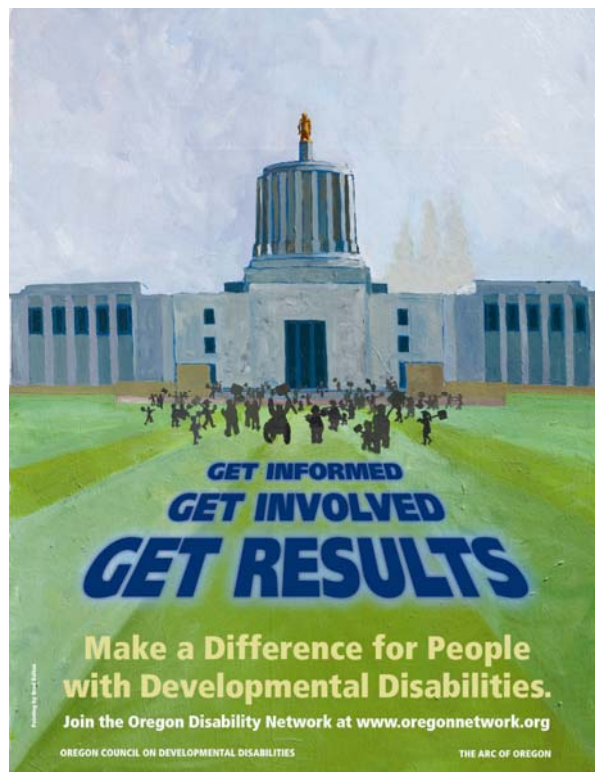


# 2009 Legislative Report



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# 2009 Legislative Session Final Report on Developmental Disability Issues

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## Summary

The 2009 Legislative Session ended the evening of June 29<sup>th</sup>, making it the shortest legislative session in a decade. The Session was dominated by the most severe national economic crisis since the Great Depression in the 1930's. Oregon alternated between having the second and third highest unemployment rate in the country. With the dollars used to fund State services primarily generated by declining personal income tax revenue, combined with a growing demand for services, Oregon began the 75<sup>th</sup> Legislative Session confronted by a looming deficit in the last months of the 2007-09 budget and increasingly grim projections for 2009-11.

Despite going into the Session with a \$4.2 billion dollar hole in the 07-09 and 09-11 budgets, legislators were able to avoid many reductions through the use of federal stimulus dollars (American Recovery and Reinvestment Act or ARRA), tax increases, and selective service reductions.

Oregon is not out of the financial hole yet for 2009-2011 and the "solutions" may be only temporary. Revenues may continue to go down and more funding reductions may still be on the horizon. The tax increases that are a part of the final budget package will most likely to go to the voters in January. If these tax measures are not implemented, more funding reductions in critical services will be necessary. Finally, there is concern about what will happen at the end of the biennium when ARRA funds are expected to end.

Despite the grim budget situation, several major legislative initiatives passed this session including a significant expansion of health care (HB 2116), health care reform (HB 2009), a transportation package that included increased support for specialized transportation, and the closure of the School for the Blind.

## Budget:

Policymakers, faced with growing deficits in the remaining months of the 2007-09 budget, began making significant reductions in the December 2008 Rebalance. Confusion about whether the Rebalance actions rolled into the 09-11 budget continued throughout the Session. In the end, Legislators reduced over \$2 billion dollars from program budgets, significantly less than what was initially projected.

*DD Program Budget:*

The DD Program was not targeted for significant reductions in the first round of budget discussions. Other programs within Seniors and People with Disabilities initially received more serious reductions.

Ultimately, heavy use of ARRA dollars eased many of the projected reductions in the current budget cycle. However, as mentioned above, when the ARRA funds are expected to disappear in late 2011, a significant budget hole is projected for the Seniors and People with Disabilities program.

Despite end-of-session restorations in many areas of the Department of Human Services and Seniors and People with Disabilities, most of the proposed DD Program funding reductions were not restored. The following are some of the more significant reductions approved by Legislators:

- \$6 million cut from the Family Support Program (1/3 of the program!)
- \$2 million cut from Employment and Community Inclusion Program
- \$2.5 million cut from DD Housing Fund
- \$1.2 million cut from DD training / special projects
- Loss of \$3.7 million in General Fund dollars from the early closure of Eastern Oregon Training Center.

*Education:*

- *K-12 State School Fund*

The total allocated funding for K-12 education was approximately \$6 billion dollars. The allocation was broken into two segments, reflecting the uncertain fiscal future of the state. The first is \$5.8 billion and the second allocation to be available in 2010 is \$200 million.

- *Early Intervention / Early Childhood Special Education*

The proposed reduction in Early Intervention / Early Childhood Special Education was over \$13 million dollars. \$8 million dollars were restored. The program will not be required to return to the Emergency Board for funding of projected case load growth. Additionally, a budget note directs the Oregon Department of Education to begin to use an "actual cost" funding formula.

Despite the restoration of some funding for Early Intervention / Early Childhood Special Education, the program is still \$5 million dollars below the Essential Budget Level (EBL) for 2009-11. Even if the program were fully funded at the 2009-11 EBL, actual funding for this program remains significantly below the actual cost. Services for young children with disabilities have been reduced over 20% in recent years.

*Special Transportation for Elderly and Disabled:*

A \$10 million General Fund appropriation for Senior and Disabled Transportation brought the total funding for the program to just over \$29 million dollars. This is an \$11.5 million dollar increase in the program which now includes General Fund as well as cigarette tax and lawnmower fuel tax revenue.

**Bills of Particular Interest in 2009 Session:**

Below is a very brief summary of specific legislation of particular interest to the Developmental Disabilities community. If you would like to read the full text of any of these bills, go to the State Legislative site at:

[http://www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/)

Health Care:

- SB 9: Removes the sunset (end date) on the requirement that insurers provide coverage, including medical foods, for treatment of inborn errors of metabolism. *Passed*
- SB 381: Requires coverage for medically necessary treatment for traumatic brain injury. *Passed*
- SB 460: Would have created a birth anomalies database. The bill failed to move in the last days of the session but the final draft of the bill had support and is likely to pass either in 2010 or 2011. *Failed*
- SB 679: Will allow an insurer to pay cash dividends to enrollees who participate in a program to promote healthy behaviors. *Passed*
- HB 2009: Major health care reform legislation. Creates Oregon Health Authority and begins a process of transferring health care related programs out of DHS and into a newly created Health Authority. Establishes the Oregon Health Policy Board which is directed to create a plan for improved health care delivery and outcomes in Oregon. *Passed*
- HB 2116: Significantly expands access to health care and creates the funding source through an increased hospital tax and a one percent tax on commercial insurance premiums. Offers health care to all uninsured children up to the age of 19 including access to a variety of health insurance options for families over 200% of the Federal Poverty Level. Language to include children with disabilities who had insufficient health care coverage was stripped out of the final bill. *Passed*
- HB 2445: Legislation to provide access to additional health care through the Family Opportunity Act to children whose existing health insurance is inadequate. Language was originally in HB 2116 but was removed in the final version of the bill. *Failed*

- HB 2535: Creates the Charitable Prescription Drug Program to distribute donated prescription drugs to needy or uninsured individuals. This legislation was designed to address the current practice of throwing out unused and often very expensive prescription medications. *Passed*
- HB 2589: Requires private insurance to cover hearing aids for children and youth. *Passed*
- HB 3000: Would have required insurance to pay for autism treatment services. See below: Package of Autism Spectrum Disorder Bill. *Failed*

#### Rights / Protective Services

- SB 874: Updates Oregon statute to reflect new changes in the federal Americans with Disabilities Act which took effect on January 1, 2009. *Passed*
- HB 2441: Establishes conditions when a confession alone is sufficient for prosecution. This bill is intended to assist in situations where the victim is not considered competent to testify. *Passed*
- HB 2442: Expands the definitions of abuse and strengthens the abuse investigation system. The bill modifies definitions; creates local multidisciplinary teams to develop protocols related to investigations; establishes timelines and communication requirements for investigation and notification; increases statewide consistency in abuse investigations; protects employers when disclosing information about prospective employees to another employer; and increases fines. This bill was the result of significant collaborative work during the Interim and was created to respond to abuse allegations in the DD system. The original legislation was amended many times in an effort to keep the fiscal impact minimal. *Passed*
- HB 2444: Expands the duties of the Long Term Ombudsman to include individuals with mental illness and Developmental Disabilities. *Failed*
- HB 2668, HB 2669, HB 2670: Legislation from the Department of Justice to develop criteria for determining whether a defendant should be considered ineligible for the death penalty based on cognitive deficit. *Failed*

#### Education

- SB 72: Clarifies the role of the Educational Service Districts in the delivery of Special Education Services. Brings Oregon law into compliance with IDEA by allowing parents to revoke consent to evaluate a child for special education or provide special education or related services. *Passed*
- SB 512: Requires that schools be notified when a youth is charged, convicted, or excused by reason of “insanity or mental defect” in juvenile court. Must comply with federal laws related to students receiving special education services. While the legislation requires notification if the student is not convicted, there is concern about the impact of notification simply when a student is charged with an offense in juvenile court. *Passed*
- SB 574: This session again saw an effort to reduce the number of Educational Service Districts (ESD) and opposition to the bill by some of rural ESDs. This legislation would have changed the governance and election process of ESDs and reduced the number from 21 to 13. *Failed*
- SB 652: Would have placed the burden of proof on school districts in challenges of special education and related services. On the other hand, the bill would have put the burden of proof on parents who request tuition reimbursement for a placement change initiated by the parents. *Failed*
- SB 767: Relates to the creation of public charter schools and virtual or online charter schools. Creates an Online Learning Task Force to make recommendations for ensuring appropriate use of online learning. This bill was highly controversial with both families and the teacher’s unions weighing in. *Passed*
- HB 2013: Creates a taskforce on school facilities. *Passed*
- HB 2061: Waives the increase in graduation requirements for specific groups of students. Bill was in response to the cost of implementing new graduation requirements in a time when schools are struggling to maintain teachers and programs. *Passed*
- HB 2362: Allows Department of Education to make available an assessment system that measures student’s progress in achieving academic content standards at current grade level, determines grade level of student’s understanding, knowledge or ability, tracks and provides reports on progress of student and makes predictions of anticipated student progress. *Passed*
- HB 2507: Creates an “Extended Diploma” and clarifies the requirements for the Modified Diploma. This bill builds on legislation passed in the 2007 session. It is part of an effort to assure that all students experience high expectations and that there is statewide consistency in diplomas. *Passed*

- HB 2599: Strengthens anti-bullying policies in schools. *Passed*
- HB 2834: Closes the Oregon School for the Blind. Establishes the Blind and Visually Impaired Student Legacy Fund and appropriates funding. Requires proceeds from the sale of the school property to go to the Education Stability Fund. This was a very controversial bill that split the disability community. At the time of closure fewer than 30 students attended OSB. Over 800 blind/visually impaired students are currently served in local school districts. OSB was not accredited to provide a high school diploma. Concerns remain about the quality of services to blind/visually impaired students, particularly the high school transition services. *Passed*

#### DD Services:

- SB 165: Authorizes the State to contract for DD Services if the local County Developmental Disabilities Program declines. There have been four counties that have declined to provide services in recent years. Currently, the State is managing one program directly and has contracted three other county programs. *Passed*
- SB 702: Would have moved Support Services and other services to people with developmental disabilities into the Home Care Commission and set a process for establishing a bargaining unit for representation of workers by SEIU. The DD community opposed the bill because of potential reductions in services to pay for the additional costs of the program and possibly significant changes in the nature / governance of services. *Failed*

Note: A budget note was placed in the DHS budget requiring the Department to determine whether some DD self-directed community based services should be covered by the Home Care Commission. Additionally, a workgroup will be established by the House Human Services Committee to address the relationship of DD client directed community based services and SEIU / Home Care Commission.

- HB 2555; 2752; 2856; SB 806: Efforts to severely limit employment options provided by Qualified Rehabilitation Facilities for people with disabilities by changing the definition of eligibility and making other changes in the law. The Department of Administrative Services, through a work group that included representatives from The Arc, the DD Council, and Disability Rights Oregon, tried to address the concerns raised by the Oregon School Employees Association and other critics of the program, but the critics who proposed the legislation were unwilling to make any major compromises. *Failed*

#### Other Legislation that impacts the DD Community:

- SB 58: Allows landlord to require tenant to restore premises to pre-modification condition. This is consistent with federal law. *Passed*
- SB 287: Allows DHS to deny or suspend a provider license if an individual or organization has other facilities that do not meet licensing rules. *Passed*
- SB 638: Would allow families to take School Activity leave from work to participate in school activities or meetings similar to Family Leave. This might be particularly important to families of children who experience disability and have difficulty taking time from work to attend meetings. *Failed*
- SB 731: Allows banks to protect certain funds in an individual's bank account from being garnished or taken to pay outstanding debt. These are funds that are already protected from being garnished under federal law but once in the account were mingled with other funds and garnished. *Passed*
- HB 2052; SB 529: Both bills address issues related to the siting of community based homes for individuals coming out of the State Hospital. HB 2052 requires the creation of a Local Public Safety Coordinating Council and requires that the Council is consulted prior to the siting of a secure Psychiatric Security Review Board home. SB 529 establishes a liaison between DHS and the communities. *Passed*
- HB 2144: Establishes core values and principles for "Wraparound Initiative" (integrated care) for children and youth experiencing significant mental health disabilities. *Passed*
- HB 2600: Requires lodging facilities with 175 or more beds to provide a lift system for people with disabilities to access bed, toilet, shower or bath. Applies to newly constructed facilities and extensive renovations. *Passed*
- HB 2883: Creates a Public Guardian and Conservator Task Force. Disability Rights Oregon agreed to staff the Task Force. *Passed*
- HB 2920: Creates a Task Force on Effective and Cost Effective Service Provision. Subcommittees will be created on specific subject areas. *Passed*
- HB 3065: Redirects the funding from the current Oregon Supplemental Income Program to a non-cash benefit. Prior to the passage of this legislation, Oregon's response to the federal contribution requirement was to send recipients checks amounting to approximately \$1.70 each month. Over 40,000 checks were never cashed. The cost to issue, mail, and track the payments exceeded the benefit. Under this legislation, the State will

redirect the funds to other programs to benefit the target population.  
*Passed*

- HB 3279: Makes adult foster care payments subject to collective bargaining. Some are concerned about the ability of the State to implement this legislation since Medicaid law requires the state Medicaid agency to set rates for Medicaid services. Additionally, current State law requires rates to be tied to the needs of the individual. *Passed*
- HB 3466: Requires the State Police to establish a data base to aid law enforcement agencies in assisting individuals with disabilities. This is similar to a program that currently exists in Portland and several other communities. *Passed*
- A package of Autism Spectrum Disorder Bills was introduced, but the bills did not move because of the Governor's Executive Order creating the Oregon Commission on Autism Spectrum Disorder. The Commission is expected to address many of the issues identified in the proposed legislation. Only HB 3000 actually received a hearing. HB 3001 created a Commission in statute. HB 3003 required ODE and DHS to develop a plan to address high school transition and HB 3018 set up the Commission to receive private funds. *Failed*

**Conclusion:**

The positive outcomes that did occur this session for people with developmental disabilities were the result of citizen advocates participating in the legislative process. The next session is scheduled for February, 2010. If you would like to get involved, join the Oregon Disabilities Network by visiting <http://ornet.e-actionmax.com/default.asp> . The Oregon Disability Network is sponsored by the Oregon Council on Developmental Disabilities and the Oregon Developmental Disabilities Coalition. Your voice is important – make it count!