shortfall.

Tuition revenue has exceeded projections primarily because enrollments have exceeded projections. Resource fee revenues are exceeding projection primarily because of fee increases imposed by campuses. The additional revenue will not support all of the requested expenditures – approximately \$9.7 million will be financed from fund balances.

The Other Funds expenditure limitation increase for education and general services will allow the Department to offset all but an estimated \$7 million of the Education and General program reductions made in special session cuts this interim. Given that the System is facing increased costs from enrollment growth, the Subcommittee recommended the expenditure limitation increase to allow campuses to provide service levels closer to those anticipated in the original biennium budget.

The request also included a \$12,750,000 increase in the amount that may be spent on fee remissions. This will allow the fee remissions that have already been awarded to students to actually be paid.

The Subcommittee recommended approval of the request.

Representative Johnson's motion carried with no objections voiced. (Representative Winters and Senators Yih and Carter excused)

## **26. Department of Higher Education**

Senator Hannon moved that the Emergency Board authorize the transfer of \$1,800,000 from the Other Funds Capital Construction (Other Revenues [Including Federal Funds]) expenditure limitation established for the Department of Higher Education by section 2(6)(j), chapter 845, Oregon Laws 2001, for the Library addition/remodel at Southern Oregon University, to the Other Funds Capital Construction (Lottery Bonds) expenditure limitation established by section 2(6)(j), chapter 845, Oregon Laws 2001, for the same project, and further increase this same Other Funds Capital Construction (Lottery Bonds) expenditure limitation by an additional \$3,200,000.

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

The Southern Oregon University library project was initially approved by the Legislature during the 2001 regular session. The project will almost double the size of the library, and will finance modernization of the existing portion of the facility. It addresses the university's 1995 library accreditation report finding that the existing library fails to meet expected standards. During the 2002 third special session, the Legislature approved an additional \$5 million of Lottery Bonds for this project. This will help expedite the project and allow construction to begin in March.

The Department is now requesting a corresponding expenditure limitation increase to allow these additional lottery bond proceeds to be spent. The Legislature was unable to approve the necessary expenditure limitation increase when it approved the new financing because no capital construction bill was considered during the special session.

Under this request, total project cost increases by \$3.2 million to \$23.2 million. The increase would be paid by gift funds and will finance some additional square footage and equipment purchases. The gift funds will also finance Americans with Disabilities Act (ADA) and service vehicle requirements and certain permit fees. Gift funds will no longer be needed for the Article XI-G bond match. Instead, lottery bond proceeds will provide the full match.

The Legislative Fiscal Office (LFO) recommended approval of the request with a technical correction to eliminate excess expenditure limitation for the project. The Subcommittee recommended approval of the LFO recommendation.

Senator Hannon's motion carried with no objections voiced. (Representatives Schrader and Winters and Senators Yih and Carter excused)

## 28. Department of Higher Education

Senator Beyer moved that the Emergency Board increase the Other Funds Capital Construction [Other Revenues (Including Federal Funds)] expenditure limitation established for the Department of Higher Education by section 2(5)(m), chapter 845, Oregon Laws 2001, by \$700,000 for the Hinsdale Wave Research addition at Oregon State University.

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

The Department requested permission to spend an additional \$700,000 on the Hinsdale Wave Research addition, which the Legislature approved with a \$3.7 million Other Funds Capital Construction [Other Revenues (Including Federal Funds)] expenditure limitation during the 2001 regular session.

The Hinsdale Wave Research addition will house the largest and most advanced tsunami testing facility of its kind. The reason for the cost increase is that the original cost estimates did not include electrical upgrades and fire code requirements that have proven necessary. The university has also identified a need for an overhead crane to operate above the wave basin. These costs will be financed by either a National Science Foundation (NSF) grant, or from the Oregon State University (OSU) College of Engineering budget. If the university is not successful in receiving NSF grant funding for these associated facility costs, it will finance the addition through a combination of gifts and building use (indirect cost recovery) credits.

The project has already been approved by the Legislature to allow OSU to proceed with a high-priority program on wave research. The request for additional expenditure limitation is before the Emergency Board to allow construction on the project to begin without delay.

The Subcommittee recommended approval of the request.

The following Committee discussion occurred:

Representative Butler noted the irony of requiring sprinkler system upgrades in a wave research facility and identified this as an example of his concerns about the enforcement of fire codes. He suggested that the Legislature review this issue.

Senator Beyer's motion carried with no objections voiced. (Senators Yih and Carter excused)

## 29. Department of Human Services

Representative Winters moved that the Emergency Board authorize transfers of General Fund appropriations, authorize transfers and approve increases in Other Funds and Federal Funds expenditure limitations, and approve position adjustments, per the attached schedule, with the understanding that the Department of Administrative Services will unschedule \$314,192 General Fund in the Director's Office Department-wide Support Services budget, for the Department of Human Services rebalance plan for the 2001-03 biennium.

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

The Department of Human Services (DHS) submitted a budget rebalance plan with a net \$23.1 million General Fund need plus \$87.9 million in unspecified General Fund reductions from House Bill

5100 (2002 fifth special session). Medical Assistance programs are the primary cost drivers of the \$23.1 million General Fund need, with smaller increases in mental health and seniors' services. The HB 5100 reductions will be implemented if Measure 28, the temporary income tax increase, is not approved by voters in January 2003. The Subcommittee focused on options to manage the immediate \$23.1 million General Fund problem, recommending the Emergency Board defer adjustments for the \$87.9 million unspecified reductions at this time.

The Subcommittee considered the Legislative Fiscal Office's (LFO) recommendations of management actions that would resolve the \$23.1 million General Fund deficit. The Subcommittee concurred with most of the LFO recommendations, but made several changes in program reductions proposed in the LFO recommendations. The Subcommittee's recommended actions to balance the DHS budget include:

- management actions to limit new positions and reduce existing staff, with a net reduction of 44 positions and 52.78 FTE across the department;
- continue current reimbursement levels for pharmacists and Diagnosis Related Grouping (DRG) hospitals;
- eliminate the balance of new local funding for mental health services;
- eliminate 8 lines of coverage from the Oregon Health Plan (OHP) prioritized list;
- delay the OHP Standard expansion to persons up to 110% of the Federal Poverty Level until July 2003; and
- eliminate OHP coverage for dental, mental health, chemical dependency, and durable medical equipment and supplies for the OHP Standard population effective March 2003.

The Subcommittee recommended approval of the plan as adjusted.

The following Committee discussion occurred:

Representative Westlund observed that the DHS rebalance generated a number of tough issues. He expressed concern with the proposed reductions to the Oregon Health Plan (OHP) Standard benefits package relating to adult dental and alcohol and drug abuse treatment. He noted that a more contemplative review of the situation would be good and that the reductions would not take place until March 1, 2003. He encouraged everyone to work on the issues between now and then. Nonetheless, he stated that Oregon has a significant budget crisis that calls for tough decisions to be made.

Representative Schrader stated that the Subcommittee had a lengthy discussion of the DHS rebalance plan and that he had been told to work with LFO on an alternative set of recommendations to balance the budget. He asked for the opportunity to present this alternative.

Representative Winters stated that the Subcommittee had worked hard on this Emergency Board item and had not enjoyed arriving at its recommendations. She confirmed that she had asked Representative Schrader to work with LFO to arrive at an alternative.

Representative Schrader moved that the Emergency Board amend Representative Winters' motion to include an alternative set of management actions that would balance the Department's budget.

Representative Schrader noted that his proposed amendment would generate savings from the Staley Settlement Agreement for services and a further delay to a crisis home for developmentally disabled persons, would restrict any reduction to DRG hospital reimbursement until at least February 1, 2003, would not cut the OHP Standard benefit package, and would increase reimbursement to obstetricians.

Representative Winters noted that the increase to obstetrician reimbursement was in the Subcommittee's proposal. Also, she added, she had spoken with advocates for persons with developmental disabilities and they had expressed concerns about any reductions to Staley Settlement-related services.

Representative Schrader noted that there had been no discussion with persons who had put together the OHP Standard Plan or OHP 2 waiver. He stated that dentists had worked hard to propose a reduced dental benefit, but one that still provided basic care. He expressed concern that the Subcommittee's proposal would now eliminate the OHP Standard dental package altogether. He acknowledged that the OHP Standard benefit components needed to be refined. He pointed out that basic dental care helped persons find and keep work. Representative Schrader stated his hope for a more public process and noted that his proposal protects provider reimbursement, but also avoids serious reductions to the OHP Standard benefit package. He admitted that Staley services could be reduced under his proposal, but not significantly.

Senator Hannon asked Representative Schrader whether there were staffing or position savings under his proposal.

Representative Schrader indicated that under his proposal, savings were coming from Staley services and further administrative staff reductions. Even with these reductions, the Department's budget would not be balanced.

Senator Hannon stated that a policy decision had been made several biennia back that would limit Legislative oversight of employee positions and full-time-equivalents. He stated that a former member had not wanted to micro-manage positions. He, however, wanted to save programs rather than keeping bureaucrats employed who managed programs that would be cut. He preferred not to reduce provider reimbursement.

Senator Derfler asked if LFO could explain the different proposals. He noted his discomfort in bringing forward significant changes to Subcommittee recommendations at the full Emergency Board.

Representative Schrader stated that LFO had presented its recommendations and that the Subcommittee had modified them. He had indicated to the Subcommittee his intent to develop another alternative for consideration. He stated that it was not his intention to subvert the Subcommittee process.

Representative Winters noted that typically the Subcommittee would have had more time to work through the rebalance issues. She added that with respect to the OHP Standard benefit reductions, the Subcommittee had had no choice about the order of the benefit reductions because the Health Services Commission, rather than the Legislature, set the priority order.

Senator Derfler asked LFO to explain Representative Schrader's alternative recommendations. Staff reviewed a spreadsheet listing Representative Schrader's recommended management actions and noted differences and similarities between the LFO proposal, the Subcommittee proposal, and Representative Schrader's proposal.

Senator Derfler asked staff if the proposal balanced the Department's budget and what Representative Schrader's recommendation on the Staley Agreement services meant. Staff stated that all the proposals took care of the immediate DHS budget deficit of \$23.1 million. With respect to the Staley Agreement, staff observed that some savings had already been assumed in the rebalance plan, but whether more savings were achievable was not known. Staff noted that the Emergency Board

could leave the Department's budget unbalanced for the time being, but reiterated its recommendation to take care of the immediate \$23.1 million deficit.

Senator Beyer asked staff why the administrative cut of 39 positions was not on the LFO or the Subcommittee list of recommendations. Staff responded that DHS had included that option on its list of management actions to achieve the HB 5100 reductions. The positions in question include accounting and information management positions. Staff noted that, in its view, these positions were needed to continue work on issues such as federal cost allocation and critical information systems projects.

Senator Derfler sought clarification that the \$88 million General Fund reduction would take place if the tax measure failed. Staff stated that Senator Derfler's understanding was accurate and added that the LFO strategy had been to focus on the \$23.1 million problem at hand.

Representative Johnson asked if the obstetrician reimbursement increase was in Representative Schrader's proposal.

Representative Schrader answered that the increase was in all of the proposals.

Representative Johnson asked if there could be legal issues around the Staley Agreement service reduction.

Representative Schrader stated that that was a possibility.

Representative Minnis noted that she had been advised there could be legal issues around Staley service reductions.

Representative Schrader noted that that issue could be dealt with, if necessary, over the next three months. He stated that he was simply attempting to find a better proposal that is more collaborative and less harmful to the OHP Standard benefit package. He reiterated his belief that the Assembly needed the help of providers and advocates.

Representative Butler stated his support of Senator Hannon's earlier remarks. He added that he believed there had not been enough position savings achieved. Instead, programs were made to suffer.

Senator Derfler stated that he would not support Representative Schrader's proposal. He appreciated the direction Representative Schrader wanted to go, but did not believe the full Emergency Board was the proper arena to make these kinds of changes.

Representative Westlund complimented Representative Schrader on the work he had done. He reiterated his earlier remarks stating that in the current budget crisis, everyone needed to pull together and that stakeholders have a clear role to play.

Senator Beyer expressed his support of reducing the administrative positions and hoped to be able to review the issue more thoroughly.

Senator Metsger stated that he understood Representative Schrader's proposal was late in coming, but that the Emergency Board routinely modified Subcommittee recommendations. He stated his support of Representative Schrader's proposal and noted that this proposal was closer to the LFO proposal which was attempting to deal with the immediate \$23.1 million DHS deficit. He commended both Representatives Winters and Schrader for their efforts.

Representative Winters thanked Representative Schrader for his work. She noted her concerns, however, about the reduction of Staley services. She added that moving ahead without knowing the legal ramifications involved with this possible reduction was, in her view, not prudent. She pointed out that this DHS rebalance was the toughest review the Subcommittee had ever had. She stated that she and Senator Hannon had spoken about the need for greater legislative control and oversight over the establishment of positions and position reclassifications. She said that the Legislative Assembly did not have the control it once had over position actions.

Representative Schrader's motion failed with Representatives Westlund, Butler, Winters, Morgan, Wilson and Simmons and Senators Hannon, Clarno, Messerle, Beyer and Derfler voting "no". (Representative Minnis and Senators Yih and Carter excused)

Representative Winters' motion carried with Representative Schrader and Senator Metsger voting "no". (Representative Minnis and Senators Yih and Carter excused)

### **31. Department of Human Services**

Representative Schrader moved that the Emergency Board acknowledge receipt of a report on the Veterans Services pilot project in Multnomah and Washington Counties.

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

The 2001 Legislative Assembly directed the Department of Human Services (DHS) to implement a one-year County Veteran's Services pilot project in Multnomah and Washington Counties. The budget note providing this directive stated, "[t]he purpose of the project is to attempt to save Medicaid long term care funds by assisting eligible veterans who are current Medicaid clients to attain federal Veteran's benefits that can be used to fund long term care services." DHS was told to report to the Emergency Board about the project and include a recommendation concerning its continuation. The Department reported in June and again at the Subcommittee meeting.

DHS reports that net General Fund savings for the first nine months of the project are \$5,610. The Department recommends continuing the project through the end of November. DHS is then proposing to fully evaluate the results for the one-year project and to report to the 2003 Legislative Assembly in January. The evaluation will include a cost benefit analysis of continuing the project.

The Subcommittee recommended acknowledging receipt of the report.

Representative Schrader's motion carried with no objections voiced. (Representatives Westlund and Minnis and Senators Yih, Clarno, Carter and Derfler excused)

### **33. Department of Human Services**

Senator Hannon moved that the Emergency Board acknowledge receipt of a report on seeking competitive bids for medical services for persons with developmental disabilities, that Legislative Leadership appoint an oversight committee to review a Department of Human Services' Request for Proposal for services to medically fragile persons with developmental disabilities as well as the bidding process to provide these services, and that the oversight committee report to the January meeting of the Emergency Board on its work.

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

The Department of Human Services' (DHS) report describes the history of state-operated group homes. Briefly, these homes were developed as part of the long-range plan to phase out the Fairview Training Center and to provide community-based care for its residents. Implementation of the plan and closure of Fairview ended a lengthy litigation proceeding that had begun in 1986 when the U.S. Department of Justice sued the state over conditions at Fairview. Today, privately operated homes provide 24-hour comprehensive care for 97% of the 5,000 developmentally disabled persons receiving such care in Oregon. State-operated group homes provide services to 142 persons in 33 homes. Nine of the homes focus on individuals with medically fragile conditions. The other homes serve those with significant behavioral conditions.

The report evaluates privatizing the nine homes for medically fragile persons from the perspective of General Fund savings, consistency with the long-range plan and agreement with the U.S. Department of Justice, and whether there would be an adequate "backstop" to the private system. In summary, the Department does not recommend privatization. DHS believes that such action would put Oregon at risk of renewed litigation and would erode the state's ability to respond to emergencies and civil commitments. Moreover, the agency believes savings would be marginal.

The Subcommittee heard testimony from a parent whose son lives in one of the state-operated group homes. This testimony opposed privatization. Senator Clarno provided testimony from Senator Yih that expressed concerns about the DHS report and supported privatization. The Subcommittee considered these concerns carefully. Members expressed their beliefs that privatization of governmental functions is sometimes appropriate—but not in all instances.

Consequently, the Subcommittee recommended acknowledging receipt of the report and requesting legislative leadership to appoint an oversight committee to review a Department of Human Services' Request for Proposal for services to medically fragile persons with Developmental Disabilities as well as the bidding process to provide these services. The Subcommittee discussed the need for the oversight committee to be comprised of persons who support and do not support privatizing the state-operated group homes, and that the oversight committee report to the January meeting of the Emergency Board on its work.

The following Committee discussion occurred:

Representative Winters clarified that the role of the oversight committee was to review a Request for Proposal (RFP) only and not to implement or release the RFP. She stated that she had discussed this issue with Senator Derfler and stressed the importance of including all stakeholders in the oversight committee review process.

Senator Hannon's motion carried with no objections voiced. (Representative Minnis and Senators Yih, Clarno, Carter, Messerle and Derfler excused)

#### **34. Department of Human Services**

Senator Hannon moved that the Emergency Board acknowledge receipt of a report on privatizing the senior prescription drug program.

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

Senate Bill 9, passed by the 2001 Legislative Assembly, established a program to assist low-income seniors to pay for prescription drugs. Seniors enrolled in the program will be able to purchase

drugs from participating pharmacies at the Medicaid prescription rate. Eligible seniors are persons 65 and over, have incomes up to 185% of the Federal Poverty Level, have been uninsured for drugs for at least six months, and have less than \$2,000 in liquid assets. To participate, an eligible senior must pay a \$50 enrollment fee each year.

The Department of Human Services (DHS) was designated to implement the senior prescription drug program and requested expenditure limitation and position authority at the October meeting of the Emergency Board. In response, the Emergency Board increased the agency's Other Funds expenditure limitation by \$1.3 million, approved the establishment of 10 limited duration positions, and directed the Department to report on the program during its 2003 budget hearings. In addition, the Emergency Board directed the agency to present a report at its November 2002 meeting on privatizing the program.

DHS reported that two components of the program were already planned to be outsourced or privatized. These two components are the collection of program fees and the transmission of a participant's eligibility status and the prescription drug price to a pharmacy. The Department contacted two providers to estimate their costs to do a third program component – eligibility determination. Both estimates were above the Department's estimated costs of determining eligibility by a considerable margin.

Subcommittee members asked the program managers if they were concerned about underestimating the DHS costs, given the preliminary responses from the private contractors. DHS program managers indicated that they were not concerned because they believed their real costs would be lower. For example, existing DHS information systems could be modified and used. Contractor costs for developing new information systems and testing them could be higher. Likewise, DHS program staff could be phased in as needed. Contractors might hire more eligibility staff even though initial program demand might be fairly light.

The Subcommittee recommended acknowledging receipt of the report and directing the agency to implement the program on February 1, 2003.

Senator Hannon's motion carried with no objections voiced. (Senators Yih, Carter, Messerle and Derfler excused)

### **37. Department of Human Services**

Representative Winters moved that the Emergency Board acknowledge receipt of a report on Medicaid reimbursement for providers of durable medical equipment.

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

House Bill 5091, passed by the Assembly during the 2002 third special session, reduced Medicaid reimbursement to the fee-for-service providers of durable medical equipment (DME) by \$331,691 General Fund. The Legislative Fiscal Office recommended the budget reduction, having learned from the Department of Human Services (DHS) that it intended to implement the lower rates in October. The Emergency Board, at its October meeting, directed the Department to report on the reduction at its November meeting.

The DHS report outlines the process the agency went through in deciding on the reduction and compares the reduced DME rates with current Medicaid reimbursement for other medical services. The DME rate reduction results from changing reimbursement from 100% of the 1999 Medicare

Maximum allowable to 80% of the 2002 Medicare Maximum allowable cost. This rate reduction amounts to about 17.5%.

The Subcommittee recommended acknowledging receipt of the report.

Representative Winters' motion carried with no objections voiced. (Senators Hannon, Yih, Carter, Messerle and Derfler excused)

### **38. Department of Human Services**

Representative Schrader moved that the Emergency Board acknowledge receipt of a report on Medicaid reimbursement for pharmacies.

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

House Bill 5091, a bill passed during the 2002 third special session to balance the state's budget, included a budget note which directed the Department of Human Services (DHS) to reimburse institutional and non-institutional pharmacies at the ingredient cost assumed in the Department's June 2002 rebalance plan. That rate was average wholesale price (AWP) less 14%. In addition, the budget note required the Department to report the Emergency Board in November on the costs of increasing reimbursement to AWP less 13% and the ability of the Department to absorb those costs within its current 2001-03 budget.

The DHS report estimated the cost of increasing reimbursement to AWP less 13% for both institutional and non-institutional pharmacies would be \$609,000 General Fund (\$1.5 million Total Funds). Because the Department presented a rebalance plan with a deficit of \$23.1 million General Fund, it stated that it could not absorb these additional costs. The Emergency Board at its October meeting did allocate \$300,000 General Fund to increase institutional pharmacy reimbursement to AWP less 11% and a dispensing fee of \$3.91. Any funds remaining after this increase were to be used to increase non-institutional pharmacy ingredient cost reimbursement. DHS submitted a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) to implement this rate increase.

Subcommittee members asked the Department when they expected to hear from CMS about the pharmacy rate increase. Department managers stated that they anticipated a response from CMS within the next 60 days. The Department was also asked whether they had requested pharmacy input on ways to contain pharmaceutical costs, apart from reducing pharmacy reimbursement. The Department responded that the Oregon Maximum Allowable Cost strategy had saved more General Fund than originally anticipated and that other cost containment strategies were being implemented. The Subcommittee encouraged DHS to work with pharmacy industry leaders to arrive at other cost containment strategies.

The Subcommittee recommended acknowledging receipt of the report.

Representative Schrader's motion carried with no objections voiced. (Senators Hannon, Yih, Carter, Messerle and Derfler excused)

### **39. Department of Human Services**

Representative Winters moved that the Emergency Board acknowledge receipt of a report from the Department of Human Services on the status of the Department's reorganization.

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

House Bill 2294 (2001), the reorganization bill for the Department of Human Services (DHS), requires DHS to report to each meeting of the Emergency Board during the 2001-03 interim on the status of the Department's reorganization efforts. DHS reported that implementation is continuing. The staffing, information system, accounting and budget changes needed to make the new structure work are being put in place. The reorganization efforts have been generally well-received by employees and community partners, although support is not universal.

The 2001 Legislature reduced the DHS budget by \$4 million General Fund for savings anticipated from the reorganization. It also authorized DHS to identify an additional \$6 million General Fund savings to be reinvested in reorganization projects. DHS reported it has identified \$4.1 million of the \$6 million to be reinvested. The \$4.1 million has been redirected to information system, facilities, accounting and budget, staff training and evaluation work, although the DHS budget rebalance plan reduces the training and evaluation funding by \$0.8 million of that amount. DHS advised the Subcommittee that, with other budget reductions made this interim, it does not expect to be able to find more savings to be reinvested in the reorganization.

The Subcommittee voiced frustration that the Department had not been able to find the full amount of savings for reinvestment. It was also noted that the reorganization is a process that will not be completed by the end of this biennium and support for DHS' continued work was expressed. The Subcommittee suggested that DHS talk with higher education institutions to help ensure that professional education in those institutions is in line with the tenets of service integration.

The Subcommittee recommended acknowledging receipt of the report.

Representative Winters' motion carried with no objections voiced. (Senators Hannon, Yih, Carter and Derfler excused)

#### **40. Department of Corrections**

Senator Metsger moved that the Emergency Board acknowledge receipt of a report on the impact of the October 2002 Corrections Population Forecast and the update of the Long-Range Prison Construction Plan, increase the Federal Funds expenditure limitation established for the Department of Corrections by section 3, chapter 631, Oregon Laws 2001, by \$377,242, and authorize, within the General Fund expenditure limitations established for the Department of Corrections by section 1, chapter 631, Oregon Laws 2001, the transfer of \$1,809,072 from subsection (1) Institutions and Correctional Programs to subsection (3) Central Support/Operations and Administration, with the understanding that the Department of Administrative Services will unschedule an additional \$14,314,889 General Fund.

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

The Department of Corrections (DOC) presented its second rebalance plan of the biennium and its most recent Prison Population Forecast on which the rebalance plan is based.

A new Prison Population Forecast is prepared every six months by the Department of Administrative Service's Office of Economic Analysis. The forecast shows increased growth in the anticipated prison population for the current biennium. Overall, prison population is expected to grow at a slightly accelerated rate over the previous forecast until 2007 when the growth levels off. For the

current biennium, the forecast shows an additional 496 inmates at the end of the biennium than the number assumed in the current legislatively approved budget, representing a 4.3% increase in the number of inmates over the budgeted amount.

DOC uses this forecast to update the Long-range Prison Construction Plan (LPCP). A complication in updating the LPCP is the Executive Branch decision to delay the sale of Certificates of Participation (COPs) originally scheduled for October 2002. Given the uncertainty of the budget for the remainder of the 2001-03 biennium, the sale of COPs to finance all or part of the construction of an expansion of the Shutter Creek facility (100 beds), and minimum security facilities in Lakeview (400 beds) and Madras (432 beds) was delayed to at least March 2003.

Overall, the growth in the prison population through 2012 is forecasted to exceed 15,000 and still require the construction of all of the facilities already included in the LPCP. Facilities planned for completion after July 1, 2003 are delayed by three to thirteen months because of the delay in the sale of COPs or the slowing of the growth in the forecast beginning in 2007.

Based on the new Prison Population Forecast, DOC has seen an average increase of 266 inmates per month over the amount budgeted during the 2001 regular legislative session. By the end of the biennium, the expected prison population will be almost 500 inmates greater than the budgeted amount. To address this estimated increase in the prison population, DOC accelerated the opening of units throughout the system at a cost of \$1.6 million General Fund. Facilities that were affected included Coffee Creek, Eastern Oregon, South Fork Forest Camp, and Powder River.

To address the \$1.6 million General Fund issues described above, DOC proposed the following solutions:

1. DOC will receive an additional \$377,242 in federal State Criminal Alien Assistance funds over the amount currently assumed in the budget. These funds will be used to offset General Fund needs in the rebalance plan and requires a corresponding increase in the Federal Funds expenditure limitation.
2. In February 2002, the Emergency Board requested DAS to unschedule \$873,192 General Fund which DOC had identified early in the biennium as a reserve for employee compensation issues. DOC no longer requires these funds for this purpose.
3. DOC also proposed to use the unscheduled \$411,097 General Fund that had been identified to address the outcome of negotiations over a Fair Labor Standards Act (FLSA) issue. The negotiations with the federal government were completed and the actual cost to the state is only \$20,957, leaving the remainder available to address other rebalance issues.

The rebalance plan also requested the transfer of \$1,809,072 General Fund from the Institutions and Correctional Programs appropriation to the Administration and Central Support /Operations appropriation to reflect the current organization of the Department.

The Department presented new information regarding expenditures to date this biennium. From that information, over \$14 million General Fund in vacancy, energy, medical, and other additional savings were identified for this biennium.

The additional savings identified by DOC may be available to address future unanticipated needs this biennium and could help in addressing the two major risks facing the success of the rebalance plan. First, the Department had "borrowed" \$13.7 million from its operating budget for initial construction costs. These funds were to be paid back from the proceeds of the sale of COPs during the biennium. If the sale originally scheduled for October 2002 is delayed beyond March 2003, DOC will have a \$13.7 million General Fund hole in its operating budget. In addition, the delay has increased the overall construction costs by approximately \$2 million and requires the continued use of

temporary beds. Any delay past March 2003 will further increase construction costs because of inflation and the potential loss of a construction season.

The second major risk is the potential for \$28.6 million General Fund of reductions included in section 2 of HB 5100 (2002 fifth special session) if the January 28, 2003 tax referral fails. The Department has identified prison closures and release of inmates as an option for these reductions. The additional savings for the current biennium may assist in minimizing the closure of prisons this biennium but, since many of these savings are vacancy related, the impact on 2003-05 spending is minimized. Any significant prison closures would require changes in statute early in the next session to provide timely release authority to DOC so savings are realized in this biennium. Release of prisoners would also significantly affect the community corrections system since the additional number of released inmates would severely strain a system which is also scheduled to be cut if section 2 of HB 5100 is implemented. Counties may have the option to opt out of community corrections (SB 1145) and return the function to the State if the reductions continue into the 2003-05 biennium. Alternatives other than release authority would very likely lead to prison overcrowding with greater security risks to DOC staff, and could lead to lawsuits relating to overcrowding as has happened in other states.

At the conclusion of the agency presentation, the Subcommittee discussed local jail capacities and various ways they could be utilized. The Department of Administrative Services (DAS) advised that its recommendation on the DOC request was changed since it is not necessary to reschedule funds set aside to address an FSLA issue and since the new information provided confirmed that an additional \$14,314,889 General Fund could be uncheduled.

The Legislative Fiscal Office (LFO) confirmed that it concurred with the DAS recommendation. LFO advised the Subcommittee that the uncheduled funds could be used to assist with HB 5100, section 2 reductions; other needs in this biennium that might be identified; or to fill the approximately \$13.7 million funding gap in the operating budget used to prepay some construction related costs (assuming no further COPs are issued this biennium). LFO also stated that funds derived from vacancy savings would not necessarily be available to solve 2003-05 budget issues, and also confirmed that DOC will need additional prison beds to come on-line to address future population growth. LFO expressed the expectation that DOC take another look at its plans to address the HB 5100 reductions given the addition savings identified after the rebalance plan was prepared.

The Subcommittee recommended approval of the modified Legislative Fiscal Office recommendation.

Senator Metsger's motion carried with no objections voiced. (Representative Simmons and Senators Yih and Carter excused)

#### **41. Dispute Resolution Commission**

Senator Metsger moved that the Emergency Board acknowledge receipt of reports on fees and program organization, with instructions; deny action to transfer a position from the Department of Land Conservation and Development; deny a \$280,000 Other Funds expenditure limitation increase; and request the Department of Administrative Services to unschedule \$280,000 General Fund, pending action by the 2003 Legislative Assembly.

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

The Dispute Resolution Commission presented reports on its organizational structure and fee advisory committee. The Commission also requested the transfer of a position from the Department of

Land Conservation and Development (DLCD). This Subcommittee felt that this action would be best handled in the budget process, through the elimination of the DLCD position and creation of a position in the Commission. The Commission requested an increase of \$280,000 in Other Funds expenditure limitation, to allow the Commission to spend General Fund dollars that would be transferred from the Community Development Office. The money would be spent for a variety of purposes, including dispute resolution projects and training programs. The Subcommittee felt that the use of the General Fund for these purposes, in the current budget crisis, is questionable.

The Subcommittee discussed the role of the Commission in resolving Salmon Plan issues. The Commission was not directly involved in dispute resolution related to the Plan, but had been involved in resolving fish passage disputes. The Subcommittee expressed its regret that the current budget situation required the actions that it recommended.

The Subcommittee recommended that the Emergency Board: 1) acknowledge receipt of the Public Policy Dispute Resolution Program reorganization report, with instructions that the 2003-05 budget presentation specifically address legislative concerns, as expressed in the budget notes and Emergency Board discussions; 2) acknowledge receipt of the Community Dispute Resolution fee report, with instructions that the final report address the specific questions in the budget note; 3) deny action on the DLCD position, pending action by 2003 Legislative Assembly; and 4) deny the \$280,000 Other Funds expenditure limitation increase and request the Department of Administrative Services to unschedule the \$280,000 General Fund, for reversion or reallocation by the 2003 Legislative Assembly.

The following Committee discussion occurred:

Representative Schrader noted that the dispute resolution program saves the state money, especially in terms of Department of Justice costs, and that he would reluctantly support the motion.

Representative Metsger's motion passed with Representative Johnson voting "no".  
(Representatives Winters and Simmons and Senators Yih and Carter excused)

## **42. Military Department**

Senator Hannon moved that the Emergency Board increase the Other Funds Capital Construction expenditure limitation established for the Military Department by section 3(2)(a), chapter 909, Oregon Laws 1999, Armed Forces Reserve Center-Salem, by \$917,000 for increased Department of Justice fees and construction oversight costs of the Salem Armed Forces Reserve Center/Emergency Coordination Facility.

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

The Legislature authorized the construction of the Salem Armed Forces Reserve Center/Emergency Coordination Facility (SAFRC/ECF) in 1995. The project was scheduled for completion in December 2001. Due to numerous noncompliance construction issues, completion of the facility has been delayed.

The majority of increased costs are for construction oversight of seismic bracing of electrical, mechanical, and plumbing systems and legal fees related to a dispute with the contractor that has delayed facility completion. The Department estimates these costs to be \$677,000, of which \$425,721 is for Department of Justice fees to represent the Department in a lawsuit filed by the contractor for breach of contract and \$251,279 is for additional architect and engineering construction oversight

costs, structural engineering services for seismic review, and specialty inspection costs for completion of the remaining construction work.

In addition, the Department needed to correct an accounting error of \$240,000 related to work performed under an agreement with Portland General Electric (PGE) for modifying and installing two backup generators to PGE's specifications. The transaction was recorded as a "reduction of expense" that resulted in overstating the amount of expenditure limitation the Department had available. Actual expenses were paid out of Federal Funds. The transaction should have been recorded as "deferred revenue" resulting in crediting revenue instead of expenses. Since the Department applied the credit to Other Funds and continued to expend the Other Funds, it now needs an increase in Other Funds expenditure limitation to correct the problem.

The Subcommittee recommended approval of the request.

Senator Hannon's motion carried with no objections voiced. (Representatives Winters and Simmons and Senators Yih, Carter and Metsger excused)

#### **44. Military Department**

Senator Hannon moved that the Emergency Board defer action to the 2003 Legislative Assembly on the Military Department's request to purchase a 4.5 acre parcel of land adjacent to the Salem Army Aviation Support Facility, with instructions to work with the Department of Environmental Quality and the landowner on a purchase price.

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

The Military Department proposed to purchase the property adjacent to the Salem Army Aviation Support Facility and Turner Road to the east using proceeds from Certificates of Participation. If approved, total cost to the General Fund over the life of the issue will be approximately \$1.5 million with debt service payments for each of the next four biennia averaging \$381,013. Acquisition of the property provides an opportunity to address a growing concern about the security of the facility, environmental issues, and an improved location to site the Flight Operations Building, and parking as well as primary access for the facility in a location that takes advantage of a recently installed traffic signal enhancing the safety of ingress and egress to the facility.

The Subcommittee agreed that increasing the expenditure limitation at this time is premature since:

- the Department does not have a commitment from the property owner for a sales price or conditions for clean-up of the contaminants on the site;
- the earliest date proceeds would be available to purchase the property would be late March 2003;
- demand for commercial and industrial land has been average and the property appraiser foresees no significant change in market conditions judging the probable exposure and marketing period to be between 12 and 24 months;
- federal funds are not currently available for construction of the facility; and
- the Legislature will be in a better position to evaluate the priority for this future debt service after the January 2003 vote on temporarily increasing income taxes.

The Subcommittee recommended deferring action until the 2003 Legislative Assembly can review the purchase during the regular session.

Senator Hannon's motion carried with no objections voiced. (Representatives Winters and Simmons and Senators Yih, Carter and Metsger excused)

#### **45. Military Department**

Senator Beyer moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Military Department by section 3, chapter 61, Oregon Laws 2001, by \$6,600,000 for increased federal funding for maintenance of federally supported facilities.

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

The Military Department has been advised that an additional \$6.6 million in federal funds are available to the State of Oregon for federally supported facilities. The Department plans to use the funds to address an estimated \$3.2 million in higher than anticipated utility costs resulting from increased usage of Oregon National Guard (ONG) facilities mobilizing units for deployment to the Middle East and to complete several energy conservation projects in various ONG facilities to reduce consumption of electricity and natural gas.

The Department will use an estimated \$2.1 million to focus on a variety of maintenance and repair projects at camps and training facilities as well as increased security, intrusion detection systems at weapons vaults, property master planning, furniture, additional video-conferencing, and travel for training.

In addition, \$1.3 million will be used to construct concrete containment structures for fuel-truck storage facilities located throughout the state to comply with state and federal environmental regulatory requirements to lower the likelihood of ground contamination. The federal funding does not require state match.

The Subcommittee recommended approval of the request.

Senator Beyer's motion carried with no objections voiced. (Representatives Winters and Simmons and Senators Yih, Carter and Metsger excused)

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

Representative Butler moved that the Emergency Board approve a temporary shift of 8 positions (3.36 FTE) from Lottery Funds to Other Funds for the remainder of the 2001-03 biennium, and increase the Other Funds expenditure limitation established for the Economic and Community Development Department by section 2(1), chapter 771, Oregon Laws 2001, Administration of department and community development programs, by \$480,000.

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

The Economic and Community Development Department (OECD) Lottery Funds operating budget was cut by \$720,000 in the 2002 fifth special session. This reduction eliminated the equivalent of 12 positions. An additional \$616,932 and 2 positions were reduced in earlier special sessions. OECD will absorb \$240,000 of the reductions by leaving 4 positions vacant, and would need to cut 8 currently filled positions to finance the remainder of the reduction. OECD requested that the 8 positions be permanently funded out of interest earnings on its revolving infrastructure loans. This will

reduce the funds available for grants for community infrastructure projects. The alternative is to cut positions, which would cause a reduction in the number of community infrastructure projects that can be completed this biennium. OECDD has discussed this trade-off with the affected communities, and they support the use of Other Funds revenue to continue the 8 positions.

The Subcommittee discussed observations that there is strong legislative support for programs that benefit their districts and that OECDD staff are well prepared and doing an excellent job. The Subcommittee felt that the 2003 Legislative Assembly will need to review the community infrastructure program, both in terms of future infusions of lottery backed bond resources and the staffing level required to maintain an ongoing program. The Subcommittee suggested that the decision on whether to permanently shift staff to Other Funds revenue should be deferred pending that legislative review.

The Subcommittee recommended approval of the request.

Representative Butler's motion passed with no objections voiced. (Representatives Winters and Simmons and Senators Yih, Carter and Metsger excused)

## **50. State Fair and Exposition Center**

Representative Schrader moved that the Emergency Board acknowledge receipt of reports on the 2001 and 2003 Annual Oregon State Fair, cash flow and progress on improving revenues, and the Master Plan update.

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

The 2001 Legislature directed the Oregon State Fair and Exposition Center (Fair) to report to the November 2001 and November 2002 meetings of the Emergency Board on the current fiscal status and any progress on improving revenues, including attendance and revenues from the annual state fair. The Fair has made the second of these two required reports.

The Fair reported that net revenue from the 2002 Annual State Fair is down 37% from the 2001 Annual State Fair. The Fair has projected a 2001-03 biennium ending balance of \$454,508, which is 25% below the ending balance reported at the November 2001 meeting of the Emergency Board. The Fair will work with the Department of Administrative Services to manage expenditures to ensure an adequate cash flow. The Fair also reported on its continued work on long-term strategies to improve revenues, and to implement the Facilities Modernization Master Plan.

The Subcommittee recommended acknowledging receipt of the reports.

Representative Schrader's motion passed with no objections voiced. (Representative Simmons and Senators Hannon, Yih and Carter excused)

## **52. Department of Agriculture**

Representative Morgan moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Department of Agriculture by section 4, chapter 769, Oregon Laws 2001, by \$980,000 for federal grants and supplemental funding for ongoing programs, with the understanding that the Department of Administrative Services will unschedule the limitation pending receipt of the funds.

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

At its October 2002 meeting, the Emergency Board approved a number of federal grant applications by the Oregon Department of Agriculture for Homeland Security, Sudden Oak Death disease, threats from new pests and weeds, and weed control measures. The Department has also been made aware of supplemental federal assistance to ongoing programs for additional noxious weed control and Gypsy moth surveys.

All funds driving the need for increased expenditure limitation are currently included in federal agencies' appropriation bills. However, the Department has yet to receive any of the approved funding as Congress has not acted on the appropriations. Therefore, the Subcommittee requested that the increased limitation be unscheduled until funding is received.

The Subcommittee recommended approval of the request.

Representative Morgan's motion carried with no objections voiced. (Representative Simmons and Senators Hannon, Yih and Carter excused)

### **53. Department of Environmental Quality**

Representative Westlund moved that the Emergency Board acknowledge receipt of a report on privatization of the Vehicle Inspection Program, with instructions.

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

Information was provided by the Department of Environmental Quality (DEQ) during its budget hearings last legislative session indicating many states' vehicle inspection programs are privately operated. This information prompted the Joint Committee on Ways and Means to include a budget note in the Department's 2001-03 budget (SB 5517) directing the agency to investigate privatizing the state's vehicle inspection program through a Request for Proposal (RFP) process.

The Vehicle Inspection Program (VIP) operating in the Portland metropolitan region and Medford is a completely fee supported program designed to reduce pollution from vehicles by ensuring their emission control systems are functioning correctly. The program, in operation since 1975, is part of the plans required by the federal Clean Air Act and has helped both areas meet federal air quality standards for smog and carbon monoxide. In 1997, with the adoption of an enhanced testing program as part of the state's air quality maintenance plan for Portland, the Environmental Protection Agency (EPA) reclassified the area from "nonattainment" to "attainment" with federal standards. The maintenance plan allows the Department more flexibility in dealing with industrial and transportation emissions.

The current vehicle inspection fee is \$21 in Portland and \$10 in Medford and is payable only when a vehicle passes an emissions test. About 20% of all vehicles are retested at no charge, some repeatedly. These fees were set in 1997 when the enhanced testing program was implemented with the understanding that the fee would not be increased again for 10 years. The fee was subsequently set at such a level that a balance accrued over the first years of the enhanced testing program. This balance was to be used to cover costs in later years to maintain the program over the 10-year period without a fee increase. The Department reports that the average cost per certificate (the combined average cost per certificate for Portland and Medford) recently moved higher than the average fee per certificate (the combined average fee per certificate for Portland and Medford), which has been \$19.90 since

1997. This will require the reserve to be drawn down slowly, as planned, to continue the program into 2007 when it is projected the fee will have to be increased to maintain the current program. If the fee is raised in 2008, it would be the first increase in 11 years.

At the April 2002 meeting of the Emergency Board, the Department reported it had constructed an RFP that mirrors their current vehicle inspection program. This was done to ensure that all responses could be measured against the current program and duplicated the program's current level of service and air quality benefits. The RFP was modified after the April 2002 Emergency Board meeting based on comments by members of the Emergency Board and the Legislative Fiscal Office (LFO) that more flexibility should be provided in the RFP. These revisions were largely intended to provide responders with more flexibility to propose innovations and efficiencies. The RFP was also altered to allow a company to assume the leases on current stations (except for two buildings the Department has determined are no longer suitable and plans to replace) after they were refit with equipment by the bidder and passed DEQ acceptance testing. The RFP already allowed for companies to submit multiple proposals.

An oversight program is required by EPA if an emissions inspection program is to be operated by a private company. In response to this requirement, DEQ designed a program in the RFP that would cost \$5.80 per certificate to operate over the six year length of a proposed private contract. This fee would be added to the bidder's proposed fee for a total cost per certificate bid. Contractors would need to make testing data available to the DEQ oversight program, which would be responsible for reporting the data to the EPA. The oversight program would also be responsible for resolving disputes between the public and the contractor, checking the performance of contractor test equipment to ensure it was functioning correctly, certifying contractor training, and auditing daily paperwork and test records. About half the functions and responsibilities of the proposed oversight program are part of the current program, including operation of a referee lane, statistical analysis, and program administration. Therefore, about half of the \$5.80 fee would pay for new responsibilities such as on-site audits. The Department reports the \$5.80 fee per certificate compares favorably to other states operating a fee supported oversight program. Some states use General Fund or Federal Funds to subsidize the oversight program, making comparison problematic. No state, except Oregon, allows an unlimited number of free tests and only charges a fee upon passage and issuance of a certificate.

The Department reported only one contractor responded to the RFP. That company, Environmental System Products (ESP), submitted two proposals. ESP's primary proposal largely conformed to the RFP requirements, while the alternative proposal intentionally omitted RFP requirements to produce a lower bid per certificate. ESP specializes in emissions testing and equipment, and has experience with all the tests conducted by Oregon. In fact, ESP provides Oregon with some of its testing hardware and software. DEQ reported the company meets and exceeds the experience requirements of the RFP, operating facilities in fifteen states, Canada, Mexico, and Asia. ESP has been in the vehicle emissions inspection business for 26 years.

ESP's primary proposal is to charge \$23.65 per certificate over the six year period of the contract. This fee includes the \$5.80 charge for the DEQ oversight program and 35 cents to provide DMV services. This fee compares to the existing average fee of \$19.90 per certificate, which already includes about half of the costs of the proposed oversight program. As noted earlier, DEQ does anticipate needing to raise the fee in 2008 to cover program costs. This anticipated change would increase the estimated average fee over the same six years as the ESP proposal to \$20.77 per certificate. It should be noted that increasing the fee is not the only means the Legislature would have of continuing program operations. Other options not requiring a fee increase in 2008 include reconsidering the policy of allowing an unlimited number of free re-tests or accelerating reconfiguration of current testing lanes to realize efficiencies from testing requirements for newer vehicles.

The alternative proposal from ESP included a fee of \$21.70 per certificate. The reduced fee bid was made possible through shifting costs back to the state by having DEQ continue to operate some functions of the current program, like the self-testing fleet program, and having the state pay for credit card transaction fees. DEQ estimates the cost of these and other shifted costs to equal almost \$1 per certificate. The alternative proposal does not seem to include DMV registration services. At a minimum, this results in longer wait times at some DMV field offices for services as some of the customers normally registering at a DEQ testing facility would now be forced to register at a DMV office. The alternative proposal included reducing the performance bond to \$1 million from the DAS recommended \$10 million, increasing the percentage of part-time employees to 50%, and allowing ESP to use current DEQ equipment. The RFP did not allow the use of existing equipment because it would give the company that provides the proprietary software an unfair advantage. That software provider is ESP.

The report identified some general concerns with ESP. First, the financial statement submitted by ESP in their response to the RFP includes a statement that the company's ability to obtain additional debt financing may be limited because of covenants in ESP's current debt agreements. This could impact ESP's ability to adhere to a transition plan that included the construction of new facilities. In addition, reference checks of states in which ESP operates indicated a number of concerns. All states contacted reported problems with ESP meeting contract requirements and all but one state contacted had invoked penalties for non-compliance with the contract. All but one state reported problems with high turnover rates in the range of 200% to 300% per year, which most attributed to the practice of using a high percentage of part-time employees.

Five contractors responded to the initial Request for Information and attended the pre-proposal conference. Of these companies only ESP submitted bids. DEQ contacted the other four companies to ascertain why they had not submitted a bid to ensure there were no structural problems with the RFP. One company responded they were not sure they had sufficient experience to qualify under the RFP and did not feel they could provide the level of service of the current program for a \$21 fee. Two others had no experience with the type of testing Oregon operates and had shown interest in the hopes of partnering with another firm with more experience. The final company wrote a letter explaining why they chose not to bid that included the statement that their view of the Oregon program "is that it is a very exceptional situation where state personnel have effectively implemented and operated an I/M Program. This is rare."

The Department was required by the budget note to make a recommendation to the Emergency Board on privatization. The Department and LFO recommended that the vehicle inspection program not be privatized. Privatization would not result in the savings of any General or Lottery Funds as the program is completely fee supported. The current program is working well and any transition to a new provider would mean some service disruption. If privatized, the Legislature would be foregoing the direct control it currently enjoys over the program in exchange for a system in which any modifications would require contract renegotiations. Finally, under both the current proposals, citizens would be paying more for emissions testing. The Subcommittee acknowledged that this RFP process has been very time consuming and has generated a tremendous amount of information regarding the privatization process. Therefore, the Subcommittee decided to look more closely at all the issues surrounding privatization during the next legislative session.

The Subcommittee recommended acknowledging receipt of the report, with instructions. DEQ was directed to prepare information for consideration by the next Legislative Assembly on an alternative DEQ budget item for implementation of a privatized vehicle inspection program during the 2003-05 biennium, and the Department of Administrative Services was directed to: a) request ESP to agree to extend, for an additional 210 days, the time period for which its bid proposals shall remain

fixed and valid, and b) issue Notice of Intent to Award, if ESP's bids are found responsive, subject to approval of the 2003 Legislative Assembly. It was the intent of the Subcommittee that the 2003 Legislature shall examine the issues related to privatization of the vehicle inspection program relative to the ESP bid proposals and make a recommendation on the future of the program.

The following Committee discussion occurred:

Senator Clarno asked that LFO ensure all program expenses are included as costs of the current program before further consideration of privatizing the program.

Senator Derfler stated future privatization RFPs should allow both the agency currently operating the program and the private sector to bid under the same conditions to ensure a fair process.

Representative Morgan clarified that the budget note didn't anticipate the complexity of the issues involved in examining privatizing the vehicle inspection program and that the process is not yet at the point where comparisons can be made due to the inordinate amount of information generated. The intent of the motion is to leave the RFP process open long enough to allow a more thorough examination of all the facts and issues involved in privatization during the Ways and Means process next session.

Senator Metsger stated he opposed the change to the LFO recommendation in Subcommittee as there is nothing in the original LFO recommendation that would preclude further examination of privatization next session and that additional consideration is warranted to ensure all issues are adequately covered. He also stated he had confirmed with Legislative Counsel that the Emergency Board did not have the authority to compel the agency to comply with the direction in the motion. He further stated it is important to examine the issue on an equal basis.

Representative Butler explained that the worst case scenario would be having to re-bid the RFP, but he wanted to ensure that the playing field was level between the agency and those making the proposals when considering privatization.

Representative Schrader asked if there was discussion in the Subcommittee on charging a fee when a test was taken, rather than just when a car passed and a certificate was issued.

Representative Morgan answered that there was no discussion on the subject in the Subcommittee, but it would be made a part of the discussions next session as about 30% of the tests are not currently paid for.

Representative Schrader commented that all issues, including the inclusion of administrative costs, should be thoroughly examined before a decision is made on privatization. In addition, the question of whether it is the role of government to do things the private sector can do should be answered.

Representative Westlund stated the issues are very complex and that privatization of the vehicle inspection program involves a difficult analysis. He clarified that the intent of the motion is to ensure that a fair comparison between the current program and the responses to the RFP can be made next session. He stated that while the LFO analysis is correct, under the current proposals for privatization people would pay more, it is important to include all costs of the current program and to consider the benefit to the tax payer.

Representative Winters asked if the intent of the comparison analysis was to include quality of the service provided.

Representative Westlund answered that quality of service should be included.

Representative Westlund's motion carried with Senator Metsger voting "no". (Representative Simmons and Senators Yih and Carter excused)

#### **54. Department of Environmental Quality**

Senator Metsger moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Department of Environmental Quality by section 6(2), chapter 774, Oregon Laws 2001, Water Quality, by \$3,000,000 for the non-point source grant program, increases in the Environmental Protection Agency base grant, and federal grant awards for which application was previously approved.

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

The request for a \$3,000,000 Federal Funds expenditure limitation increase is caused by three factors. First, the Department of Environmental Quality (DEQ) needs \$1,300,000 in additional limitation for its non-point source grant program. This program makes monies available to communities and organizations statewide to address surface water and groundwater pollution caused by non-point sources. The Environmental Protection Agency (EPA) has increased the funding for non-point source grants by approximately \$950,000 over what was anticipated in the Department's 2001-03 legislatively adopted budget. In addition, there was an increase in funds carried over from the previous biennium due to fluctuations in reimbursements to grant recipients and delays in the receipt of grant funds from EPA.

Second, DEQ received about \$1,100,000 more in its base water quality grant from EPA. This was the result of unanticipated increases in federal appropriations, which are in turn passed on to states to operate base water quality programs.

Finally, the Department sought and received approval to apply for a number of water quality grants, totaling about \$600,000, with the understanding they would return to the Emergency Board to seek expenditure limitation if the grants were awarded. These grants support specialized water quality projects including effluent trading, innovations in addressing wet weather pollution issues, and investigating the presence of viruses in groundwater. None of these grants require additional matching funds.

The Subcommittee recommended approval of the request.

Senator Metsger's motion carried with no objections voiced. (Representative Simmons and Senators Yih and Carter excused)

#### **56. Department of Fish and Wildlife**

Representative Morgan moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Fish and Wildlife by section 2(1)(a), chapter 773, Oregon Laws, Fish Propagation, by \$82,710 for an agreement with the Idaho Power Company to rear and release 300,000 fall Chinook into the Snake River below Hells Canyon Dam.

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

The Idaho Power Company has entered into a contract with the Oregon Department of Fish and Wildlife (ODFW) to rear 300,000 fall Chinook sub-yearlings and release them into the Snake River below Hells Canyon Dam. Idaho Power is initiating the agreement to mitigate for lost fall Chinook production in the middle portion of the Snake River as part of a 1980 agreement with ODFW. A fish pathologist will monitor the hatchery-reared fish for the presence of viral, bacterial, fungal, and parasitic agents and action will be taken if any unusual loss occurs. All fish will have the adipose fin clipped for identification as a hatchery reared fish before release.

The Subcommittee recommended approval of the request.

Representative Morgan's motion carried with no objections voiced. (Representative Simmons and Senators Yih and Carter excused)

## **60. Division of State Lands**

Representative Wilson 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 \$54,300 and approve the establishment of one limited duration position (0.25 FTE) for additional workload in the agency's Removal-Fill Permit Program, with the understanding that the Department of Administrative Services will unschedule the limitation until a signed agreement between the Division and the Oregon Department of Transportation has been executed.

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

The Division of State Lands is the state agency charged with administering the state removal-fill permit laws set forth in ORS 196.795 through 196.990. These laws require authorization by the Division for most construction activities in the waters of the state. As part of this authorization process, the Division reviews the Oregon Department of Transportation's (ODOT's) construction plans, permit applications, wetland delineation reports, and any actions that may affect the aquatic resources of the state's waterways and wetlands.

The number of planned transportation projects has increased significantly as a result of the Oregon Transportation Investment Act passed by the 2001 Legislative Assembly. Both the Governor and the Legislature have expressed a desire to move these projects along as quickly as possible to contribute to Oregon's economic recovery. Some of the projects will require removal-fill permits from the Division, adding to its existing workload.

In addition to an increase in the number permits to be issued, the agencies have identified a need for pre-application technical assistance to ODOT by the Division to avoid project delays that result when ODOT must redesign projects in order to have its permit request approved.

ODOT will cover the position costs. Funding will be from a combination of federal funds and state gas tax revenues, which will be reflected as Other Funds in the Division's budget. The position will be phased out at the end of the 2001-03 biennium, but the 2003 Legislative Assembly has the option of continuing the position if ODOT needs the same level of support in the 2003-05 biennium.

The Subcommittee discussed the existing staffing levels for removal-fill activities and recommended approval of the request.

The following Committee discussion occurred:

Senator Messerle commented that he commends ODOT for expediting the projects, but expressed his concern about the policy of having to pay for staff in other regulatory agencies to get their specific projects moved forward. He indicated his belief that this reflects a conflict of interest and further indicated his intention of voting “no” in protest, not of ODOT’s efforts, but of the policy of having to pay for additional agency staff to have applications processed. He expressed his desire to take a hard look into this practice during the next regular legislative session.

Representative Morgan expressed her reluctant support of the motion because of the need to get the transportation projects completed, but indicated that she was also concerned about taking dollars that should be going to construction projects to pay instead for additional agency staff. She commented that she believed the solution to this situation is through simplifying the permitting process and administrative rules rather than through the hiring of additional state agency staff.

Representative Wilson’s motion carried with Representative Schrader and Senator Messerle voting “no”. (Representative Simmons and Senators Yih and Carter excused)

## **62. Department of Transportation**

Senator Beyer moved that the Emergency Board deny the Department of Transportation’s request for approval of a grant application and increase in Federal Funds expenditure limitation for a social security number verification program for commercial drivers licenses and direct the Department to report to the 2003 Legislature on the requirements in federal and state law for use of social security numbers.

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

The Federal Motor Carrier Safety Administration notified the Department of Transportation in September that it had approved \$373,478 to complete programming for storage and display of social security numbers and to begin the automated verification of social security numbers on-line with the Social Security Administration prior to issuing a commercial driver license. Federal regulations require drivers to provide their social security number to the state and states to provide the social security number to a nationwide database that compiles all of the licensed commercial drivers by social security number to ensure only one driver license is issued.

The improvements to Driver and Motor Vehicle Service’s (DMV) computer infrastructure would allow collection of social security numbers for all driver licenses. This action would assist other agencies to link clients to the state DMV database through social security numbers where federal law requires it. The grant requires no matching funds or additional positions.

The Subcommittee raised questions and concerns about developing a system to collect and maintain personal information from citizens generally and, as in this case, a system that goes beyond federal requirements. The Subcommittee also brought up issues relating to proposed congressional legislation tying voter registrations to driver data bases and federal mandates to states tied to threats of losing federal funds.

The Subcommittee recommended denial of the request.

Senator Beyer’s motion carried with no objections voiced. (Representative Simmons and Senators Yih, Clarno and Carter excused)

## 65. Department of Transportation

Representative Wilson moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Transportation by section 2(14), chapter 643, Oregon Laws 2001, Public transit, by \$3,006,721 to accommodate accelerated program delivery for Public Transit Special Transportation Fund projects.

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

The Department of Transportation, Public Transit Division makes grants for capital planning and operations support throughout the state for local transportation providers to improve service to the elderly and disabled. Transit services are generally operated by special providers under contract with cities, counties, and transit districts.

The 2001 Legislature approved changing the distribution accounting method for Special Transportation Funds from a revenue transfer to an expenditure limitation. The Department anticipated expenditures would be equal to the amount of cigarette tax revenue received during the 2001-03 biennium, which was estimated at \$9.6 million.

Updated expenditure forecasts indicate that payments for grant agreements will total \$12.7 million, \$3 million more than the \$9.6 million budgeted. The increased expenditure is caused primarily from the commitment of \$2.2 million in expenditures for 88 projects that were not paid out in 1999-01. These were capital projects for vehicles, equipment, or facilities that had a long lead time between execution of the grant agreement, placing an order, and taking delivery. The beginning balance and expected revenues are sufficient to cover the higher expenditures, leaving a \$1 million ending balance to be carried into the 2003-05 biennium.

The Subcommittee recommended approval of the request.

The following Committee discussion occurred:

Representative Johnson noted for the record an issue raised in the Subcommittee meeting relating to how the Department of Transportation oversees the grant funds passed through to local counties and transportation districts. She pointed out that the Department provides little to no supervision with respect to how the funds are used once the proceeds are remitted to the local transportation program. As a result, Representative Johnson advised of her intent to work with the Department to insure state laws allow appropriate oversight of the funds once they are transferred to the local jurisdictions.

Representative Wilson's motion carried with no objections voiced. (Representative Simmons and Senators Yih, Clarno and Carter excused)

## 66. Department of Transportation

Senator Hannon moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Transportation by section 1(2), chapter 970, Oregon Laws 2001, by \$19,999,999 to implement the South Metro Commuter Rail project, with the understanding that the Department of Administrative Services will unschedule \$20 million until lottery bonds are issued and all statutory and agreement-based conditions are met.

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

The 2001 Legislature authorized the issuance of \$35 million in lottery bonds to finance the South Metro Commuter Rail Project and established a \$1 Other Funds expenditure limitation. The project, estimated to cost \$120 million, will build a 14.7 mile commuter rail line in Washington County between Beaverton and Wilsonville. After certain conditions have been met, \$20 million in lottery bonds will be sold in the 2001-03 biennium, with the remaining \$15 million to be issued in 2003-05. The conditions include a grant agreement (between the Department of Transportation and Washington County) and documentation of sufficient funding.

The grant agreement is in place but funding documentation is pending application for and approval of federal funding from the Federal Transit Administration. The Department requested that the expenditure limitation be increased to \$20 million and unscheduled by the Department of Administrative Services until the lottery bonds are issued to firmly demonstrate the state's commitment to the project and reliability of funds to the federal government. Having an expenditure limitation in place may facilitate approval of the grant application. Un-scheduling the expenditure limitation will ensure that the limitation will only be used when the conditions of the statute and grant agreement have been met.

The Subcommittee recommended approval of the request.

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

## 69. Department of Transportation

Representative Johnson moved that the Emergency authorize transfers of Other Funds expenditure limitations per the schedule below to align limitations with current program expenditure projections.

Preservation	Section 2(2), chapter 643, Oregon Laws 2001	+\$3,000,000
Bridge	Section 2(3), chapter 643, Oregon Laws 2001	+\$5,000,000
Highway Safety	Section 2(4), chapter 643, Oregon Laws 2001	+\$8,000,000
Modernization	Section 2(6), chapter 643, Oregon Laws 2001	-\$16,000,000

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

The Legislature approved expenditure limitations in the Department of Transportation (ODOT) highway program based on projected contractor payments for the 2003-05 biennium. The projections are made 18 months in advance of actual payment and represent planned project amounts. Major changes in this biennium's construction activity relate to the programming of Transportation Investment Act (OTIA) priority projects and addressing the severe bridge crack problem. These projects were not known at the time the budget was built.

From the most recent project delivery evaluation, the limitation for the Bridge and Highway Safety areas of the budget will be inadequate to support the projects programmed for the remainder of the biennium; the Preservation area will be close to the maximum expenditure limit, while Modernization and Local Government projects appear to have excess limitation. The requested changes are to increase Preservation by \$3 million, Bridge by \$5 million, Highway Safety by \$8 million, and decrease Modernization by \$16 million.

The transfer of expenditure limitation does not increase the overall expenditure limitation.

The Subcommittee recommended approval of the request.

Representative Johnson's motion carried with no objections voiced. (Representative Simmons and Senators Yih and Carter excused)

## **70. Department of Transportation**

Senator Hannon moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Transportation by section 2(16), chapter 643, Oregon Laws 2001, Transportation safety, by \$35,017 and increase the Other Funds expenditure limitation established for the Department of Transportation by section 2(14), chapter 643, Oregon Laws 2001, Public transit, by \$291,700 to backfill current biennium General Fund reductions, with the understanding that the Department of Administrative Services will unschedule the \$326,727 General Fund.

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

As a result of legislative actions in special sessions this biennium, the Department of Transportation, Transportation Safety Division's "Think First and Trauma Nurses Talk Tough Program" and Public Transit Division General Fund supported programs that provide rides to elderly and disabled populations throughout the state were reduced by a combined \$326,737.

The Department has identified Other Funds to backfill the current General Fund reductions. Since Other Fund revenues are available to pay the costs and avoid program reductions, the Subcommittee recommended that the General Fund be unscheduled permanently regardless of the outcome of the special election on a temporary income tax increase in January 2003 and that the Other Funds expenditure limitation be approved without being unscheduled.

The Subcommittee recommended approval of increasing the Other Funds expenditure limitation by \$326,737, with the understanding that the Department of Administrative Services will permanently unschedule \$326,737 General Fund.

Senator Hannon's motion carried with no objections voiced. (Representative Simmons and Senators Yih and Carter excused)

The meeting was adjourned at 11:00 a.m.

EMERGENCY BOARD:

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Senator Gene Derfler, Chair

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Representative Ben Westlund, Secretary

ATTEST:

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Ken Rocco, Legislative Fiscal Officer

**DEPARTMENT OF EDUCATION 2001-03 REBALANCE PLAN  
November 2002**

<u>Program Area</u>	<u>2001 ORS Reference</u>	<u>Fund Type</u>	<u>Adjustments to Legislatively Approved Budget</u>
<b><u>Expenditure Limitation Adjustments (Transfers and Increases):</u></b>			
Operations	Chpt 799, Sec 3(1)	Federal Funds	<u>(6,000,000)</u>
		Total	(6,000,000)
Oregon State Schools for the Deaf and for the Blind	Chpt 799, Sec 3(2)	Federal Funds	<u>500,000</u>
		Total	500,000
Grant-in-Aid (GIA) Programs -			
The Individuals with Disabilities Education Act	Chpt 772, Sec 3(1)(a)	Federal Funds	4,400,000
Title I - Low income	Chpt 772, Sec 3(1)(b)	Federal Funds	5,400,000
Title I - Migrant education	Chpt 772, Sec 3(1)(c)	Federal Funds	(1,500,000)
Title II - Vocational education	Chpt 772, Sec 3(1)(d)	Federal Funds	700,000
All other federal programs	Chpt 772, Sec 3(1)(e)	Federal Funds	<u>12,100,000</u>
		Total	21,100,000
<b>Net Federal Funds Expenditure Limitation Adjustments</b>		<b>Total</b>	<b><u>15,600,000</u></b>
<b><u>General Fund Transfer:</u></b>			
GIA Programs -			
Educating children with disabilities in hospital programs	Chpt 772, Sec 1(3)	General Fund	(475,887)
Educating children with disabilities in long term care or treatment programs	Chpt 772, Sec 1(4)	General Fund	475,887
<b>Net General Fund Adjustments</b>		<b>Total</b>	<b><u>-</u></b>

**DEPARTMENT OF HUMAN SERVICES 2001-03 REBALANCE PLAN  
November 2002**

<u>Cluster/Program Area</u>	<u>2001 ORS Reference</u>	<u>Fund Type</u>	<u>Adjustments to Legislatively Approved Budget</u>	<u>No. Pos.</u>	<u>FTE Change</u>
<b><u>Transfers, Establishments, and Expenditure Limitation Adjustments:</u></b>					
<b>Economic Independence &amp; Family Stability Services:</b>					
Adult & Family Services	Chpt 892, Sec 1(1)(a)	General Fund	(7,153,464)		
	Chpt 892, Sec 3(1)(a)	Other Funds	129,339		
	Chpt 892, Sec 4(1)(a)	Federal Funds	<u>(1,061,418)</u>		
		Total	(8,085,543)	(17)	(9.79)
Services to Children and Families	Chpt 892, Sec 1(1)(b)	General Fund	(9,656,390)		
	Chpt 892, Sec 3(1)(b)	Other Funds	(379,227)		
	Chpt 892, Sec 4(1)(b)	Federal Funds	<u>8,799,990</u>		
		Total	(1,235,627)	(15)	(13.61)
Alcohol and Drug Abuse Programs	Chpt 892, Sec 1(1)(c)	General Fund	(168,860)		
	Chpt 892, Sec 3(1)(c)	Other Funds	882,426		
	Chpt 892, Sec 4(1)(c)	Federal Funds	<u>(156,269)</u>		
		Total	557,297	(2)	(1.50)
Vocational Rehabilitation Programs	Chpt 892, Sec 1(1)(d)	General Fund	(613,813)		
	Chpt 892, Sec 3(1)(d)	Other Funds	(7,208)		
	Chpt 892, Sec 4(1)(d)	Federal Funds	<u>986,394</u>		
		Total	365,373	(2)	(2.00)
Total Economic Independence & Family Stability Services	Chpt 892, Sec 1(1)	General Fund	(17,592,527)		
	Chpt 892, Sec 3(1)	Other Funds	625,330		
	Chpt 892, Sec 4(1)	Federal Funds	<u>8,568,697</u>		
		Cluster Total	(8,398,500)	(36)	(26.90)
<b>Health Services:</b>					
Public Health Programs	Chpt 892, Sec 1(2)(a)	General Fund	(373,050)		
	Chpt 892, Sec 3(2)(a)	Other Funds	(36,055)		
	Chpt 892, Sec 4(2)(a)	Federal Funds	<u>11,488,670</u>		
		Total	11,079,565	5	(1.12)
Mental Health Services	Chpt 892, Sec 1(2)(b)	General Fund	455,056		
	Chpt 892, Sec 3(2)(b)	Other Funds	(3,085,108)		
	Chpt 892, Sec 4(2)(b)	Federal Funds	<u>(7,387,424)</u>		
		Total	(10,017,476)	(1)	(5.33)
Medical Assistance Programs	Chpt 892, Sec 1(2)(c)	General Fund	15,230,439		
	Chpt 892, Sec 3(2)(c)	Other Funds	34,047,258		
	Chpt 892, Sec 4(2)(c)	Federal Funds	<u>43,837,860</u>		
		Total	93,115,557	(27)	(27.41)
Total Health Services	Chpt 892, Sec 1(2)	General Fund	15,312,445		
	Chpt 892, Sec 3(2)	Other Funds	30,926,095		
	Chpt 892, Sec 4(2)	Federal Funds	<u>47,939,106</u>		
		Cluster Total	94,177,646	(23)	(33.86)
<b>Long Term Care &amp; Developmental Disability Services:</b>					
Senior and Disabled Services	Chpt 892, Sec 1(3)(a)	General Fund	1,480,871		
	Chpt 892, Sec 3(3)(a)	Other Funds	(1,060,694)		
	Chpt 892, Sec 4(3)(a)	Federal Funds	<u>6,654,017</u>		
		Total	7,074,194	(2)	(2.71)

<u>Cluster/Program Area</u>	<u>2001 ORS Reference</u>	<u>Fund Type</u>	<u>Adjustments to Legislatively Approved Budget</u>	<u>No. Pos.</u>	<u>FTE Change</u>
<b>Long Term Care &amp; Developmental Disability Services (continued):</b>					
Developmental Disability Services	Chpt 892, Sec 1(3)(b)	General Fund	(2,596,521)		
	Chpt 892, Sec 3(3)(b)	Other Funds	(17,553)		
	Chpt 892, Sec 4(3)(b)	Federal Funds	<u>(2,599,041)</u>		
		Total	(5,213,115)	(3)	(8.22)
<b>Total Long Term Care &amp; Developmental Disability Services</b>					
	Chpt 892, Sec 1(3)	General Fund	(1,115,650)		
	Chpt 892, Sec 3(3)	Other Funds	(1,078,247)		
	Chpt 892, Sec 4(3)	Federal Funds	<u>4,054,976</u>		
		Cluster Total	1,861,079	(5)	(10.93)
<b>Department-wide Support Services:</b>					
Office of the Director	Chpt 892, Sec 1(4)	General Fund	3,395,732		
	Chpt 892, Sec 3(4)	Other Funds	250,246		
	Chpt 892, Sec 4(4)	Federal Funds	<u>(6,601,357)</u>		
		Total	(2,955,379)	20	18.91
<b>Department Totals</b>					
	Chpt 892, Sec 1	General Fund	-		
	Chpt 892, Sec 3	Other Funds	30,723,424		
	Chpt 892, Sec 4	Federal Funds	53,961,422		
		Dept. Total	84,684,846	(44)	(52.78)