

## MINUTES OF THE EMERGENCY BOARD

**September 26, 2008**

**State Capitol**

**Salem, Oregon**

Members Present: Representative Merkley, Presiding Chair  
 Senators Bates, Carter, Courtney, Johnson, Morse, Schrader, Westlund,  
 Whitsett, Winters  
 Representatives D. Edwards, Galizio, Gilman, Jenson, Morgan, Nathanson,  
 Nolan, Shields, P. Smith

Members Excused: Senator Nelson

Pursuant to the provisions of ORS 291.328, and acting under the authority of ORS 276.390, ORS 286A.160(3), 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 September 26, 2008, took the following actions:

The meeting was called to order by Representative Merkley at 8:32 a.m. in Hearing Room F of the State Capitol.

### Agency Reports

Representative Jenson moved that the Emergency Board acknowledge receipt, en bloc, of the following reports: Item 51, Department of Fish and Wildlife – Point of Sale licensing system; Item 54, Department of Aviation – reconciliation of accounting transactions; and Item 59, Department of Administrative Services – compensation plan changes and position allocations.

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

The Subcommittee recommended acknowledging receipt of all the reports.

The motion carried with no objection voiced. Sens. Carter and Nelson excused.

### 2. Judicial Department

Representative Nolan moved that the Emergency Board acknowledge receipt of a report on the eCourt Program, with instructions.

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

The success of Oregon eCourt Program was acknowledged to be of critical importance to Oregon. The Program is conceptually designed to modernize the Oregon court business systems and practices and to manage new cases on a web-based case and financial management system. Oregon eCourt is essential because the antiquated and inefficient Oregon Judicial Information Network (OJIN) cannot be maintained indefinitely. However, the Program has a number of significant risks, including technology, business re-engineering, project management, stakeholder expectations management, and cost.

The eCourt Program lacks fundamental project definition and management best practices and, until October 2008, independent Quality Assurance oversight. The Department lacks an overall Program manager, and did not replace the overall Program contractor, which left soon after the 2008 special session. The Project's total cost is based on uncertain estimates due to the lack of a business case and a comprehensive implementation plan for the Program. Current budget estimates are \$20 million more than what has previously been reported to the Legislature, based on planned base budget expenditures that had not previously been reported. The transparency of the eCourt Program activities between the Judicial and Legislative branches of government has been weak. However, in his testimony to the Subcommittee, the Chief Justice of the Supreme Court emphasized his commitment to ensuring that the eCourt Program would be completely transparent.

The Subcommittee recommended that the eCourt Program be slowed until key deficiencies are corrected and risk substantially mitigated. The Subcommittee approved recommendations to mitigate Program risks. For the 2007-09 interim, the Department is directed to:

- a) Procure, on contract, the services of a reputable vendor with experience in the field of court operations or a similarly complex organization to manage the eCourt Program implementation;
- b) Direct its Quality Assurance contractor to report in person regularly to the Emergency Board, the Joint Committee on Ways and Means, and any other committee that the Legislature may direct. The QA contractor should meet weekly with the Legislative Fiscal Office and provide all reports requested by LFO;
- c) Report to the interim Joint Committee on Ways and Means prior to the 2009 legislative session on how the Program and all component Projects are adhering to the lessons learned from the State Data Center;
- d) Comply with the 2007 Legislature's direction and self-fund all Appellate Case Management expenditures, including costs related to the Supreme Court, rather than use certificate of participation proceeds; and
- e) Defer any request for Other Funds expenditure limitation related to the Program until the 2009 legislative session.

For the 2009 Legislative Session, the Department was directed to report to the Joint Committee on Ways and Means early in the session on its ability to meet the expectations for an effectively managed project based on best practices and lessons learned from the State Data Center and other state information technology projects.

The Judicial Department noted its concurrence with the recommendations made by the Subcommittee.

The Subcommittee recommended acknowledging receipt of the report, with the aforementioned instructions.

Representative Nolan's motion carried with no objection voiced. Sens. Carter and Nelson excused.

### **3. Oregon Student Assistance Commission**

Representative Galizio moved that the Emergency Board allocate \$4 million from the Emergency Fund, established by section 1, chapter 910, Oregon Laws 2007, to supplement the

appropriation made to the Oregon Student Assistance Commission by section 1(1), chapter 748, Oregon Laws 2007, Payments to individuals and institutions, for the Oregon Opportunity Grant program.

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

The 75<sup>th</sup> Legislative Assembly authorized program changes, known as the Shared Responsibility Model (SRM), for the Oregon Opportunity Grant (OOG) program. State funding for OOG was significantly increased to \$103.6 million, or a 36.8% increase over the 2005-07 biennium which included more than doubling funding for grants in the second academic year of the biennium.

With the implementation of the SRM, the Oregon Student Assistance Commission (OSAC) sets grant awards equal to the difference between its determination of the cost of education (which includes living expenses as well as tuition and fees) and the student's ability to pay. The student's ability to pay is based on an amount that varies with the student's financial resources and qualifications for federal student aid (the family share and the federal share). As a result, award amounts will vary by income level and family size.

OSAC requested an allocation of \$4 million from the Emergency Fund to supplement funding for OOG based upon three factors including an increase in the number of Free Applications for Federal Student Aid (FAFSA), final disbursements from the 2007-08 academic year, and lower than anticipated revenues from Lottery and Federal Funds.

Based on current estimates, the Commission will not have to modify awards already made. However, even with the additional \$4 million, they will have to impose cost controls, which could include modifying the Expected Family Contribution or capping awards, to stay within the legislatively approved budget.

The Subcommittee recommended approval of the request.

The following Committee discussion occurred:

Senator Morse requested a summary of the 2009-11 General Fund financial position from the Legislative Fiscal Office (LFO) and noted that we are in volatile financial times. He stated this is a difficult vote, but would reluctantly vote no because of the uncertainty of the financial position.

Representative Morgan stated that she has worked hard to fund education and is supportive of this program. However, given the recent information on the Department of Corrections, capital investments in the Judiciary and Oregon State Hospital, and the pending rebalance for the Department of Human Services, the prudent course of action is to hold money in reserve.

Senator Courtney asked the LFO as to whether other approaches were available for this request. LFO responded that reservations could be established within the Emergency Fund for some of the larger requests and defer action until December when another forecast would be available. Senator Courtney further clarified that funding would still be available in December.

Senator Whitsett noted he was supportive of the colleges in his district and this will not be a popular vote, but thought allocating funds at this time was imprudent.

Senator Bates requested an update on the action taken for faculty salaries at the last Emergency Board meeting. He noted that several members argued taking action on salaries at that time was

imprudent because of uncertain times. Senator Bates noted that given the current conditions, \$4 million is no more than a rounding error, and if the financial conditions worsen, the Legislature will be back in special session to address issues much larger. He stated there has been a commitment to students.

Representative Gilman stated he is very supportive of student assistance, but was not in favor of spending money that is not available.

Representative Shields stated he is frustrated that when times are tough, prison inmates rise to the top of priorities. He noted we need to support low and middle income students now in times of economic need.

Senator Winters stated this was a tough vote and is supportiv of Opportunity Grants. However, she would like to see the Committee look at options for reservation given the financial uncertainty and information the Committee received on the increasing DHS caseloads.

Senator Schrader stated that of all programs, none were more important than this one. He noted that the investments to this program have been negligible compared to other states and the program's funding has been an embarrassment in the past. Senator Schrader stated this was a good investment.

Representative Jensen commented that \$4 million is not a rounding error and would like to see consistency in applying the standard across all policy. He commented that it is always difficult to spend money you are not sure you have, but this was a good investment and problems will be worse later if this action is not taken.

Representative D. Edwards noted that when he ran for office it was to provide the same or better opportunities for future Oregonians. He stated that smart companies invest in research and development in difficult economic times and the Opportunity Grants are the equivalent of research and development.

Representative Galizio noted that several letters were received in support of the program from students, many of whom were non-traditional (e.g., veterans, older students, or displaced workers). He stated that Oregon does not do a very good job in retraining workers and this program does not just support 18-year olds, but those that have lost, or will lose, jobs.

Senator Carter commented that when unemployment is high, people go to school; and although this is a tough vote for some, it will help put food on the table.

Representative Merkley noted this is the first generation of people to receive less education than parents. This is a prudent investment.

The motion carried. Reps. Gilman and Morgan and Sens. Morse, Whitsett, and Winters voted no. Sen. Nelson excused.

## **6. Department of Higher Education**

Senator Morse moved that the Emergency Board establish an Other Funds Capital Construction [Article XI-F(1) Bonds] expenditure limitation for the Department of Higher Education of \$21,169,000 for Phase I of the Central Power Station project at the University of Oregon.

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

The 2005 Legislative Assembly approved \$13 million in State Energy Loan Program (SELP) funding for deferred maintenance at the University of Oregon power plant that was intended to replace worn out components. In preparation for this work, the university paid for an engineering study tasked with taking a long-term examination of the university's future heating, cooling, and energy needs and the ability of the existing plant to support these needs if the deferred maintenance was completed. The study found that a significant investment would be needed just to renovate the existing power plant due to a number of regulatory changes, including changes in building codes that prohibit chillers and boilers being located together, which is how the current power plant is configured. In addition, state restrictions on use of the Willamette River Millrace for cooling heated water used by the steam plant, combined with the decreasing efficiency of the Millrace to cool water due to silt buildup, will require the construction and use of chilling towers instead. Finally, 700,000 square feet of additional space will be constructed on campus that was not considered when the deferred maintenance project was contemplated in 2005. These factors led the university to determine a complete rebuild of the central power plant would be required.

This work would be split into two phases. Phase I of the central power plant project calls for construction of a new chiller plant building with new chillers and cooling towers. In addition, improvements will be made to electrical infrastructure in anticipation of Phase II. Phase I is to be completed by September 2009.

Phase II will include installation of boilers to provide steam for heating buildings, emergency generators, and seismic upgrades. The university reports this portion of Phase II will need to be completed by October 2010 in order to meet the increase in demand created by completion of new campus buildings, including the arena, scheduled to be on-line by the end of 2010. The current estimate for the cost of Phase II is \$56.3 million.

The Subcommittee verified that Phase I and Phase II can be viewed as separate projects and that approval of Phase I in no way obligates the Legislature to approve Phase II, and recommended approval.

The motion carried with no objection voiced. Sens. Nelson and Schrader excused.

## **7. Department of Higher Education**

Senator Morse moved that the Emergency Board increase the Other Funds Capital Construction [Article XI-F(1) Bonds] expenditure limitation established for the Department of Higher Education by section 2(5)(e), chapter 725, Oregon Laws 2003, University of Oregon, Parking structure, by \$5,680,000 and establish an Other Funds Capital Construction [Other Revenues (Including Federal Funds)] expenditure limitation of \$1,400,000 for the parking structure project at the University of Oregon.

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

The Legislative Assembly approved a parking structure project at the University of Oregon during the 2003 session with the inclusion of \$10,920,000 in Other Funds Capital Construction [Article XI-F(1) Bonds] expenditure limitation. The Department of Higher Education requested to increase the previously established Other Funds Capital Construction [Article XI-F(1) Bonds] expenditure limitation to \$16.6 million and provide the authority to expend an additional \$1.4 million in gifts and

donations to build an \$18 million underground parking structure at the University of Oregon adjacent to the new arena and below a proposed new alumni center. This parking structure project would be undertaken concurrently with construction of the new basketball arena. This should allow the university to realize significant savings compared to building a similar stand-alone parking facility.

When completed, the new parking structure would provide an additional 375 parking spaces. When combined with the 148 spaces that will be constructed as part of the arena project, over 500 parking spaces would be available to meet parking demands for arena events, the proposed new alumni center, campus visitors, and for day use by university employees. Revenues from parking operations would be used to pay the debt service on the new parking facility.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sen. Nelson excused.

## **8. Department of Higher Education**

Representative Galizio moved that the Emergency Board increase the Other Funds Capital Construction [Article XI-F(1) Bonds] expenditure limitation established for the Department of Higher Education by section 2(2)(a), chapter 761, Oregon Laws 2007, Western Oregon University, New student residence project by \$8,750,000.

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

The Department of Higher Education requested authority to expand the construction of a previously approved student housing facility at Western Oregon University (WOU) from 200 beds to 300 beds and add a living-learning center to the project. WOU reports student housing reservations have increased by 18% in just two years and that students are remaining in residence for the full year at a higher rate than previously experienced. The university asked to expand its new student housing project from what was previously approved by the 2007 Legislative Assembly to meet this increasing demand. The university forecasts that demand for on-campus housing will continue to increase over the next 10 years. Debt service on the project would be paid using revenue from the university's housing operations, including rent at the new facility.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sen. Nelson excused.

## **9. Commission for the Blind**

Representative Nathanson moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Commission for the Blind by section 3, chapter 74, Oregon Laws 2007, by \$600,000 for services to clients, Attorney General expenses, and other costs.

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

The Commission for the Blind (OCB) assists Oregon's blind population to learn basic living skills, help integrate into society, and secure and maintain employment. Vocational Rehabilitation basic support (Section 110) funds from the U.S Department of Education, Rehabilitation Services

Administration make up most of the Commission's funding. Oregon's formula funding allocation is split, by agreement, between OCB (12.5%) and the Department of Human Services (DHS) (87.5%).

OCB is applying for \$600,000 in additional Section 110 re-allotment funds. It will use \$41,295 in already-budgeted General Fund and \$121,094 Other Funds from OCB's donations account to meet the \$162,389 matching funds requirement. OCB expects to have sufficient Other Funds limitation to cover the \$121,094 amount due to savings in their 2007-09 budget to date, but needs the added \$600,000 in Federal Funds expenditure limitation. If awarded, the federal re-allotment funds will be used as follows:

- (a) \$100,000 to cover Attorney General costs which are currently above budget;
- (b) \$400,000 for Special Payments to help blind clients obtain employment;
- (c) \$65,000 for technology upgrades to switch computers to Vista and obtain an independent server; and
- (d) \$35,000 for Capital Outlay upgrades. The upgrades include an exhaust system for the Portland office woodshop and exercise room, as well as funds for landscaping projects and soundproofing the woodshop and radio rooms.

The agency reported that it discussed its intention to apply for re-allotment funds with DHS, who is also applying for re-allotment funds. DHS indicated that OCB's request would not interfere with its request, and that as long as OCB and DHS each have the matching funds the Federal Funds are expected to be available for distribution. DHS also noted that unlike the formula grant allotment process, which is based on a percentage split between DHS and OCB, the re-allotment process is a stand-alone issue for federal allotment purposes.

The \$162,389 in matching funds will ultimately affect the statewide maintenance of effort (MOE) requirement for this grant. The MOE is calculated based on the level of non-federal program spending two years prior to the current year. If the re-allotment funds are awarded, OCB and DHS will need to assume responsibility for the higher MOE in the next biennium.

The Subcommittee noted the one-time nature of the re-allotment funds, and expressed concern about using one-time funds for on-going client service needs, but recommended approval of the request.

The motion carried with no objection voiced. Sen. Nelson excused.

## **10. Department of Human Services**

Senator Bates moved that the Emergency Board acknowledge receipt of a report on the Department's 2007-09 biennial budget; allocate \$2,435,027 from the special purpose appropriation made to the Emergency Board by section 38(1), chapter 16, Oregon Laws 2008, to supplement the appropriation made to the Department of Human Services by section 1(3), chapter 743, Oregon Laws 2007, Health Services, for the Oregon State Hospital improvement plan; and approve the establishment of 168 permanent positions (21.48 FTE); with instructions.

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

The Legislature made changes to the Department of Human Services (DHS) 2007-09 budget during the February 2008 special session, based on the agency's first rebalance plan. The changes included the establishment of two special purposes appropriations, one for the Oregon State Hospital (OSH) improvement plan, and one for potential caseload and cost-per-case increases and other

program needs. In June 2008, DHS reported to the Emergency Board that it estimated its General Fund expenditures for the biennium would be about \$7 million higher than its approved budget. DHS also then requested and received allocations from the special purpose appropriations of \$2.4 million for OSH and \$2.4 million for vocational rehabilitation services.

DHS reported that it now faces a budget shortfall of an estimated \$140.8 million General Fund, before any offsetting management or legislative actions. The three largest factors in the projected shortfall are program caseload and cost increases, federal rule changes and audit findings, and a decline in tobacco tax revenues.

- Program caseload and cost increases are estimated to be about \$41.8 million General Fund higher overall than assumed in the Fall 2007 forecast used for the first rebalance plan. The most notable changes are in the Oregon Health Plan (OHP) and the Temporary Assistance to Needy Families (TANF) programs. OHP caseloads are projected to be about 4% higher, creating a \$32.2 million General Fund need. Caseloads in the TANF program are up 15%, increasing the General Fund need by \$17.7 million.
- Recent federal rule changes and audit findings are expected to have a \$57.1 million impact on DHS' budget in this biennium. Rule changes for Medicaid Targeted Case Management reimbursement are expected to reduce Federal Funds revenues by \$12.9 million. A separate rule change for the federal Social Services Block Grant will limit administrative reimbursement to 9%, creating a \$2.9 million Federal Funds problem in the Administrative Services Division budget. In response to a federal program audit, DHS will redetermine eligibility each year for children in substitute care placements who receive services paid with TANF Emergency Assistance funds. This is expected to reduce federal funding for these services by \$37.6 million this biennium. A new policy requiring active psychiatric treatment for patients in the OSH geropsychiatric program will limit eligibility for federal Medicaid reimbursement in that program, creating a \$3.7 million Federal Funds shortfall.
- Cigarette and other tobacco tax revenues dedicated to the OHP and the Tobacco Use Reduction Account are now forecast to be \$21 million lower for the biennium, almost 6% less than previously expected.

Other factors contributing to the projected General Fund shortfall are \$10 million to cover the unfunded portion of the employee salary and benefit package, \$5.3 million from other revenue issues, \$3 million for a one-time cost associated with earlier payments under the new Medicaid Management Information System, and \$2.4 million in OSH continuous improvement plan funding.

DHS presented the Subcommittee with proposals for offsetting management actions or expected savings totaling \$127 million, including a request for the \$17.5 million balance in the two Emergency Board special purpose appropriations. DHS would produce other General Fund savings from:

- Using \$72 million in Other Funds and Federal Funds to replace General Fund within DHS' budget;
- \$20 million in administrative savings from hiring delays and a freeze on all but direct service positions, reducing overtime and temporary staff costs, and services and supplies cutbacks; and
- \$16 million from expected program savings and other revenues.

These actions would not directly affect DHS clients or program services, but would result in reduced working capital and cash flow, increased need for borrowing with added interest costs, reduced capacity to provide support services, and delays in projects and staff training. In total, with the allocation of the special purpose appropriations, these proposals would reduce the estimated budget shortfall to about \$14 million General Fund.

The Subcommittee generally supported DHS' proposed management actions, with the understanding that the agency needs to take action now to achieve the administrative savings. The Subcommittee recommended the Emergency Board acknowledge receipt of the report, allocate \$2,435,027 from the special purpose appropriation, and approve the establishment of 168 permanent positions (21.48 FTE) for the Oregon State Hospital improvement plan. However, the Subcommittee did not support allocating the \$15.1 million balance in the other special purpose appropriation to DHS at this time, with the understanding that the funds will remain available to the Emergency Board for later use.

With these actions, DHS' General Fund budget would be about \$29 million short of its projected expenditures. The Subcommittee directed DHS to return to the Emergency Board in December 2008 with its full rebalance plan, including alternatives to balance its budget.

The motion carried with no objection voiced. Sen. Nelson excused.

### **Non-Agenda. Department of Human Services**

Senator Whitsett moved that the Emergency Board allocate \$362,695 from the Emergency Fund, established by, section 1, chapter 910, Oregon Laws 2007, to supplement the appropriation made to the Department of Human Services by section 1(3), chapter 743, Oregon Laws 2007, Health Services, to increase Medicaid reimbursement for Durable Medical Equipment.

The following is a summary of the non-agenda item and action:

The 2007-09 budget for the Department of Human Services assumed a reduction in Fee-For-Service Medicaid reimbursement for durable medical equipment (DME) of \$970,902 General Fund (\$2,537,355 total funds). Senator Whitsett indicated that he and the Senate Republican caucus were concerned about this reduction and recommended that the Emergency Board provide partial restoration of the reimbursement reduction. He explained that normally he would not make this request given DHS' estimated budgetary deficit of \$71.6 million General Fund, but that he believed this action would result in cost savings to the overall system. The issue, he said, was whether vulnerable Oregonians have adequate access to DME. Many Oregonians, particularly those living in rural or frontier areas did not have access, he stated. He pointed out that the federal government was contemplating a 9.5% reduction to Medicare reimbursement for certain DME products beginning in January 2009, and that he was concerned this would undermine the very infrastructure that delivers these services. DME providers could not, he argued, continue to operate at a loss.

The following Committee discussion occurred:

Senator Carter stated that this was a complicated issue and there was no doubt that the Emergency Board needed to help. She pointed out that this kind of problem was likely to reoccur because the federal government is attempting to reduce its costs. She said that the Legislature needed to establish its budgetary priorities very carefully in response to the current economic crisis.

Senator Winters explained that this General Fund reimbursement reduction also resulted in the loss of federal Medicaid funds. More importantly, she stated, this reduction has had an impact on those with significant health needs. DME keep people alive, she said. She pointed out that when the economy goes down, human services' needs go up and that the Legislature needed to focus on its priorities. She invited other members to join her in seeing how individuals who need DME survive. She stated that she was in favor of Senator Whitsett's motion.

Senator Bates noted that he works with patients who need DME everyday. He said DME was important, but that other medical services were also important such as, mental health and alcohol and drug abuse treatment, access to physicians, and the ability to purchase necessary pharmaceuticals. He stated that while he was sympathetic to the proposal, he did not believe the Emergency Board was the appropriate venue to deal with possible DME shortages. He said he could give many examples of other medical service shortages that the Emergency Board could attempt to solve—but that it was not the right time or place to do so.

Senator Whitsett reiterated his support for the proposal. He noted that DHS had been asked to help with the situation, but had not. Therefore, he said, it was important to bring the proposal for funding forward. He pointed out that the Emergency Board had just spent \$4 million for college students. Surely, he argued, the Board could support a much smaller request for vulnerable citizens dependent on DME.

Representative Nolan moved to table Senator Whitsett's motion.

The following Committee discussion occurred:

Representative Nolan said she agreed that DME reimbursement was a serious issue that the Legislature had worked on during the 2007 session. She added that the points various members had made demonstrated how important the issue was. She said that the Emergency Board needed to look more closely at this proposal and other DHS services and ask the Human Services Subcommittee to develop a robust recommendation for the December meeting of the Emergency Board.

Representative Morgan said that DME is a priority within the entire budget. She stated that she was concerned that the Board had already allocated millions of dollars from the Emergency Fund balance for one priority, but was declining to allocate several hundred thousand dollars for another priority. These kinds of Emergency Board decisions, she noted, would become more and more frequent as the Legislature navigates its way through this time of economic uncertainty. She asked Board members to set aside politics and to consider what was best for Oregon. She said she supported bringing this proposal back in December, but cautioned everyone to keep the big picture in mind.

Senator Winters agreed with Representative Morgan. She said that people needed to come first in this state and that a small amount of funding could help a large number of individuals. She reminded the Board that some of the reductions that had been taken in the past had ended up costing the state much more later. She stated that the Legislature needed to make sure the most vulnerable citizens would be taken care of.

Senator Carter said that legislators had been working on this issue and that she wanted to allow staff to investigate the issues at hand. No one, she said, was trying to permanently take money off the table, but rather to give staff time to evaluate this matter and bring back the best information available. She said it was difficult not to give DHS the \$15 million they had requested to help rebalance their budget, but that the Board was attempting to take staff recommendations seriously. She reiterated that

this was not an attempt to take funding away, but instead, was a way to be prudent given the financial situation facing DHS.

The motion to table carried. Reps. Gilman, Jenson, and P. Smith and Sens. Whitsett and Winters voted no. Sens. Morse and Nelson excused.

## **11. Department of Human Services**

Senator Bates moved that the Emergency Board acknowledge receipt of a report on Type A and B hospital Medicaid reimbursement.

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

At the June 2008 meeting of the Emergency Board, the Department of Human Services (DHS) presented a report on Type A and B hospital Medicaid reimbursement, in response to a budget note that had been included in the 2007 budget report for the main DHS 2007-09 budget bill, HB 5031. The Emergency Board had questions about the report's recommendations and directed DHS to return to its September 2008 meeting with responses. The revised DHS report discusses the rationale of selecting a 5% operating margin as a standard for hospital financial health; the impact of payer mix on operating margins; and the limited ability of Type A and B hospitals to subsidize the cost of less profitable services with those that are more profitable.

The Subcommittee had a brief discussion of the report, noting that Type A and B hospital reimbursement was one topic of many that was part of health care reform efforts in Oregon. They thanked the DHS Office of Health Policy and Research for the report.

The Subcommittee recommended acknowledging receipt of the report.

The motion carried with no objection voiced. Sens. Morse, Nelson, and Winters excused.

## **12. Department of Human Services**

Senator Carter moved that the Emergency Board acknowledge receipt of a report on implementing the Oregon State Hospital's Continuous Improvement Plan and direct the Department of Human Services to present another update on the plan, including information on staff safety, workers' compensation costs, and efforts to improve hospital securing, during the December meeting of the Emergency Board.

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

In response to a federal Department of Justice review of the Oregon State Hospital, the Department of Human Services (DHS) developed a plan to improve the quality of care at the hospital. The plan called for more staff (211 positions), the improvement of patient treatment plans, and reductions to patient seclusion and restraint. The staff increase was funded with \$6.7 million General Fund during the February 2008 special session.

DHS has provided regular updates to the Emergency Board and other legislative committees on its plan implementation progress. At this meeting of the Emergency Board, DHS reported that it has made progress on most fronts: the hiring of new staff is ahead of schedule; a Master Treatment Care

Plan has been piloted; and hours of patient seclusion and restraint are well below their previous levels. Patient aggression towards staff is higher than it has been and hospital staff are taking steps to alleviate this trend.

The Subcommittee recommended acknowledging receipt of the report and directing DHS to update the Emergency Board at its December meeting on plan progress. The update should include information on staff safety, workers' compensation costs, and efforts to improve hospital security.

The motion carried with no objection voiced. Rep. Nathanson and Sens. Morse, Nelson, and Winters excused.

### **13. Department of Human Services**

Senator Carter moved that the Emergency Board acknowledge receipt of report on the fiscal status of Cascadia Behavioral Healthcare.

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

At the June meeting of the Emergency Board, the Department of Human Services (DHS) reported on the dire fiscal situation of Cascadia Behavioral Healthcare, a major provider of mental health services in Multnomah County. The Board directed DHS to report again at its September meeting. DHS reports that Cascadia, while still facing significant challenges, has improved its cash flow—by reducing costs and transferring some of its services to other non-profit agencies.

DHS believes the prospects for repayment of a \$1 million loan it made to Multnomah County for Cascadia's use, are good—but the repayment may not happen during the current biennium. DHS will continue to check Cascadia's progress to improve its financial health, and is implementing a plan to better monitor other providers with whom the Department contracts for services.

The Subcommittee recommended acknowledging receipt of the report.

The motion carried with no objection voiced. Sens. Nelson and Winters excused.

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

Representative Jenson moved that the Emergency Board acknowledge receipt of a report on the implementation of workload-based staffing models in the Children, Adults and Families Division of the Department of Human Services.

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

The 2003 Legislature directed a staffing study in the Department of Human Services (DHS), using \$151,383 General Fund from agency savings identified for reinvestment to support the agency's reorganization and matching Federal Funds. DHS contracted for a study of Food Stamps and Medicaid eligibility services, and Adult Protective Services. A second staffing study in the 2005-07 interim focused on staffing for the Temporary Assistance to Needy Families (TANF), Employment Related Day Care, Vocational Rehabilitation and Long Term Care Case Management programs. McKinsey & Company recently completed a third study on child welfare staffing. DHS reported to the Legislature during the February 2008 special session on the findings of that study.

Each study recommended DHS move to a workload-based staffing model, rather than a caseload-based staffing model. This means that staffing would be based on the time actually required to do the job, rather than on a set number of cases. The Children, Adults and Families Division (CAF) reported that it has updated the first study for its eligibility services staffing, and is updating the TANF case management staffing study to reflect the recent TANF program restructuring. McKinsey & Company developed a staffing model for child welfare that reflects current program and operations.

CAF has also focused attention on initiatives to improve its program operations and workflow in child welfare, self-sufficiency, and vocational rehabilitation services. It has developed a timeline for engaging its branch offices around these initiatives. When all the staffing models are completed and adjusted for any process improvements, DHS will need to compare current staffing with the new models.

Given the need to identify and implement process improvements before “costing” an updated workload model, and budget constraints in the agency overall, CAF does not expect to adjust its staffing levels during the 2007-09 biennium. The Subcommittee was advised that DHS’ 2009-11 agency request budget includes policy option packages for improved staffing, as shown below.

<b>Pkg No.</b>	<b>Program Area</b>	<b>General Fund</b>	<b>Federal Funds</b>	<b>Positions</b>	<b>FTE</b>
108	Self-Sufficiency	\$11.8 million	\$10.6 million	185	162.80
148	Child Welfare	\$31.4 million	\$31.2 million	439	386.32
168	Vocational Rehabilitation	\$ 2.9 million	--	22	19.36
	<b>CAF Total</b>	<b>\$46.1 million</b>	<b>\$41.8 million</b>	<b>646</b>	<b>568.48</b>

These packages are based on very preliminary estimates and will be revised as workload information is updated. The agency will provide more information on process improvements and its staffing needs to the 2009 Legislature. The Subcommittee urged CAF to consider the need for statewide consistency in applying program standards and policies as it addresses its staffing issues.

The Subcommittee recommended the Emergency Board acknowledge receipt of the report.

The motion carried with no objection voiced. Sens. Nelson and Winters excused.

## **15. Department of Human Services**

Senator Bates moved that the Emergency Board acknowledge receipt of a report on eligibility for children’s health coverage.

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

In response to a budget note supporting SB 5556 (2008), the Department of Human Services presented a report on the costs and benefits of extending Oregon Health Plan coverage to children eligible under the Poverty Level Medical category, from six months to 12 months. The report outlined the negative health effects from disruption in medical coverage for children: poorer medical care; less likelihood of maintaining a relationship with a primary care provider; and unmet medical needs that, if ignored for too long, develop into chronic conditions that can be more serious and costly to treat. Extending coverage for children covered under the state’s Medicaid program from six months to 12 would reduce these negative effects and increase enrollment.

The Governor supports this policy change and wants to implement the change beginning in January 2009. There is no additional cost during the 2007-09 biennium. OHP costs would be about \$8.9 million General Fund (\$24 million total funds) higher during the 2009-11 biennium.

The Subcommittee recommended acknowledging receipt of the report.

The motion carried with no objection voiced. Sens. Courtney, Nelson, and Winters excused.

## 16. Department of Justice

Representative D. Edwards moved that the Emergency Board increase the Other Funds expenditure limitation for the Department of Justice, established by section 2, chapter 728, Oregon Laws 2007 by \$143,333, and authorize the establishment of two limited duration positions (0.66 FTE) for the Regional Automated Information Network program.

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

The Regional Automated Information Network (RAIN) is a system that allows law enforcement staff to share investigative information by searching participating agencies' electronic databases of police reports using COPLINK, which has been described as a "super google" tool for law enforcement. RAIN was established in 1975 and there are currently 41 participating agencies. Members generally include law enforcement agencies in the Willamette Valley, but are also located in other areas of the state.

The RAIN Board approached the Department of Justice (DOJ) to take over operation of the RAIN system last spring based on DOJ's successful operation of the Oregon State Intelligence Network. The Board thought that DOJ's participation would increase the number of agencies using RAIN. After a "due diligence" review of the system, DOJ officials tentatively agreed to take over the operation of the RAIN system subject to Emergency Board approval. DOJ determined RAIN would complement its other law enforcement services and enhance police agencies' ability to solve crimes. As more law enforcement agencies become member agencies of the RAIN system, both its usefulness and long-term viability should increase.

Costs of the RAIN system are covered by fees paid by member agencies. As part of its review, DOJ staff explored the revenue stream and costs of RAIN and found the revenue stream from its fee revenues and reserves is sufficient operate the system and for start-up costs. Two limited duration positions are authorized to operate the system including maintaining the connections with the local agencies.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Courtney, Nelson, and Winters excused.

## 17. Department of Justice

Senator Whitsett moved that the Emergency Board increase the Other Funds expenditure limitation for the Department of Justice, established by section 2, chapter 728, Oregon Laws 2007, by

\$289,724, and authorized the establishment of three limited-duration positions (1.00 FTE) to open a Portland Oregon Fusion Center office.

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

The Fusion Center (also referred to as the Oregon Terrorism Intelligence Threat Assessment Network or TITAN) is a joint intelligence unit consisting of staff from various federal, state, and local law enforcement agencies including DOJ, Federal Bureau of Investigation (FBI), Bureau of Alcohol, Firearms and Tobacco (AFT), and the Oregon State Police. In addition, there is a TITAN Fusion Center Task Force, consisting of representatives of over 50 agencies, in place to disseminate and react to information collected and analyzed by the Center. In December 2007, the Emergency Board approved a \$343,595 increase in Other Funds expenditure limitation and the establishment of two positions to support a Salem area Fusion Center office and to provide training for law enforcement staff on terrorism related topics.

A second Fusion Center office in the Portland area was proposed to complement the existing Salem Office. The agency believes a Portland office is needed to work with the many law enforcement agencies in the urban area. Many of these agencies do not have systems in place for gathering possible terrorism information from their staff, and they do not have the expertise to provide training to their staffs. By having a Portland office, the Department of Justice (DOJ) states the Fusion Center staff will be readily available to work with law enforcement staff directly. In addition, the majority of critical infrastructure sites designated by state, local, and federal officials at greatest risk to terrorist acts are in the Portland area.

Funding for this request is from the federal Urban Area Security Initiative grant program distributed to address homeland security issues in urban areas across the nation, and there is no matching requirement. Most of the funds in this request are for the compensation of the three authorized research analysts or investigators. Given the importance of terrorism related efforts for public safety, the Emergency Board thought approval of this request is merited for 2009-11. As in the original Fusion Center request in December 2007, there was concern about the long-term availability of these federal grants to support the program beyond the 2007-09 biennium.

The Subcommittee recommended approval.

The following Committee discussion occurred:

Representative Shields expressed concern regarding the information collected through this and other programs and the access to the information.

The motion carried with no objection voiced. Sens. Nelson and Winters excused.

## **20. Department of State Police**

Representative Morgan moved that the Emergency Board acknowledge receipt of a report on the status of recruiting troopers and the diversity status of their trooper workforce.

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

During the 2008 special session, the Legislature approved funding for 39 additional trooper positions. As part of this action, the Legislature requested the Department of Administrative Services

to unschedule the \$485,223 General Fund for these 39 positions until the Oregon State Police (OSP) reported on the recruitment and hiring of the 100 new trooper positions authorized in the 2007 session. As of the date of the Emergency Board meeting, 98 new trooper positions had either been filled or offers been extended to recruits. The result of the successful recruitment efforts and fewer than expected trooper retirements is that the agency was actually ahead of the recruitment schedule assumed in the budget.

The agency did request the \$485,223 General Fund be rescheduled, but the Emergency Board delayed that decision until the December Emergency Board meeting when OSP is planning to present a rebalance plan. At that time the agency will have a better idea of its overall financial needs.

OSP reports that its trooper workforce exceeded the Governor's Affirmative Action Office's goals for specific minority populations, but lagged behind in the goal for gender. The agency has developed a long range strategy for increasing the recruitment of females and minorities through targeted audiences and applicant pools.

The Subcommittee recommended acknowledging receipt of the report.

The motion carried with no objection voiced. Sens. Nelson and Winters excused.

## **21. Department of State Police**

Representative Nathanson moved that the Emergency Board increase the Other Funds Capital Construction expenditure limitation, established for the Department of State Police by section 1(7), chapter 742, Oregon Laws 2007, Oregon Wireless Interoperability Network, by \$76,000,000, with the understanding that the Department of Administrative Services will unschedule \$49,500,000 of the limitation increase until the Department of State Police demonstrates significant progress in meeting the recommendations on project management, quality assurance, and project governance.

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

The Oregon Wireless Interoperability Network project, or OWIN, was created to replace aging state wireless communications systems, meet the federal deadline of 2013 to convert the wireless systems from "wideband" to "narrowband" frequencies, and to meet the requirements of HB 2101 that passed during the 2005 legislative session. During the 2008 special session, the Legislature authorized \$76 million of Certificates of Participation for Phase 1 of OWIN, but did not provide the corresponding expenditure limitation. A request was made at the June Emergency Board meeting for the limitation, but it was not approved over concerns about a contracting decision made by the project and overall project planning and management capacity.

The Emergency Board at its June meeting heard testimony regarding the selection of a specific vendor for microwave equipment. A competing vendor raised concerns on whether they could provide a similar product at a lower price, and whether the procurement process planned was the proper choice. The OWIN staff plans to use the Western States Contracting Alliance (WSCA) contracts, which is a list of approved contractors who meet certain specifications in a variety of product and service categories including communications equipment and installation services. A formal Request for Proposal (RFP) process is used to establish the approved list. The Subcommittee briefly discussed this issue centering on three basic concerns: (1) whether the decisions made by OWIN staff in selecting the vendor was based on a set of standards that meet the needs of the project; (2) whether the WSCA procurement process planned to be used by OWIN is proper; and (3) what the costs and other issues

are if OWIN changes its decision on using another or multiple microwave systems. Based on the findings of the Legislative Fiscal Office (LFO) staff, the Subcommittee found that the project satisfactorily addressed these questions.

A number of members expressed concern during the June Emergency Board meeting that they were not certain if the OWIN project had sufficient planning to that point to move ahead with the project. Another concern was whether the OWIN project had sufficient project management capacity for the next phases of the project including construction. Subcommittee members were generally supportive of the progress the project staff had made since the June meeting in planning for the project. There was still concern about the overall project management capacity within the current project staff. LFO staff reported on its analysis of this capacity and cited a number of recommendations including the need for establishing a dedicated project management office in the near future as well as getting an independent quality assurance contractor on board to monitor the project. In addition, there was discussion of the need for a project charter, detailed project plan, a risk management and mitigation plan, an analysis of best practices and lessons learned from similar projects in other states, and cost estimates that reflect the total costs of ownership over an extended period time. Much of this information has been or is in the process of being developed, but needs to be brought together under industry recognized project management standards.

There was also discussion on the need for a formal governance structure including a steering committee made up of member agency directors and representatives of local government. The purpose of the committee would be to provide overall program direction to the project director and staff, project oversight, and decision making responsibility for major decisions regarding program direction and budget. Just as important is that the project governance structure must be used throughout the life of the project. Subcommittee members also felt that legislators and legislative staff should participate in the steering committee activities. It was also noted that the legislative workgroup created to review the OWIN project should continue in the future.

The decision by the Emergency Board was based on the need to continue the project to meet the business case and sustain local partnerships that have been developed while insuring the project has the necessary tools and capacity to manage a project of this size. The specific recommendations and decisions by the Emergency Board outlined above are to strengthen the project, potentially to reduce costs in the long-term, and to minimize the risk of problems that often happen with large scale projects. The OWIN project staff was instructed to report its progress on meeting issues outlined above to the Emergency Board at its December meeting and to the Joint Committee on Ways and Means early in the 2009 session. In addition, the project staff should provide on-going and regular updates to all legislators in the future.

The following Committee discussion occurred:

Representative Nathanson outlined reasons for her motion and the project by rhetorically asking three questions – (1) is the project needed; (2) is the projected need now based on federal funding and deadlines; and (3) is the project the right approach?

Senators Carter and Whitsett expressed their concerns about the process used for purchasing microwave equipment.

Representative D. Edwards stated that the project is vital and he urged the project staff to contract with an outside project management consultant.

The motion carried. Sen. Carter voted no. Sens. Nelson and Winters excused.

## 22. Board of Parole and Post-Prison Supervision

Representative D. Edwards moved that the Emergency Board allocate \$210,329 from the Emergency Fund, established by section 1, chapter 910, Oregon Laws 2007, to supplement the appropriation made to the Board of Parole and Post-Prison Supervision by section 1, chapter 20, Oregon Laws 2007, to fill a deficit in the agency's budget primarily due to Attorney General-related costs and Professional Services costs.

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

The Attorney General and Professional Services costs for the Board of Parole and Post-Prison Supervision represent over 75% of the entire agency's anticipated 2007-09 Services and Supplies spending, a share much larger than almost any other state agency. The Board has very little control over the amount of Attorney General services it requires since almost all costs relate to challenges to the Board's decisions from offenders under the Board's supervision. The Department of Correction's inmate population has risen by thousands over the past decade, and current trends in the demand for legal services by the Board are continuing as this population grows. Professional Services spending faces the same issue since these costs are almost entirely for services provided by psychologists, translators, and transcribers; all dependent on the cases brought forward to the Board.

The agency requested the Emergency Board allocation after it identified and utilized all available workload efficiencies and was unable to realize any surplus funds due to vacancy savings and other actions within its budget to offset the need for the additional General Fund.

The following Committee discussion occurred.

Senator Morse asked whether all alternatives had been explored to fill this deficit.

Legislative Fiscal Office staff responded that the Board had explored the options but unfortunately could not find resources to address the deficit.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## 23. Military Department

Senator Johnson moved that the Emergency Board increase the Other Funds expenditure limitation for the Military Department established by section 2(5), chapter 747, Oregon Laws 2007, Emergency Management, by \$10,000,000 for 9-1-1 distributions to local governments.

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

The transition of the Office of Emergency Management (OEM) from the Oregon State Police to the Military Department occurred at the beginning of the current biennium. The transfer of the Emergency Communications Account between the agencies required the Military Department to undertake two actions unanticipated in the Department's budget. These actions were: (1) upon transfer of the 9-1-1 program and revenue, the Military Department was required to make two quarterly distributions that were in arrears. These distributions totaled \$12.8 million and were related

to the last two quarterly distributions for the prior 2005-07 biennium; and (2) in October of 2007, the State Police finished the accounting close-out of the Emergency Communications Account and transferred the \$4.8 million ending account balance to Military, which was distributed. These two events result in distributions totaling \$17.6 million.

In addition, there are three Other Funds expenditure limitation deficits in the 9-1-1 program: (1) the Department is projecting total expenditures from the Enhanced 9-1-1 subaccount of \$26.5 million, which is \$8.3 million above the budgeted Other Funds limitation for this expense; (2) the Department has unbudgeted expenditures for the payments it makes to the Department of Public Safety Standards and Training (this amount is \$437,759 per biennium); and (3) the Department's projections reveal that the Other Funds limitation associated with the Office of Emergency Management administration the 9-1-1 program is in deficit by an additional \$286,927.

In total, the Department's Other Fund expenditure limitation deficit totals \$26.6 million and represents over a 35% increase to the budget.

The recommended \$10 million increase is sufficient to ensure uninterrupted quarterly distributions to local governments through the first quarter of 2009 and meet monthly expenses associated with the Enhanced 9-1-1 subaccount. Once the Department completes a thorough analysis and reconciliation of all accounts and subaccounts, it may need to seek an additional limitation increase during the 2009 session.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## **24. Military Department**

Senator Johnson moved that the Emergency Board establish a Federal Funds Capital Improvement expenditure limitation for the Military Department in the amount of \$200,000 and increase the Federal Funds expenditure limitation for the Military Department established by section 3(2), chapter 747, Oregon Laws 2007, Community Support, by \$50,000 for the Oregon Youth Challenge Program.

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

The Oregon Youth Challenge Program requires funding to retrofit a Heating, Ventilation, and Air Conditioning system at its Bend, Oregon location. The cost of the retrofit is \$475,500, which exceeds the legislatively adopted budget of \$245,000 General Fund for such purposes by \$230,500. To bridge this gap, the Program has acquired a federal match of \$200,000 and will then use \$30,500 of existing Capital Improvement General Fund resources.

The Program also requested \$50,000 in Federal Funds expenditure limitation for Program staff to attend national training events and conferences.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## 25. Military Department

Representative Shields moved that the Emergency Board increase the Other Funds Capital Construction expenditure limitation for the Military Department established by section 1(9)(a), chapter 742, Oregon Laws 2007, Ontario Readiness Center, by \$323,212 by transferring \$155,554 Other Funds Capital Construction expenditure limitation established by section 1(4), chapter 623, Oregon Laws 2003, Oregon Military Department, Lane County Armed Forces Reserve Center Complex and transferring \$167,658 Other Funds Capital Construction expenditure limitation established by the Emergency Board at its June 2006 meeting for the Military Department, Baker City Readiness Project to the Ontario Readiness Center Other Funds Capital Construction expenditure limitation for solar energy investments.

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

Public contracting statutes, amended by the 2007 Legislature, require state agencies to expend at least 1.5% of the total construction contract price on solar energy technology. The Department has chosen to consolidate its 1.5% solar requirement for the Salem Army Aviation Support Facility and the Ontario Readiness Center Project into a single expenditure of \$323,212 at the Ontario project.

The Department has data that shows a combined solar investment at the Ontario Project is a better investment for three reasons: (a) the environmental conditions for the Ontario Readiness Center is more conducive to solar energy production (by about 23.5%); (b) adding solar panels will increase the energy savings at the facility; and (c) the initial investment in electrical switching gear becomes more cost-effective as solar panels are added. Construction of the Ontario installation has yet to commence so the project can be modified to accommodate the added requirement.

The Department will fund this requirement out of its Other Funds Capital Construction Account by using savings from its Baker Readiness Center and Lane County Armed Forces Reserve Center projects. The Department reports this action will not adversely impact either project.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## 26. Military Department

Representative Morgan moved that the Emergency Board establish an Other Funds Capital Construction expenditure limitation for the Military Department for the 2007-09 biennium of \$1,067,500 by transferring \$1,067,500 Other Funds Capital Construction expenditure limitation established by section 1(9)(f), chapter 742, Oregon Laws 2007, Gresham Armory Addition/Alteration to the newly established expenditure limitation for the purchase of an office building and 0.23 acres of real property in Gresham, Oregon.

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

The Department became aware of a private office building that is being offered for sale adjacent to the Armory compound. The 6,552 square foot office building is located on property

contiguous to the Gresham Armory Compound. The office building has recently been appraised for \$1,014,000. The owner will sell the building at the appraised price if the Department agrees to pay closing costs, which are estimated at \$3,500. The office building would be used exclusively for military use. The Department requires approximately \$50,000 for move-in costs. These costs would be for the installation of telecommunications/data lines throughout the facility, carpeting for the upper floor, systems furniture, security, and signage. This would be matched with an identical amount of Federal Funds. Additional federal funding beyond this match could also be available.

The Department proposed to use existing Other Funds Capital Construction expenditure limitation with certificates of participation (COP) from the Gresham Armory Addition/Alteration project to fund the purchase. The Department of Administrative Services, Capital Investment Section has stated that altering the use of COP revenue from construction to acquisition is a permissible use as long as the purchase is permissible under tax code and COP statutes.

According to the Department, the acquisition of the office building would reduce the scope of the planned addition to the Gresham Armory Addition/Alteration project approved by the 2007 Legislature by \$1,209,211 and eliminate adding a second floor to the Armory. The Department will modify its plans to update the Armory and use the \$2.3 million balance of the original \$3.3 million limitation to complete the addition/alteration project. The Department notes, even with the savings associated with this request, yet-to-be received Armory bid costs could exceed this amount and require additional funding in the future.

If this recommendation is approved, the Capital Construction expenditure limitation established by the Emergency Board will expire at the end of the current biennium and will not extend the normal six year timeframe for a Capital Construction project. There should be, however, sufficient time for the Department to close on the building purchase, if the purchase is approved by the Emergency Board.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## **27. Criminal Justice Commission**

Representative Shields moved that the Emergency Board increase the Federal Funds expenditure limitation for the Criminal Justice Commission established by section 3, chapter 726, Oregon Laws 2007, by \$74,970 for a grant from the U.S. Department of Justice for a cost-benefit analysis of drug courts.

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

The Criminal Justice Commission (CJC) received a \$199,920 federal grant from the U.S. Department of Justice for the evaluation of drug courts in Oregon. The Commission gained legislative approval to apply for the grant in January 2008 and will use existing staff costs to meet the grant's 25% matching requirement.

These grants funds will be used as part of a larger CJC cost-benefit study of drug courts statewide. This statewide study includes identifying 4,000 drug court participants (2001-2006) and comparing their recidivism rates with offenders with similar characteristics who did not participate in drug courts. This analysis of the 4,000 participants provides information for the benefit side of the

equation including the avoided costs to taxpayers and victims. These specific grant funds in this request will be used to examine the cost side of drug courts which are funded from a variety of state and local sources. The costs of the District Attorney offices, defense attorneys, parole and probation programs, courts, substance abuse treatment providers, jails, and others will be compared between drug court participants and the other offenders. The CJC plans to contract with an outside research firm to complete much of the work funded with these grant funds. Costs of five existing drug courts in Oregon will be evaluated.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## **28. Criminal Justice Commission**

Representative Shields moved that the Emergency Board increase the Other Funds expenditure limitation for the Criminal Justice Commission established by section 2, chapter 726, Oregon Laws 2007, by \$113,728 to support activities relating to asset forfeiture, with the understanding the Department of Administrative Services will unschedule \$60,000 of the amount until the cost of the proposed electronic filing system is known.

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

The Criminal Justice Commission (CJC) anticipates significant increases in its workload relating to asset forfeiture resulting from the passage of Ballot Measure 53 in May 2008. The use of civil forfeiture by law enforcement agencies had been curtailed by the voters in 2000, but Ballot Measure 53 opens the doors to these agencies by making civil forfeiture a viable tool to provide resources for law enforcement and other activities. Under Ballot Measure 53 and HB 3457 (2005), resources resulting from civil forfeitures by local government agencies is distributed as follows: 10% to the Commission to Children and Families for relief nurseries; 20% to the CJC for drug courts; another 2.5% to CJC for monitoring and oversight; 5% for the Illegal Drug Clean-up Fund; and the remaining 62.5% to local law enforcement agencies for equipment, cash for undercover “buys,” drug awareness programs in schools, and administrative expenses. The Commission is responsible for providing oversight, data collection, and training relating to civil forfeiture through the Asset Forfeiture Oversight Advisory Committee and Commission staff.

The Commission plans to use the increased spending authority to provide training to increase the local expertise and knowledge relating to civil forfeiture, to cover the additional costs of the Asset Forfeiture Oversight Advisory Committee as it increases its oversight functions, and to provide the funding for a portion of an existing position. The largest item is the creation of an electronic filing system for forfeitures to replace the current paper based process which is cumbersome and results in errors. Since the actual cost of creating this proposed system is unknown, the increase in limitation is made with the understanding the Department of Administrative Services will unschedule \$60,000 of the increase until the cost of the system is known. There are sufficient current and projected Asset Forfeiture resources to pay for these anticipated costs.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## 29. Department of Corrections and Department of Human Services

Senator Schrader moved that the Emergency Board acknowledge receipt of a report on the construction of a new prison and a new state hospital facility near Junction City, and request the Department of Administrative Services to reschedule \$6.5 million in Department of Correction's Other Funds Capital Construction expenditure limitation.

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

The Joint Committee on Ways and Means during the 2007 legislative session required the Departments of Corrections and Human Services to report to the Emergency Board on joint efforts of the agencies in constructing a new prison and new state hospital on the same property in Junction City. A 1,800 bed minimum and medium security prison is scheduled to open in the fall of 2012, and a 360 bed state hospital facility is scheduled to open in the fall of 2013.

The report outlined the joint planning and development activities for the two facilities including sewer and water related infrastructure, traffic and road improvements, a joint heating and cooling plant, wetland mitigation, and a joint laundry and warehousing operation. Based on what are rough estimates at the time, the two agencies identified \$31 million in potential savings compared to two projects being developed separately.

The Subcommittee recommended acknowledging receipt of the report and requesting the Department of Administrative Services to reschedule the \$6.5 million that had been unscheduled until this report was completed and presented.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Bates, Nelson, and Winters excused.

## 30. Department of Corrections

Representative Morgan moved that the Emergency Board acknowledge receipt of the Department of Correction's rebalance plan for 2007-09, authorize transfers of General Fund appropriations between the Department's divisions, increase Other Funds expenditure limitations by a total of \$1,183,820, authorize the establishment of an Other Funds expenditure limitation for Debt Service of \$3,549,487, and increase the Federal Funds expenditure limitation by \$7,106,216 per the attached schedule, with the understanding the Department of Administrative Services will unschedule \$5,000,000 of the Federal Funds limitation increase until receipt of further State Criminal Alien Assistance Program funds.

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

The Department of Corrections presented a rebalance plan which requires no additional General Fund resources at this time. Health care costs were the most significant problem requiring \$15.4 million more than what is currently budgeted. The primary factor for this deficit is the increasing costs of health care services provided in the community. These are generally more specialized services not provided by agency health care staff. The \$15.4 million deficit also included \$1.1 million in greater than budgeted pharmacy costs.

Other major financial problems addressed in the rebalance plan include under-funding of employee compensation costs, overtime and differential costs, State Data Center assessments, and fuel costs. Identified savings offset these increased costs including over \$20 million realized by delaying the opening of the medium security facility at Madras. This was possible based on updated forecasts and by accelerating the opening of more minimum security units. Other savings included reductions equal to 2% of each division's budgets, and identification of funds in capital construction accounts no longer required which can offset General Fund debt service costs. The agency also received \$2.1 million in State Criminal Alien Assistance Program federal funds which can replace General Fund resources. The agency may receive up to another \$5 million of this funding this biennium, and if it does, the Emergency Board recommended that the Department of Administrative Services unschedule an equal amount of General Fund.

This rebalance plan only addressed the issues as identified at this point of the biennium. With almost half of the biennium remaining, a number of factors could significantly change the Department's financial status. These include passage of specific ballot measures, impact of the current hiring freeze, and future health care costs.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Nelson and Winters excused.

### **31. Department of Veterans' Affairs**

Senator Westlund moved that the Emergency Board allocate \$70,000 from the Emergency Fund established by section 1, chapter 910, Oregon Laws 2007, to supplement the appropriation made to the Department of Veterans' Affairs by section 1(1), chapter 138, Oregon Laws 2007, services provided by the Department of Veterans' Affairs, to provide educational aid to veterans.

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

The Oregon Department of Veterans' Affairs (ODVA) has long administered an educational aid program for veterans. Prior to 2005, that aid was limited to \$50 per month for eligible veterans attending post-secondary school full-time. In 2005, the monthly amount was raised to \$150. In 2007, eligible veterans attending post-secondary school part-time became eligible for \$100 per month under the program. Included in the Department's 2007-09 General Fund budget was \$96,230 for the educational aid program. That amount has now been spent and the Department requested \$100,000 to continue to pay educational aid through the end of the biennium.

During the 2003-05 biennium, educational aid payments amounted to less than \$22,000. The 2005-07 biennium saw the educational aid payments increase to \$69,200. The Legislature increased the Department's 2007-09 budget significantly to the \$96,230 level when it expanded eligibility to part-time students. Making part-time students eligible for aid is not the only reason for the increased aid. Demand for aid from full-time students has mushroomed and full-time students outnumber part-timers 3 to 1. The Department has not pinpointed a cause for this explosive growth in demand, but believes it stems from increased knowledge about the program and changing economic conditions.

The Department has limited General Fund money and its appropriations are strictly controlled, giving the Department little ability to move funding to cover a shortfall. However, the Department has accrued approximately \$30,000 General Fund savings in Personal Services that it feels can be used to

partially fund the shortfall. The Department has confirmed it will transfer the \$30,000 savings to the educational aid program leaving the actual projected need at \$70,000.

The Subcommittee recommended that the Emergency Board allocate \$70,000 from the Emergency Fund so that the Department may continue to make educational aid payments to qualified veterans.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Nelson and Winters excused.

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

Representative Nathanson moved that the Emergency Board increase the Other Funds expenditure limitation established for the Economic and Community Development Department by section 2(2), chapter 760, Oregon Laws 2007, Oregon Community Development Fund, by \$9,800,000, for purposes of responding to increased disbursement requests from the Safe Drinking Water Revolving Loan Fund from communities undertaking drinking water system infrastructure improvements, with the understanding that the Department of Administrative Services will unschedule the expenditure limitation increase pending actual disbursement needs.

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

The Safe Drinking Water Revolving Loan Fund (SDWRLF) program provides low-interest rate loans to help community water systems comply with federal and state safe drinking water standards. The loans are funded through a federal/state partnership. The amount of federal monies that the Department can disburse is limited by the agency's Other Funds expenditure limitation.

The Subcommittee recommended increasing this expenditure limitation to meet the current projection for 2007-09 biennium Safe Drinking Water Revolving Loan Fund disbursement requests. The expenditure limitation increase will permit a total of \$32.1 million of federal monies to be spent on SDWRLF loan disbursement requests this biennium.

Because the total amount of loan disbursements remains uncertain, the Subcommittee recommended that the Emergency Board approve the Other Funds expenditure limitation increase with the understanding that the Department of Administrative Services will unschedule the limitation increase, pending the need to reschedule it for loan disbursements.

The Subcommittee recommended approval of the Legislative Fiscal Office recommendation.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Nelson and Winters excused.

### **33. Department of Environmental Quality**

Senator Morse moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Environmental Quality by section 2(3), chapter 712, Oregon Laws 2007, Land Quality, by \$929,000 to implement the statewide electronic waste recycling program.

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

The Oregon Assembly passed HB 2626 (chapter 302, Oregon Laws 2007) which required the Department of Environmental Quality (DEQ) to implement a statewide electronic waste recycling program by January 1, 2009. The law requires manufacturers of specified electronic devices (including primarily computers, computer monitors, and televisions) to either participate in a statewide collection and recycling program administered by DEQ through a contractor or pay for their own comparable recycling program. The Department's contractor program must meet requirements set out in the law, including providing statewide collection, using environmentally sound management practices, transportation of waste, and recycling of collected waste.

At the time the bill passed there was considerable uncertainty about how much Other Funds expenditure limitation DEQ would need for the contractor program. Since passage of the bill, DEQ has worked with producers and others to refine their estimate of funding needs for the new program. Recycling fees from participating manufacturers based on the manufacturers' share of recycled materials will finance the state contractor program. The fees are to be set using estimated costs and are to be adjusted when actual costs, as well as each manufacturers' share of recycled waste, is known.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Rep. P. Smith and Sens. Nelson and Winters excused.

#### **34. Department of Agriculture**

Senator Johnson moved that the Emergency Board allocate \$95,600 from the Emergency Fund established by section 1, chapter 910, Oregon Laws 2007, to supplement the appropriation made to the Department of Agriculture by section 1(3), chapter 710, Oregon Laws 2007, Natural Resources, for a privately owned shellfish hatchery in Netarts Bay to assist with recovery of shellfish larvae and seed production after a bacteria infestation and changing ocean conditions disrupted production.

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

The Oregon Department of Agriculture (ODA) sought \$95,600 from the Emergency Fund to assist the privately owned and operated Whiskey Creek Shellfish Hatchery with resumption of normal business operations following a bacteria outbreak eight months ago that has prevented the business from rearing any significant amounts of marketable shellfish larvae or seeds. Since that time another problem has emerged. Ocean conditions in the area have changed and pH levels have risen dramatically causing additional problems at the facility due to the acidity of the water. The hatchery supplies shellfish eggs and larvae to independent shellfish producers on the west coast. The Department reports that there is no evidence that the state caused the introduction of the bacteria into the facility.

The business operators have been working with scientists at Oregon State University (OSU) Coastal Oregon Marine Experiment Station on methods to protect the hatchery's ocean water intake from the bacteria and address rising pH levels. The total cost to complete this project is estimated at \$556,200. Of this project total, the company will provide \$200,000, the Regional Investment Board will provide \$50,000, other contributions by partners including OSU have provided \$115,000, and the Strategic Reserve Fund would provide \$95,600. The Emergency Board was asked to pay the remaining \$95,600.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Nelson and Winters excused.

### **35. Department of Agriculture**

Representative Nolan moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Agriculture by section 2(3), chapter 710, Oregon Laws 2007, Natural Resources, by \$350,000 to develop a business plan for building a facility to use ryegrass straw as a renewable energy resource.

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

The Oregon Department of Agriculture (ODA) was asked by the House Committee on Agriculture and Natural Resources to request \$350,000 from the Emergency Fund to pay for development of a business plan to construct a renewable energy facility that would use ryegrass straw as a fuel source. This would provide an alternative use for straw that is currently burned as part of grass seed production.

The Department of Agriculture reports that the creation of a business plan is the next step in this process. A business plan is required in order to find a project developer and financing for the energy project. ODA requested funding from the Emergency Board to prepare this business plan. If funding is provided, the Department reports the business plan would be completed by approximately March 2009. Total project costs are estimated to likely exceed \$10 million. Funding for the actual project is envisioned to be provided by private companies, but would almost certainly require extensive use of market incentives such as tax credits to be profitable.

The Subcommittee expressed concerns over the original funding request given current economic conditions. Because of this, the Subcommittee approved an Other Funds expenditure limitation so the Department could use moneys from the Field Burning Research Fund or other sources such as gifts, grants, or donations.

The motion carried. Sen. Whitsett voted no. Sens. Nelson and Winters excused.

### **36. Department of Agriculture**

Representative Nolan moved that the Emergency Board increase the Federal Funds expenditure limitation established for the Department of Agriculture by section 4(2), chapter 710, Oregon Laws 2007, Natural Resources, by \$250,000 to eradicate and contain Sudden Oak Death disease and increase the Federal Funds expenditure limitation established for the Department of Agriculture by section 4(3), chapter 710, Oregon Laws 2007, Agricultural Development, by \$478,631 to accommodate federal funding for specialty crops promotion activities.

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

The Oregon Department of Agriculture requested an increase in its Federal Funds expenditure limitation by \$478,631 to spend on specialty crop assistance and promotion activities during the 2007-09 biennium. Specialty crops are defined by the U.S. Department of Agriculture as fruits, vegetables,

tree nuts, dried fruits, and nursery crops. The Department will use some of the funds to make grants for marketing activities promoting specialty crops.

After submitting the request letter, the Department was informed of the availability of an additional \$250,000 in Federal Funds to combat Sudden Oak Death outbreaks in Oregon. At its June 2008 meeting, the Emergency Board allocated \$427,500 General Fund to continue SOD eradication efforts with instructions to the Department and the Department of Forestry to continue to aggressively pursue additional federal monies.

The Subcommittee approved the request.

The motion carried with no objection voiced. Sens. Nelson and Winters excused.

### **37. Parks and Recreation Department**

Representative Galizio moved that the Emergency Board approve, retroactively, the submission of a federal grant application for \$3,000,000 to the National Oceanic and Atmospheric Administration (NOAA) under the Coastal and Estuarine Land Conservation Program (CELCP) for the acquisition of 1,695 acres near Ona Beach State Park and Beaver Creek State Natural Area properties in Lincoln County.

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

The Parks and Recreation Department (OPRD) legislatively approved budget includes funding for land acquisitions for the preservation of an area of outstanding natural, scenic, or historical value and recreational enjoyment. The National Oceanic and Atmospheric Administration (NOAA) solicited Coastal and Estuarine Land Conservation Program (CELCP) acquisition projects from eligible coastal states. OPRD previously acquired 318 acres along Beaver Creek and conservation easements (25 acres) for two additional parcels utilizing a similar grant program of NOAA. OPRD proposed to purchase an additional 1,695 acres from four property owners. The acquisition grant requires a 50% match which will come from OPRD's Property Acquisition Program funded by Lottery Funds in the amount of \$2,025,000 and \$975,000 of in-kind match in the form of the 343 acre parcel and conservation easements previously acquired.

The Subcommittee recommended approval.

The following Committee discussion occurred:

Representative Morgan noted that there are five proposals for land acquisitions on the current Emergency Board agenda. The total amount of land that is under discussion is over 3,600 acres with the total amount of money to change hands totaling over \$11 million. Representative Morgan noted that this land is a very important component of the productive land base in the rural parts of the state and that transferring this land into public ownership takes away from what is already a limited source available for future economic development in the state. Representative Morgan also noted over half the land in the state is already off the tax rolls and in public ownership, and, since property taxes are the major funders for local jurisdictions, she will be objecting to this request.

The motion carried. Reps. Jenson, Morgan, and P. Smith and Sen. Whitsett voted no. Sens. Nelson, Westlund, and Winters excused.

### 38. Parks and Recreation Department

Representative Galizio moved that the Emergency Board approve, retroactively, the submission of federal grant applications to the National Oceanic and Atmospheric Administration (NOAA) under the Coastal and Estuarine Land Conservation Program (CELCP) for \$2,000,000 and to the U.S. Fish and Wildlife Service (USFWS) under the Cooperative Endangered Species Conservation Fund (CESCF) grant program in the amount of \$1,007,000 for the acquisition of 193 acres in Lane County on behalf of The Nature Conservancy for the protection of the Oregon silverspot butterfly (*Speyeria zerene hippolyta*), coho salmon, and marbled murrelet.

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

The Nature Conservancy (TNC) asked the Oregon Parks and Recreation Department (OPRD) and the Department of State Lands (DSL) to act as the state recipient agencies for CELCP and CESCF grant proposals for acquisition of 193 acres on Big Creek in Lane County to protect and enhance the populations of Oregon silverspot butterfly (*Speyeria zerene hippolyta*), coho salmon, and marbled murrelet. If both grant applications are successful, only one grant would be accepted. The CELCP grant is the preferred funding mechanism.

The Big Creek property is surrounded by public lands which include the Siuslaw National Forest and Carl G. Washburne Memorial State Park. TNC has proposed a partnership with the U.S. Forest Service, OPRD, and the Oregon Watershed Enhancement Board to put the Big Creek property into long-term conservation ownership due to its high ecological diversity, federally listed threatened and endangered species relying on the property, and other ecological connections to the property by nearby habitats. OPRD and DSL requested retroactive authorization to apply for federal grants that would help acquire the same property. By both agencies applying for grant funds from two different grantors, Oregon increases its chances to receive funding to acquire the desired land. If both applications are successful, only one would be accepted by the state.

The Subcommittee recommended approval.

The following Committee discussion occurred:

Senator Whitsett reiterated Representative Morgan's general comments on transferring private lands into public ownership from Item #37 and pointed out that, while the existing property taxes on this particular property are \$13,000, the current owner planned to build a destination resort and up to 11 home sites that would generate considerably more property taxes for the local jurisdiction. Senator Whitsett also stated that while the analysis is technically correct, a tax analysis would show a much higher return for the economy and local jurisdictions. By taking these properties out of private sector ownership and putting them into the public sector the land is removed from future economic development.

The motion carried. Reps. Jenson, Morgan, and P. Smith and Sen. Whitsett voted no. Sens. Nelson, Westlund, and Winters excused.

### 39. Department of Geology and Mineral Industries

Representative Galizio moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Geology and Mineral Industries by section 2, chapter 76, Oregon Laws 2007, by \$1,645,785 to support activities relating to geologic survey mapping, seismic monitoring, and operational activities in the Mined Land Regulation and Reclamation program.

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

The Department of Geology and Mineral Industries (DOGAMI) requested an increase in Other Funds expenditure limitation to cover geologic survey data collection, seismic instruments, and Mined Land Regulation and Reclamation Program operation expenditures. The 2007-09 legislatively adopted budget (LAB) included \$3.1 million for Light Detection and Ranging (LIDAR) mapping; \$1.5 million of this total was Other Funds limitation for partner funded LIDAR projects. The Department has been more successful than anticipated at finding funding partners, so an additional \$1,291,534 in Other Funds limitation was requested to implement projects scheduled to be completed in the 2007-09 biennium. Local businesses pay monies to DOGAMI's Strong Motion Instrument Fund instead of purchasing their own seismic monitoring equipment. Funds collected are used to expand the network of monitoring equipment. The request included \$77,100 in Other Funds limitation to purchase such equipment. Finally, a package in the 2007-09 LAB) shifted a portion of funding in the Mined Land Reclamation Program from Federal Funds to Other Funds. The execution of this shift resulted in an unintentional decrease in Services and Supplies funding, so an additional \$277,151 in Other Funds limitation was included to cover operational expenditures through the end of the biennium.

The Department plans to use additional Other Funds limitation to greatly expand the state's LIDAR mapping inventory; use accumulated funds in the Strong Motion Instrument Fund to purchase equipment to strengthen Oregon's seismic monitoring network; and to correct an unintended operational expenditure limitation shortfall that resulted from a technical adjustment made in the 2007 legislatively adopted budget.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

### 40. Military Department and Department of Forestry

Senator Schrader moved that the Emergency Board direct the Department of Forestry to use \$99,968 existing Federal Funds expenditure limitation from a \$400,000 U.S. Forest Service payment for reimbursement of National Guard training expenses; transfer the remaining \$300,032 of the federal payment to the Military Department, increase the Other Funds expenditure limitation established for the Military Department by section 2(3), chapter 747, Oregon Laws 2007, Community Support, by \$300,032; and transfer \$298,075 General Fund from the appropriation made to the Military Department by section 1(5), chapter 747, Oregon Laws 2007, Emergency Management, as modified by section 49(1), chapter 16, Oregon Laws 2008, Oregon Local Disaster Assistance Loan Account to the appropriation made to the Military Department by section 1(3), chapter 747, Oregon Laws 2007, Community Support, for National Guard fire fighting training expenses.

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

During the last week of June 2008, the Governor directed the Military Department and the Department of Forestry to train National Guard soldiers and airmen for wildland fire suppression. This effort was undertaken due to a significant draw-down of private wildland firefighter crews available for firefighting in Oregon. The soldiers and airmen trained this past summer have yet to be activated and deployed to a wildfire.

The Subcommittee acknowledged that the Executive Branch acted prudently given the threat of wildfire. There was discussion, however, about the fact that the Executive Branch committed General Fund for emergency purposes in absence of an emergency declaration and in advance of official legislative approval by Emergency Board action.

The Subcommittee's recommendation was for the Department of Forestry, which has existing Federal Funds expenditure limitation, to use \$99,986 of the \$400,000 U.S. Forest Service payment to reimburse its own National Guard training expenses. The Department of Forestry is then to transfer the remaining \$300,032 Federal Funds to the Military Department in partial payment for its \$598,107 expense. The Military Department's remaining \$298,075 expense is to be funded out of an existing \$500,000 General Fund appropriation that the Department received during the 2008 special session for the Oregon Local Disaster Assistance Loan Account. No expenditures have been made out of this Account to date.

The Subcommittee also discussed the importance of the Oregon Local Disaster Assistance Loan Account in providing disaster assistance loans for local governments needing temporary help meeting Federal Emergency Management Agency (FEMA) matching funds requirements.

This recommendation will fund all of the expenses of both the Department of Forestry and the Military Department. The \$201,925 balance of the appropriation in the Oregon Local Disaster Assistance Loan Account remains available for its original purpose, disaster assistance loans for local governments needing temporary help meeting Federal Emergency Management Agency matching funds requirements.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

## **42. Department of Energy**

Representative D. Edwards moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Energy by section 2, chapter 139, Oregon Laws 2007, by \$140,943 and authorized the establishment of three limited duration positions (0.99 FTE) to address increased activity in the Business Energy Tax Credit (BETC) program.

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

During the 2007 regular session, the Legislature increased tax credits available to individuals and businesses who undertake approved energy improvements. The cap on the tax credit available to businesses was increased from \$10 million to \$20 million. In the February 2008 special session, the cap for certain manufacturing facilities was increased to \$40 million. Although the Department claimed in information provided for the original fiscal impact statement on the Business Energy Tax Credit (BETC) program that it could absorb the workload increases due to additional positions being provided in the agency's 2007-09 legislatively adopted budget, the amount of additional work related

to energy tax credits has exceeded the agency's current capacity to process applications. In 2006, the Department reviewed approximately 2,600 applications; to date for 2008, the Department has received more than 4,200. The Department currently has a backlog of approximately 800 applications. Factors leading to the workload increase include agency outreach efforts on the BETC program, the rapid increase in energy prices, and the increasing complexity of some applications. The number of applications is expected to increase further if the Federal Production Tax Credit for renewable energy electricity projects is renewed as expected.

The Department anticipates that the three additional positions will be able to stop the current backlog from growing through the remainder of this biennium. The agency will likely request continuation of the positions as part of its 2009-11 budget request if the workload warrants. The positions are funded through BETC application fees.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Nelson, Schrader, Westlund, and Winters excused.

#### **43. Department of Land Conservation and Development**

Representative Galizio moved that the Emergency Board allocate \$466,328 from the special purpose appropriation made to the Emergency Board by section 4(1), chapter 737, Oregon Laws 2007, to supplement the appropriation made to the Department of Land Conservation and Development by section 1(1), chapter 737, Oregon Laws 2007, Planning program, to cover the cost of processing claims filed under Ballot Measure 49.

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

In November 2007, Oregon voters approved Ballot Measure (BM) 49, which modified statutes created with the passage of Ballot Measure 37 in 2004. The original law required providing compensation, in the form of direct payments or land use regulation waivers, to landowners whose property values were negatively impacted by land use laws or regulations. BM 49 replaced those compensatory remedies with provisions for a specific number of home site approvals. It also established different criteria for claims filed after June 28, 2007.

With the passage of BM 49, the Department of Land Conservation and Development (DLCD) was required to send notice to all eligible claimants (more than 10,000 representing approximately 6,500 claims) who had filed claims under BM 37 within 120 days of December 7, 2007. Claimants had to choose whether or not to proceed with a claim under the law's new provisions by filing a form provided by DLCD. In addition, claimants choosing to proceed had to select an option, or election, for their claim. Possible elections include the "express" path which allows building up to three homes if previously allowed when they acquired their properties and the "conditional" path which allows 4-10 homes if claimants can document reductions in property values to justify additional homes.

During the Subcommittee hearing, the agency provided an update on the status of elections and claim processing. As of September 22, 2008, DLCD had received 4,536 timely BM 49 election returns. Express path claims account for 91%, or 4,133 of the elections. About 4%, or 194 claims were filed under the conditional path. The remaining elections were identified as vested, under local jurisdiction, or withdrawn. The agency has been working closely with the Department of Justice (DOJ) on the front end to develop a robust and well-coordinated claim review/evaluation process. The

process includes steps and timelines for ownership and legal analysis of the claim, preliminary evaluation, notice and comment periods for both the public and the claimants, and issuance of a final decision. The agency expects to issue the first set of six final orders around the first of October and has 77 preliminary evaluations out for public comment and/or claimant response. The agency expects claims to flow more quickly and efficiently through the process now that steps have been established and tested.

For the 2007-09 biennium to date, DLCD has received \$9,524,696 General Fund and 35 positions (27.83 FTE) to process claims and administer the program. In addition, the 2007 Legislature created a \$1,500,000 special purpose appropriation in the Emergency Fund for claim processing costs. Any unallocated dollars in the special purpose appropriation will become “available for any purpose for which the Emergency Board may lawfully allocate funds.”

Based on a review of actual program costs to date plus projections, DLCD anticipates needing just under \$10 million (\$9,991,024) to cover BM 49 costs this biennium. The projection, which is a net figure that includes an offset for vacancy and other savings, leaves the agency short by \$466,328. About \$5.8 million of the total BM 49 budget is expected to be spent on Attorney General costs; this estimate is consistent with information reported during the 2008 special session and 2007-09 expenditure history to date.

Uncertainty about legal costs and DLCD’s ability to hire and retain staff was in part why funding was retained in the special purpose appropriation, rather than allocated, during prior review of Measure 49 budget needs. As of mid-September, DLCD had made substantial progress toward filling vacant positions and is better able to project personal services costs through the end of the biennium. Legal costs related to litigation are still difficult to predict and are being monitored closely.

With an allocation from the special purpose appropriation, along with a corresponding level of funding in 2009-11, DLCD indicates the agency will be on track to complete the review and resolution of these claims by December 31, 2010. This is the same time frame discussed during the 2008 special session when both DLCD and DOJ received additional resources for the program; the amounts approved were predicated on that target. DOJ has enough expenditure limitation – although it is unscheduled – to support the projected claims processing workload. If DLCD’s request is approved, DOJ will work with the Department of Administrative Services to have the expenditure limitation rescheduled.

Without an allocation, claims would still be processed but at a slower rate. The agency is sensitive to getting these claims resolved sooner, rather than later, as some claims have been on file since December 2004.

The Subcommittee recommended approval.

The following Committee discussion occurred:

Representative Smith asked if there was discussion in the Subcommittee about why it would take until the end of 2010 to complete the processing of express claims.

Representative Galizio replied that the timeline had been set earlier by the Legislature and included processing all claims, not just express claims.

Representative Nolan clarified that some claims are very complex and will require longer processing time. She also noted the agency was on time with the legislatively mandated deadline.

Senator Whitsett asked if the agency had reported on how many claims had actually gone out the door.

Representative Nolan responded that there are a substantial number of claims close to completion.

The motion carried. Rep. P. Smith voted no. Sens. Nelson, Schrader, Westlund, and Winters excused.

#### **44. Department of State Lands**

Senator Morse moved that the Emergency Board approve, retroactively, the submission of a federal grant application to the U.S. Fish and Wildlife Service under the Cooperative Endangered Species Conservation Fund Recovery Land Acquisition program on behalf of Benton County in the amount of \$256,820 for purchasing conservation easements.

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

The grant is offered through the U.S. Fish and Wildlife Service Cooperative Endangered Species Conservation Fund Recovery Land Acquisition program. A successful award will assist Benton County in purchasing 65.5 acres of conservation easements, estimated at a total cost of \$513,640. The subject upland prairie habitat contains healthy populations of Kincaid's lupine and the Fender's blue butterfly; both species are listed under the federal Endangered Species Act. Along with the federal dollars, the county plans to use a grant from the Oregon Watershed Enhancement Board and in-kind work from a local conservation organization to meet federal matching requirements and complete the funding package.

The Department of State Lands provided a letter of intent to apply for a federal grant to the Legislative Fiscal Office on September 2, 2008. The agency submitted the application on the due date of September 22, 2008, which is consistent with the 10-day notice requirement.

The Subcommittee recommended approval.

The following Committee discussion occurred:

Representative Morgan noted this request is one of several that would take land out of the private land base and move it to public ownership. She stated that if all requests are approved, over 3,600 acres would be removed from private ownership at a cost of more than \$11 million in taxpayer dollars. She also commented that regulations restricting the use of property help create the "willing sellers" in these transactions. Representative Morgan indicated she will continue to oppose federal grant application requests of this nature.

The motion carried. Reps. Jenson and Morgan and Sen. Whitsett voted no. Sens. Nelson, Westlund, and Winters excused.

#### **46. Department of State Lands**

Representative Nolan moved that the Emergency Board approve, retroactively, the submission of a federal grant application to the U.S. Fish and Wildlife Service under the Cooperative Endangered Species Conservation Fund Recovery Land Acquisition program on behalf of The Nature Conservancy in the amount of \$507,000 for purchasing critical habitat, with instructions.

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

The grant, offered by the U.S. Fish and Wildlife Service Cooperative Endangered Species Conservation Fund Recovery Land Acquisition program, would assist The Nature Conservancy in purchasing 1,700 acres of vernal pool and grassland habitat on the Upper and Lower Table Rocks in Jackson County. This habitat supports vernal pool fairy shrimp and dwarf wooly meadow-foam, which are both at-risk species.

The federal dollars are only one part of the proposed financing plan for the purchase; grants through the Oregon Watershed Enhancement Board and the Oregon Parks and Recreation Department are also potential, but uncertain, funding sources. The Nature Conservancy has indicated it would be interested in eventually transferring ownership of the property to the Oregon Parks and Recreation Department. However, no agreement has yet been made for such a transfer.

The Department of State Lands provided a letter of intent to apply for a federal grant to the Legislative Fiscal Office on September 2, 2008. The agency submitted the application on the due date of September 22, 2008, which is consistent with the 10-day notice requirement.

The Subcommittee recommended approval, but also recommended that the Department of State Lands be directed to report back to the Emergency Board or the Legislative Assembly if the grant is awarded. The report would cover the final financing package for the purchase and the details of any plan or agreement made to transfer the property to the Oregon Parks and Recreation Department.

The following Committee discussion occurred:

Senator Whitsett noted that approval of this action would complete the transfer of six square miles of Oregon from private to public ownership.

The motion carried. Reps. Jenson, Morgan, and P. Smith and Sen. Whitsett voted no. Sens. Nelson, Westlund, and Winters excused.

#### **47. Department of State Lands**

Representative Nolan moved that the Emergency Board acknowledge receipt of a report on plans to purchase property adjacent to the South Slough National Estuarine Research Reserve.

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

At the December 2007 meeting of the interim Joint Committee on Ways and Means, the Department of State Lands received permission to apply for a federal grant to help purchase land adjoining the South Slough National Estuarine Research Reserve. The grant application included \$220,000 to buy two small parcels that adjoin the Reserve's administrative boundary. Acquisition of

the two parcels, which total 4.0 acres, will secure the long-term stability of the Hidden Creek and North Creek watersheds and help meet the Reserve's research, education, and stewardship objectives.

The subject properties collectively are appraised at \$320,000; the remaining \$100,000 will come from a bequest to the Department that was made for the sole use and purpose of acquiring additional land for the Reserve. The agency also has banked non-federal match available to meet federal match requirements. The grant was approved in March 2008 by the National Oceanic and Atmospheric Administration; the Department reports that it is proceeding with the land purchase using available expenditure limitation.

The Subcommittee recommended approval.

The motion carried. Reps. Jenson and Morgan and Sen. Whitsett voted no. Sens. Nelson, Westlund, and Winters excused.

## **52. Oregon Department of Transportation**

Senator Carter moved that the Emergency Board acknowledge receipt of a report from the Oregon Department of Transportation on the status of the multimodal study required by HB 2278 (2007) and budget note in the 2007-09 legislatively adopted budget.

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

The Oregon Department of Transportation (ODOT) reported that a final multimodal study, which being compiled from several modal plans and study initiatives that are in progress, is likely to be completed the summer of 2011. The modal plans include the Oregon Freight Plan, Oregon Public Transportation Plan, the rail study and rail plan, the Oregon Aviation Plan, and a state ports plan. These planning documents take considerable time to produce in part due to federal and state requirements for detailed consultation and public involvement activities. The status of each project ranges from the adoption of the most recent Aviation Plan in February 2008 to just starting to scope out the work for the State Ports Plan by the Oregon Economic and Community Development Department. Most of the work for these plans will be completed during the 2009-11 biennium.

The rail study is currently under way with the infrastructure assessment and analysis expected to be completed by summer 2009. Following completion of the rail study, the rail planning work will be initiated to provide a 20 year forecast of needs, level of service, performance goals, description of funding sources, and possible investment strategies to address identified needs. The final rail plan will likely take two years to complete.

The Subcommittee recommended acknowledging receipt of the report.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

## **57. Department of Consumer and Business Services**

Senator Bates moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Consumer and Business Services by section 1, chapter 215, Oregon Laws 2007, by \$508,567 and authorize the establishment of five permanent positions (1.90 FTE) to perform additional bank and trust examinations, with the understanding that the

Department of Administrative Services will unschedule the expenditure limitation increase until the need can be established.

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

The Division of Finance and Securities within the Department of Consumer and Business Services (DCBS) conducts regular examinations of Oregon's state-chartered banks to ensure their safety and soundness, often in conjunction with the Federal Deposit Insurance Corporation (FDIC). If a state or federal regulator identifies specific concerns with an institution, both regulators take appropriate steps to ensure the safety and soundness of the bank.

The current economic environment has caused an increased number of banks to receive lower than usual examination scores. Since September 2007, the agency has examined 22 of the 35 state-chartered banks. Of those, 14 received scores that were lower than their previous score in the Asset Quality component and 10 banks received a score that was less than satisfactory.

When a bank is rated less than satisfactory, the FDIC requires the agency to revisit that institution every six months until performance improves. These follow-up examinations tend to be more complex and require more hours to perform. Given the current economic environment, the agency expects the number of banks requiring follow-up examinations to increase. Between the increasing number of follow-up examinations and the increased complexity, the agency is projecting a workload increase of 60 to 70 percent.

DCBS requested the establishment of permanent positions instead of limited duration. They also requested limitation based on the positions being hired at the top step of the salary range. The Department provided evidence that hiring for these positions may be difficult. Bank examiners are at a premium given the economic situation and the salary that DCBS can offer is less than the FDIC and most of the Western states, including California, Washington, and Idaho pay for similar positions. The agency believes that by offering top step of the salary range and permanent status they will have a better chance of recruiting in this very competitive market.

The bank program is funded by annual assessments from financial institutions. There are sufficient reserves to pay for the positions for the rest of the 2007-09 biennium, but the agency will need an increase in the assessment for 2009-11 to continue supporting the program at the higher level.

The approved expenditure limitation will provide for five permanent full-time positions (1.90 FTE). The agency was directed to present an update on the hiring status and the need for these positions to be continued into the 2009-11 biennium at their budget hearings during the 2009 regular session.

It was recommended that the requested Other Funds limitation be approved, but unscheduled by Department of Administrative Services until the Budget and Management Division and the Legislative Fiscal Office can determine if it is needed. As the biennium proceeds, the Department can determine if it has savings in other areas of the budget that might offset the requested limitation.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Rep. Nathanson and Sens. Nelson, Westlund, and Winters excused.

**58. Department of Administrative Services**

Senator Schrader moved that the Emergency Board acknowledge receipt of a report on expenses and debt service savings resulting from refinancing Lottery Revenue Bonds, as required under ORS 286A.160(3).

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

Under Oregon law, the State Treasurer is authorized to issue refunding bonds at any time to take advantage of changing market conditions and achieve savings in debt service payments. Per ORS 286A.160(3), when bonds are issued during the interim, the Department of Administrative Services (DAS) is required to report on the action to the Emergency Board. The DAS report, which covers incurred expenses and debt service savings resulting from the issuance, is due within 90 days of the bond sale.

DAS reports that 2008 Series A Lottery Revenue Bonds were sold on June 4, 2008. A portion of the sale proceeds were used to refinance outstanding 1999 Series B Lottery Revenue Bonds that supported projects at three agencies. Specifically, \$15.14 million of Lottery Bond Principal was refinanced, incurring issuance costs of \$102,680. About \$1.5 million in net debt service savings will be realized over the 7 year remaining term of the bonds. Of this amount, \$293,745 in savings will be realized during the 2007-09 budget period.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

**61. Department of Administrative Services**

Senator Schrader moved that the Emergency Board increase the Other Funds expenditure limitation established for the Department of Administrative Services by section 26(1), chapter 7, Oregon Laws 2007, by \$1,521,931; establish a \$500,000,000 Other Funds expenditure limitation for the payment of insurance premiums from the Oregon Educators Revolving Fund; and direct the Department of Administrative Services to report on program performance measures and costs and savings, including the methodology for calculating costs and savings, during its budget hearings in 2009.

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

When the Legislature created the Oregon Educators Benefit Board in 2007, it provided an estimated 18 months of funding for its operations. The Board was expected to return to the Legislature for additional funding authority after the first open enrollment period for school districts had occurred. The Board has completed its first open enrollment period and will begin collecting its administrative fee in October. The Board now requested \$1,521,931 Other Funds expenditure limitation for operating expenses through the end of the biennium.

The Board also asked that the Emergency Board establish a \$650 million Other Funds expenditure limitation for it to pay the insurance premiums for school districts from its Oregon Educators Revolving Fund. When the Board was established, how the insurance premiums would flow from school districts to insurers was unknown and no expenditure authority was provided. The Board has adopted its rules and school districts will be invoiced by the Board for their insurance premiums

and administrative fees. The Board will then pay the insurance premiums directly from its revolving fund and now needs the necessary expenditure limitation to do so.

Open enrollment ended September 15<sup>th</sup> and the Board now has a much better idea of the amount of insurance premiums it will be paying over the next nine months. Monthly premium payments could be more than \$55 million per month, or \$497 million through the end of the biennium. Given the newness of the system, stragglers are expected to be processed, and Board staff expects the total enrollment to increase. Expenditure limitation of \$500 million should provide sufficient spending authority to ultimately cover all premium payments through the end of the biennium. If circumstances change and it is found that the \$500 million will not be sufficient, the issue can be addressed when the Board's budget is reviewed during the 2009 session.

The Subcommittee discussed the need for performance metrics, principally through program costs and savings to the state, and the need for the Legislature to understand the methodology of calculating program costs and savings. The Subcommittee recommended that the Emergency Board increase the Other Funds expenditure limitation for operations by \$1,521,931 and establish an Other Funds expenditure limitation of \$500 million for the payment of insurance premiums from the Oregon Educators Revolving Fund. The Subcommittee also recommended that the Department be directed to report to the Legislature during its budget hearings on performance measures for the program along with statewide program costs and savings and the methodology for computing those costs and savings.

The following Committee discussion occurred:

Senator Morse asked whether there was a sense the program would achieve savings.

Senator Schrader replied that the Department would be evaluating this over the next few years and that there is an issue of the consistency of data coming from school districts. He also commented that the program seemed to be well received as it had much higher enrollment than expected.

Representative D. Edwards commented that the Department testified that the program had saved an estimated \$37 million the first year.

Representative Morgan noted that the enabling legislation for the program required that the program cost no district more than it would otherwise have incurred for employee health insurance. She pointed out that having appropriate metrics for reporting back on the savings could be made difficult as districts have varying capacities to deal with the data needed. She further noted that, going forward, the Legislature should continue to monitor this to determine whether the program actually saves money statewide, or takes money that might otherwise go into the classrooms.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

## **62. Secretary of State**

Senator Johnson moved that the Emergency Board allocate \$53,942 from the Emergency Fund established by section 1, chapter 910, Oregon Laws 2007, to supplement the appropriation made to the Secretary of State by section 1(2), chapter 264, Oregon Laws 2007, Elections Division, for the recount costs of Ballot Measure 53.

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

Ballot Measure 53 was on the ballot for the May 2008 primary election. According to the Voters' Pamphlet, the measure amended the constitution "to allow civil forfeitures for crimes similar to crime of conviction, permits proceeds to be used for law enforcement; other changes." The measure passed, but the differential between the votes was within one-fifth of 1% of the total number of votes. ORS 258.290 requires an automatic recount when this occurs. Since it was a statewide measure, the state must reimburse counties for the costs of the recount.

The recount costs of the counties total \$113,328. The Emergency Board granted the Secretary of State \$1.8 million out of a special purpose appropriation to cover the costs of the Special Election in November 2007. Since that time, the agency has discovered that \$59,386 of those funds were for costs that were for non-allowable reimbursement items for counties. The Secretary of State is proposing using that amount as an offset to the current request. With the offset, the amount of the request is \$53,942.

The Subcommittee recommended approval of the allocation.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

### **63. Legislative Fiscal Office**

Senator Carter moved that the Emergency Board allocate \$119,093 from the Emergency Fund established by section 1, chapter 910, Oregon Laws 2007, to supplement the appropriation made to the Department of Agriculture by section 1(3), chapter 710, Oregon Laws 2007, Natural Resources, to pay for an existing entomologist position for 8 months and provide cost share funding for eradication efforts by individuals to address a major grasshopper infestation in Eastern Oregon.

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

There has been a growing problem of increasingly large infestations of clearwing grasshoppers (*Camnula pellucida*) in a number of eastern Oregon counties. Infestations as high as 100 grasshoppers per square yard have been experienced. By comparison, infestation levels of 8 grasshoppers per square yard can be considered enough to create economic harm.

The Oregon Department of Agriculture reports that it is unable to address this emergency situation due to a lack of funding, including Federal Funds from the U. S. Department of Agriculture. The Department needs General Fund to support the existing position designated as the eastern Oregon entomologist. The current position is vacant due to lack of federal funding to hire a replacement. The request also includes \$50,000 for a cost share program that would be used to leverage private landowner efforts and ensure contiguous treatment areas

Legislative leadership brought this request forward due to the emergency nature of the problem and the past history of the Emergency Board assisting with pest eradication efforts during cycles of extremely high infestations. ODA reported the current large infestation is a typical high peak seen every 20 to 25 years.

The Subcommittee recommended approval.

The motion carried with no objection voiced. Sens. Nelson, Westlund, and Winters excused.

The meeting was adjourned at 11:12 a.m.

EMERGENCY BOARD:

/s/ Jeff Merkley

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Representative Jeff Merkley, Presiding Chair

/s/ Kurt Schrader

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Senator Kurt Schrader, Secretary

ATTEST:

/s/ Ken Rocco

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Ken Rocco, Legislative Fiscal Officer