

Oklahoma State Legislature

2009 End of Session Report

The 2009 Legislative Session: Last year, the State House opened the 2008 Session in disarray, as the current Speaker Lance Cargill was reported to not have paid his taxes on time for a number of years. The House subsequently selected a new Speaker, but never fully recovered. The House Majority Republicans limped through the 2008 Session without ever showing much strong leadership.

This year, it was an uproar in the State Senate. Senate President Pro Tempore Glenn Coffee as the first Republican leader of the Senate in state history was named in a federal tax lien filed by the Internal Revenue Service last year that sought \$28,822 in federal taxes owed for almost two years. He was also criticized for giving hefty raises to members of his first Senate Republican Majority Leadership staff at a time when agencies were told to expect budget cuts. While State Senate Democrats called for Coffee to resign, he was credited by his Republican colleagues as the driving force for Republicans achieving control of the Senate and continued to have the support of the Republican Majority Caucus. The end result was that President Pro Tempore Coffee was not removed, but his leadership team appeared to have lost some of their leadership control. Most importantly, this appeared to result in the Senate hearing and passing bills that probably would have otherwise been stopped.

With all of that said, the first-ever GOP-controlled legislative Session in state history was fairly similar to previous Sessions in terms of substance and activity -- with more than 2,500 bills and resolutions being introduced. There was less out-right fighting than expected between Democrat Governor Brad Henry and the Republican controlled House and Senate. But by the end of Session, Governor Henry did end up vetoing a large number of bills.

1st Year of 2-Year Session: With 2009 being the first year of the two-year Legislative Session, all bills that were not defeated will remain alive for next year. That means any bill that was not heard or was otherwise held up somewhere along the way is alive for possible consideration again in 2010. Only bills on which there was a negative vote are dead. Plus, Legislators will also introduce another round of new bills again next year. So, the 2010 Session will be very, very busy!

Forgettable 2009 Highlights: In reflection, some of the accomplishments during the Session came across as more entertaining than memorable, including:

HB 1464 Creation of a black bear hunting season;

HB 2158 Authorizing the hunting of feral (wild) hogs from the air; and

SB 452 Allowing people who file down horse teeth to continue their craft known as "teeth floating".

Some Notable Items that did NOT pass:

Autism -- SB 1: Democrats lost several battles to pass "Nick's Law" that would have required private health insurance companies to cover the diagnosis and treatment of autism. Republicans answered that there were not yet enough trained Autism Care professionals in Oklahoma, so responded by passing a bill to encourage more training of professionals.

Puppy Mills -- HB 1332: The Pet Quality Assurance and Protection Act would have required dog breeders to obtain a state license and comply with strict guidelines governing the treatment and care of puppies.

Office of Accountability -- SB 646: The Accountability, Innovation and Privatization Act was introduced by Senate President Pro Tempore Glenn Coffee and was identified as a major Senate goal for the Session. The proposal would create a new State Office of Accountability which would have conducted regular performance audits, recommended efficiencies in government and reviewed the effectiveness of tax incentives. After a great deal of discussion and negotiations, SB 646 did not pass at the end of Session. "We just simply ran out of time," Coffee said. However, the bill remains alive for further consideration and efforts next Session.

Nuclear Energy -- SB 831: Would have created a cost-recovery mechanism for utilities that are building a nuclear power plant and a task force to study tax incentives for a nuclear plant.

The Economy, the State Budget and Federal Stimulus Funds:

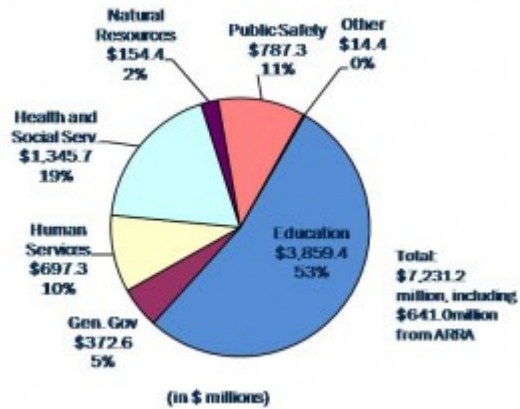
Much of the focus of the Session was on the downturn in the economy and how to deal with expected state-funding shortfalls. Projections steadily grew worse as the amount of money coming into the state each month continued to get smaller.

At the end of the Session, Gov. Brad Henry thanked lawmakers for their hard work in crafting a \$7.2 billion budget for the next fiscal year that begins July 1. In the midst of a \$900 million budget shortfall, they passed a budget that did not have to tap into the state's constitutional Rainy Day Fund, which stands at approximately \$600 million -- which will still be available for next year, if needed. Thanks to carry-over funds that were not spent last year, plus the infusion of about \$631 million in Federal Stimulus Funds, they were able to balance the budget and stave off deeper cuts.

The \$7.2 billion budget adopted for next year was a slight increase over last year's budget of \$7.1 billion. While state dollars declined by about 7%, overall spending increased due to the federal stimulus money. Lawmakers were able to provide increases in spending for

education and health care, while protecting transportation from any cuts. However, the rest of state government averaged cuts in the range of 4% -7%.

The following pie chart was developed by the Oklahoma Policy Institute and provides an interesting look at how the current state budget is divided. The chart shows that Education gets more than half -- 53% of the total -- followed by Health and Social Services. Both of these functions benefited from injections of stimulus funds. These are the only two functions with more money than last year.



HB 1603 -- Lawsuit / Tort Reform passed and signed by Governor: According to many business leaders and the State Chamber, the passing and signing by the Governor of HB 1603 was the most important pro-business accomplishment in Oklahoma in many years. It is believed that this historic lawsuit reform bill will create jobs, help attract new businesses to Oklahoma and increase health care accessibility.

HB 1603, among other things, redefines what constitutes a frivolous lawsuit and strengthens summary judgment rules to make it easier for a judge to dismiss a lawsuit determined to have no merit before it goes to trial.

Many have identified the most important provision of the bill is the \$400,000 cap placed on non-economic damages, also known as pain and suffering. It provides that this cap can be waived in certain circumstances. In cases of medical malpractice where the cap is lifted, any amount greater than \$400,000 would be paid with a reinsurance policy the state would purchase. The bill calls for the creation of a task force to study the details of the policy and payment options prior to implementation of the reinsurance policy in May 2011. This insurance policy could pay up to \$20 million a year to people in cases of gross negligence or severe disfigurement.

Workers Compensation Reform: With Republicans controlling both the House and Senate for the first time in state history, there was great speculation that this Session would see very strong Tort Reform and very strong Workers Compensation Reform. However, Tort Reform ended up getting all of the attention. Of the many W/C

bills that were introduced this year, most were basically passed over, but do remain alive for next year.

With the 2009 passage of a very strong Tort Reform Bill -- HB 1603 -- we are told by House and Senate Republican Leadership that they will focus in 2010 on Workers Comp Reform "with the same attention, commitment and energy" they focused this year on the passage of Tort Reform. We expect a number of Interim Studies and working groups which will have proposals for W/C Reform ready to go when the Legislature Convenes in 2010.

Conservative Law-and-Order: Another issue that took up lots of time and attention surrounded the public displays of monuments to the Ten Commandments. A recent lawsuit in Eastern Oklahoma upheld that a Ten Commandments monument did not to be removed from the grounds of a County Court House. In response to this affirmation by the Courts, the Legislature approved the placement of a Ten Commandments monument on the grounds of the State Capitol -- to be paid for with private funds.

Health Care Reforms: A series of major efforts and different bills culminated in Health care legislation supported by both Governor Henry and GOP leaders that targets the expanding of the Insure Oklahoma premium assistance program in an attempt to reduce the state's estimated 619,000 uninsured residents. Among major Health Care bills that were passed were:

Insure Oklahoma: HB 2026 Health Care for Oklahomans Act modifies the Insure Oklahoma premium-assistance program that helps small businesses provide health care coverage for their low- and middle-income employees. This allows employers to offer low-cost options, such as high-deductible plans compatible with health savings accounts.

Stem Cell Research Controversy -- The passage of **HB 1114** during the last week of Session was viewed as a "win-win" for both Right-to-Life advocates and the state's medical research community. This bill essentially prohibits human cloning in Oklahoma. The bill passed easily in both the House and Senate and was endorsed by Governor Henry.

HB 1114 was in response to an earlier controversy over **HB 1326** that proposed to make criminals of any researchers in the state who were found to have participated in any embryonic stem cell research in Oklahoma. Business leaders and both the OKC and Tulsa Chambers lobbied against HB 1326 out of concern that it would cause more researchers to avoid Oklahoma. The measure was widely considered to have created a burdensome regulation that would not accomplish its stated purpose. After much lobbying effort, the Governor vetoed HB 1326. The subsequent effort to over-ride his veto failed in the State Senate. HB 1114 was then crafted as a compromise.

OSU Tulsa College of Osteopathic Medicine -- A comprehensive agreement capped years of efforts to insure the future of the OSU Osteopathic Medical College in Tulsa. This teaching college has faced an uncertain future for many years, primarily due to the tenuous future of Tulsa Regional Medical Center / OSU Medical Center where it is located. Major provisions of the agreement include:

Tulsa Regional / OSU Medical Center, which is owned by Ardent Health Services (AHS), will be donated to a City of Tulsa owned trust.

The state will provide \$25 million for operating costs the first year. This amount includes \$20 million previously dedicated to OSU for the hospital and \$5 million from the state's general revenue fund.

After the first year the state will provide \$5 million annually for four more years.

Ardent will return \$3 million in unused IME money to the City Trust.

The state will allocate a \$25 million bond issue to fund capital improvements at the hospital. No new money will be needed, as OSU will use tobacco funds to make payments on the bond.

The plan includes efforts to enroll an additional 20,000 eligible Tulsans in Insure Oklahoma, in an effort to reduce the number of uninsured patients.

HB 1055 -- A priority of the Oklahoma Hospital Association to require insurance companies to honor their commitments to pay for hospital care and procedures. The bill requires that hospitals still must confirm coverage and receive prior approvals from insurance companies. However, within 4 days of actually performing the previously approved procedure, the hospital must call to reconfirm coverage. Once the follow-up is confirmed, then the insurance company is required to pay.

Identity Theft: This issue has been getting lots of attention every year, as Legislators try to beef-up the already strong state statutes. Although well intended, their efforts often cause serious unintended consequences for legitimate businesses and consumers. Additionally as Oklahoma is a very conservative, small state, we have seen conservative groups target our state “with imported efforts” to limit government access to personal information. All of this was very apparent this year, with 2 bills receiving the most attention and efforts:

HB 1363 by Rep. Marion Cooksey, R-Edmond – This bill was introduced at the request of the “Stop Real ID” group and at first sounded to lawmakers like a good idea. It would have prevented any business from sharing any information other than name and addresses with any 3rd party. The bill was a direct effort to limit the requirements of the Federal Patriot Act. After lots of effort and lobbying,

Rep. Cooksey and Legislative Leadership finally understood what was being proposed. Ultimately, the bill was withdrawn and not heard.

SB 990 by Senator Charles Laster, D-Shawnee and Rep. Kris Steels, R-Shawnee – Introduced in response to local Shawnee event where the County Clerk posted personal Social Security Numbers on publicly displayed documents. This bill would have prohibited SSN or Drivers License information from being included in any public records, plus would have required the “redacting” / removal of this information from any public records. The cost of this redacting statewide could have exceeded \$1 billion. Again, extensive lobbying efforts were required to convince the lawmakers that this proposal would simply not work. Ultimately the bill was withdrawn and not heard.

However, both of these Identity Theft Bills – and a number of others that were not heard – are still alive and can be considered again next year!

Transportation: While the Legislature worked to protect state road and bridge funding from any budget cuts, the state benefited greatly with the influx of more than \$450 million in Federal Stimulus Highway funds. The State Department of Transportation's spending for the year has nearly doubled and they are able to make great strides on their 10-year plan. The Transportation Department was the first state agency to receive and begin spending Federal Stimulus funds.

California-style State Government comes to Oklahoma; or "2009--the Year of the State Question": As has become the norm for enacting laws in California, there were many proposals in this Legislative Session that call for Oklahomans to decide issues with a statewide vote. On several occasions when the Governor vetoed a bill, the Republican-controlled Legislature turned right around and passed the same issue in the form a Resolution to send it to a statewide vote of the people. The Governor does not have any say on these proposals, except that he is instructed to place them on the next General Election Ballot -- which will be November 2010. Among statewide votes in the future will be:

Judicial Reforms – Two ballot questions on Judicial Reform were approved by the State Legislature to be added to the statewide ballot in 2010:

HJR 1041 by Speaker Chris Benge and Sen. Clark Jolley will require the state Senate to confirm any Workers' Compensation Court judge's appointment (or reappointment) made by the Governor.

SJR 27 by Sen. Patrick Anderson and Rep. Dan Sullivan will bring several reforms to Oklahoma's Judicial Nominating Commission, including:

- 1) Membership of the Judicial Nominating Commission will be increased from 13 to 15 members;

2) The two new at large members cannot be attorneys and one each will be appointed by the President Pro Tempore and the Speaker of the House;

3) For the non-attorney positions, any person who has an immediate family member who has been admitted to practice law in Oklahoma or any other state will be prevented from serving on the Judicial Nominating Commission; and,

4) No more than two of the three at large members can belong to the same political party.

English as the Official Language -- HJR 1042 Sends to a vote of the people a measure that would make English the official language of Oklahoma

More Term Limits -- SJR 12 Seeks to send a ballot issue to a vote of the people to limit the term of a Corporation Commissioner to 12 years, Governor to 8 years, and other statewide elected officials limited to 8 years. Currently, only the Governor is limited -- to 2 consecutive terms, but there is no limit on how many terms the Governor might serve if they are not consecutive.

Initiative Petition Requirements -- SJR 13 Sends a measure to a vote of the people to reduce the percentage of voters necessary for an initiative petition seeking to change legislative and constitutional measures. The goal of the measure is to make it easier to get an issue approved for a statewide vote.

State Budget Guidelines -- HJR 1014 Would allow the Legislature to make decisions about the state budget and specifically states the Legislature cannot be controlled by amounts of expenditures in other states. This is a response to a pending State Question that would require Education Funding to achieve the regional average for all adjoining states.

Voter Identification -- SJR 25 proposes a statewide vote to create the State Voter ID Act. This initiative would require every voter to show identification in order to cast ballots in elections.

Tag Agent Reform: The passage of **SB 888** eliminates "Senate Patronage" over Motor License Agents, or "Tag Agents". This bill removes the State Senate from the process of appointing Tag Agents and places the responsibility solely with the Oklahoma Tax Commission (OTC). The OTC and not the Senate already have control for selecting and approving Tag Agents in the major metropolitan counties -- Tulsa, Oklahoma and Cleveland Counties. This reform bill makes the system the same for all 77 Counties. Under the provisions of SB 888, all of the state's nearly 300 current Tag Agents are "grandfathered in" and will be approved to continue to operate their current offices.

Water Bill to protect against Texas HB 1483: asserts Oklahoma's claim to its waters under federal interstate compacts, which have been agreed to by the state of Oklahoma and its neighboring states and have been approved by Congress. It also further restates existing law providing legislative oversight pertaining to water decisions. HB 1483 specifically requires the Oklahoma Water Resources Board to first consider any water shortages or needs in Oklahoma when examining applications for water sales to out-of-state entities.

The passage of HB 1483 is a response to a lawsuit filed against the state of Oklahoma by Dallas and Tarrant County, Texas. These Texas groups are suing to receive a water permit to access clean Oklahoma water from Southeastern Oklahoma. At issue is a current statewide moratorium on out-of-state water sales, which the lawsuit claims contradicts the federal Interstate Commerce Clause of the Constitution. The moratorium is set to expire this November, and the trial is currently on the docket for December.

Low-water Dams: During the Session, officials agreed to sell \$25 million in state bonds for low-water dams in the Tulsa area. This was in follow-up to the Oklahoma Supreme Court striking down as Unconstitutional, a bill for multiple bond projects that passed last session.

Energy Bills: House Speaker Chris Benge introduced and pushed a whole series of energy bills that would provide new incentives for compressed natural gas and wind energy development and consumption, while enhancing Oklahoma's energy prowess nationwide alongside traditional natural gas and oil production. Among major energy bills that passed were:

SB 300 - - This was a proposal from the Oklahoma Corporation Commission to "map" all pipelines in Oklahoma - - from gathering through interstate product transportation. Some of these are currently mapped and some are not. There is great concern about the size of the effort and cost on the industry. Senate Energy Chairman Brian Bingman agreed to lay the bill over and has proposed setting up meetings to discuss the issue in the interim.

SB 313 – The bill extends gross production tax incentives for secondary recovery projects, tertiary recovery projects, horizontally drilled wells, inactive wells, production enhancement, certain deep wells, new discovery and three-dimensional seismic wells until July 1, 2012. However, efforts to change the current incentive rebate process to a monthly credit process were unsuccessful. Legislative Leadership would not agree to the proposal because of concerns for revenue impacts several years into the future.

HB 1949 – Extends the duration of existing tax credits available on the purchase of qualified clean-burning and electric motor vehicles. A 50% tax credit is available for originally equipped and converted qualified clean-burning and electric motor vehicle property. If the bill is signed by the Governor, tax credits will not only be available for Oklahoma citizens who use CNG for their vehicles,

but also for those who use the fuel in service stations. A \$2,500 tax credit will be available for Oklahomans who use CNG in their home refueling systems as well.

HB 1747 – Requiring all diesel fuel sold in the state on or after May 1, 2010, to contain at least 3 percent biodiesel fuel oil if there is a federal volume usage mandate for biomass-based diesel of greater than or equal to 500 million gallons per year. It sets the biodiesel content at 4 percent when mandates reach 750 million and 5 percent when mandates reach 1 trillion gallons per year. This issue became a point of controversy over concerns that the state was prematurely attempting to respond to what might or might not come down as Federal mandates.

HB 2055 - Because of the financial crisis at the SEM group in Tulsa, the Oklahoma Independent Petroleum Association proposed legislation to assist their members who were owed for production. OIPA proposed a comprehensive "lien bill" to provide continued ownership of production through transportation, processing and refining. HB 2055 proposed that the lien would only be removed when full payment was provided to the producer.

This bill created lots of concern and unanswered questions throughout the state's energy industry. Many meetings were held during session but no agreement could ever be reached on how to proceed. The bill was laid over and OIPA will continue to work on the effort in the interim.

At the end of Session, it was decided that the conference committee substitute will remain on General Order and carry over to the 2010 legislative session. It is expected an interim study will be conducted to examine the bio-diesel requirement.

Taxes were NOT cut further – In the wake of the current downturn in the economy and resultant budget problems, measures to reduce taxes died a silent death. Among the major tax cuts that were proposed, but were **NOT** enacted include:

Reduction in state's current income tax from 5.5%, down to 5.25%;

Removal of the current trigger required for further reducing the state's current income tax rate; and

Removal or reduction of the state sales tax on groceries.

Tobacco Taxes and Fines -- SB 608: The conclusion of a 4-year effort to write and pass a bill that would increase fines and penalties on both "Grey Market and Black Market Tobacco Products" coming into Oklahoma. The Oklahoma Tax Commission estimates that "ten of millions of dollars" are being lost by the state because of tobacco taxes that are not paid or that are being incorrectly paid by Tobacco Wholesalers and Retailers across the state.

Similar legislation was stopped by State Senate Democrat Leaders last year on the final day of the Session when it was learned that some of the Tribal Tobacco Retailers were not comfortable with a similar bill. This year's effort finally created a bill that was endorsed by a range of groups, including the Oklahoma Petroleum Marketers and Convenience Store Association, the Oklahoma Grocers Association, Oklahoma Tax Commission, Tobacco Wholesalers and Tribal Tobacco Retailers including the Chickasaws, Choctaws and Cherokees.

Creation of Central Information Office: This bill ended up being one of the most controversial in the Session and in fact prevented the State Senate from adjourning as scheduled. **SB 980** proposed creation of the Oklahoma Information Services Act and the position of Chief Information Officer. This CIO would be appointed by the Governor, to have authority over the Information Services Division of the Office of State Finance. The announced goal of this legislation was to centralize the purchasing and maintenance of computer hardware and software in order to insure maximum efficiencies.

The controversy around this bill was focused on which state agencies would be included and which ones would be exempt. Among those finally exempted were the office of the Governor, the State House and State Senate, the State Judiciary and all of Higher Education. Ultimately, this language passed in **HB 1170** on the final, extra day of the extended Legislative Session.

Public School Reforms – With Republicans controlling both the House and Senate for the first time in state history, as expected there were major efforts at public school reforms. Ultimately, both of the farthest-reaching reforms bills were vetoed by Governor Henry and there was no over-ride attempted on either:

SB 1111 -- Republican proposal that would have taken testing away from the Oklahoma Department of Education amid concerns that state test results were not in line with national tests. The responsibilities for administering the tests and evaluation the test scores were proposed to be transferred to a new administrative board controlled by the legislative leadership. Gov. Henry said the measure, pushed by Republican leaders of the Senate and House and supported by some business and education groups, is unconstitutional and therefore vetoed the measure.

SB 222 -- After the Governor's veto of SB 1111 followed by several unsuccessful attempts to move similar legislation, in the last week of Session lawmakers sent the governor SB 222 as a compromise measure. The bill proposed creating 3 Task Forces to focus on the delivery of the state's public school testing program, plus the calculation and reporting of test scores. These Task Forces are to work during the interim and make recommendations to the State Department of Education -- but have no other authority.

SB 834 -- Proposed the School District Empowerment Program, which would have provided that Public Schools be allowed to operate as Charter Schools. The most important provision of this proposal was that Public Schools would be freed from many current state school mandates. This was another measure that was vetoed by Governor Henry.