Test Drive for Annual Sessions

Oregon lawmakers, who meet every other year, decided to see how a more frequent approach would work.

BY PETER WONG

To meet or not to meet? That’s the question these days in Oregon as lawmakers wrestle with the issue of whether to go from biennial to yearly sessions.

The Oregon Legislative Assembly has met every other year since statehood in 1859.

Short of the governor summoning them back to Salem for a special session, legislators dealt with budget matters between sessions with a board consisting of the presiding officers, budget committee chairmen from the previous session, and other legislators appointed by the leaders and ratified by the chambers.

The Emergency Board, as it is called, was increased this year from 17 to 20 members, but still is a small fraction of the 30 senators and 60 representatives. Other matters generally waited for the next biennial session.

Oregon is one of only six states where legislators meet every other year. Kentucky used to be the seventh state, but voters approved a change to the constitution in 2000, and its General Assembly held its first annual session in 2001. Arkansas voters will decide in November if they want their General Assembly to switch to annual sessions.

“Practically every state has gone to annual sessions,” said Senate President Peter Courtney. "Oregon, however, has chosen to continue with the biennial system."
The special session of Oregon’s Legislative Assembly earlier this year did not come about without a fight.

Normally, special sessions in Oregon result only from emergencies and are called on short notice. This year’s session, based on recommendations of a legislative review commission, was authorized by a resolution approved in January 2007. Opponents challenged the constitutionality of the resolution in court, but on Jan. 28, an Oregon circuit court turned down the challenge.

Oregon Senator Larry George brought the suit, arguing that special sessions can be called only for emergencies and that declaring an “emergency” through the 2007 resolution circumvented the constitution’s prescription for biennial sessions and amounted to a “supplemental” session.

Senate President Peter Courtney and House Speaker Jeff Merkley contended the court had no jurisdiction in the case. Instead, they argued, the state constitution gave the legislature “the sole and unreviewable discretion to determine whether a special session is warranted pursuant to its emergency powers.”

The court disagreed and framed the issue as “whether the Oregon legislature has properly complied with the provisions of the Oregon Constitution in calling itself into this forthcoming special session.”

Judge Lipscomb determined that the resolution by itself was not adequate to trigger the legislature’s emergency powers, but that a formal notice issued by leadership on Jan. 18, 2008, provided the necessary legal backing.

The Oregon Supreme Court on Feb. 2 agreed with the lower court’s decision and allowed the session to take place.

—Larry Morandi, NCSL

Members of the House applaud legislative staff workers on June 28, 2007, the last day of the session.

sessions over the years. I think there’s a reason for it,” says Alan Rosenthal, a professor of public policy and political science at the Eagleton Institute of Politics at Rutgers University. “A legislature simply has to be around on a regular basis in order to behave as a coequal branch of government.”

At least some Oregon lawmakers agree with Rosenthal.

Lawmakers tried out an annual session this year, ahead of asking voters for a permanent change. If passed during next year’s session, such a measure could appear on a special election ballot in 2009 or, more likely, on the primary ballot in 2010.

The every-other-year schedule frustrates some lawmakers, who say they don’t have time to get the state’s business done.

“You cannot put together a budget for Oregon and you cannot react to Oregon’s needs in education, health, safety and natural resources if we meet for just a few months every two years,” says Senate President Peter Courtney, the legislature’s senior member, who in his 24 years has served in 15 special sessions.
CALLS FOR CHANGE HAVE BEEN BUILDING IN RECENT YEARS. TWO LEGISLATIVE REVIEW COMMISSIONS IN 1968 AND 1974 URGED A MOVE TOWARD ANNUAL SESSIONS.

VOTERS APPROVED A CONSTITUTIONAL CHANGE IN 1976 THAT ALLOWS LEGISLATORS TO CALL THEMSELVES INTO SESSION IN AN EMERGENCY, ALTHOUGH IT HAD BEEN INVOKED ONLY ONCE BEFORE THIS YEAR. WITH NO ACTIVE CAMPAIGN FOR OR AGAINST IT, VOTERS REJECTED THE LAST BALLOT MEASURE ON ANNUAL SESSIONS IN 1990, BUT BY A MARGIN OF JUST 5,000 OF ALMOST 600,000 VOTES CAST.

WHEN RICHARD DEVLIN CAME TO THE OREGON HOUSE OF REPRESENTATIVES IN 1997, HE SAYS THE SCHEDULE MADE IT TOUGH TO GEAR UP FOR THE SESSION.

“THEIR WORST FEARS WERE CONCRETE AND ABOUT THEIR ABILITY TO MANAGE A POST-CONVENTION SESSION. THEY REPEATEDLY MENTIONED THAT A SECOND SESSION WOULD BE MORE DIFFICULT, AND THEY WERE RIGHT,” DEVLIN SAYS.


“I WAS CONVINCED THAT IF WE DID NOT DESIGN THIS [2008] SESSION DOWN TO THE MINUTE, WE WOULD LOSE CONTROL,” COURTNEY SAYS. “EVERYONE THINKS ABOUT THE ADJOURNMENT DEADLINE. THAT’S THE LAST THING WE SHOULD WORRY ABOUT.”

THE PUBLIC DEADLINES, NOVEL AS THEY WERE TO OREGON LEGISLATORS, WERE LESS CONTROVERSIAL THAN A COUPLE OF OTHER RESTRICTIONS IN HOUSE RULES FOR THE SESSION.


“In my opinion, the rules were indeed a little over-restrictive, but that’s politics,” says Wilhelms, a former leader of the House Republican minority, who observed the session as a 70-year-old college intern. “They certainly did allow the House leadership the tight control desired by the commission.”

SOME OF THE MINORITY REPUBLICANS SAID THE HOUSE RULES GAVE DEMOCRATS TOO MUCH SWAY DESPITE ONLY A ONE-VOTE MAJORITY. HOUSE REPUBLICAN LEADER BRUCE HANNA VOTED FOR THE RULES TO SMOOTH OVER TENSIONS ON THE FIRST DAY OF THE SESSION.

“But we have to give equal representation to the voters—a couple of them sponsored by Devlin, who had moved to the Senate and is now the majority leader. But none passed the House.

ANOTHER LEGISLATIVE REVIEW COMMISSION IN 2006 CAME UP WITH A DIFFERENT IDEA FOR CHANGE: LEGISLATORS SHOULD TEST-DRIVE ANNUAL SESSIONS IN THE NEXT TWO YEARS BEFORE ASKING VOTERS TO APPROVE A MEASURE.

“Our trial-run recommendation was truly innovative in that it recognized the need to move toward annual sessions,” says Gary Wilhelms, a co-chairman of the commission with three decades of experience as a legislator, legislative staffer and lobbyist. “But at the same time, it sought a path that would hopefully demonstrate success to Oregon voters.”
to members,” Hanna says. “If you cut one party out completely, it’s disingenuous no matter which side you are playing on.”

Dave Hunt, the House majority leader, saw it differently.

“The one thing I liked better about the House process is that the public and organizations knew well in advance what our bills were going to be,” he says. “Many of the Senate bills, such as its proposal for mortgage foreclosures, were kept quiet until the session.”

Senator Fred Girod, who moved from the House just before this year’s session, said the Senate rules treated the Republican minority more fairly in the session. But he is still opposed to the idea.

“If we move to annual sessions, you will see an expansion and more expenditures for government,” he said. “There is no limit for do-gooders as to how much legislation they can pass.”

But Representative Scott Bruun, also a Republican, says having Oregon legislators meet more frequently will let agencies and the public know there is somebody watching. “Even with reform, it may take some years for the power imbalance to improve,” he says.

**WHAT HAPPENED**

The session produced a mixed report card depending on who did the scoring. Among the actions:

◆ In the mortgage area, a bill limiting prepayment penalties failed in the Senate, and a broader consumer-protection bill cleared the House but died in the Senate. Lawmakers passed new reporting requirements for mortgage bankers and brokers, and disclosure requirements for consultants advising homeowners about foreclosures.

◆ More money for the state police was approved so troopers can provide 24-hour coverage of major highways, and for child-welfare and state hospital workers.

◆ In response to a citizen-initiated ballot measure that would require minimum prison
sentences for first-time property and drug offenders and cost the state between $256 million and $400 million in the next couple of years, legislators drafted an alternative. It would focus on repeat offenders and cost about $100 million in the same period. Voters will choose between the measures on the November ballot.

Money transfers made during the session would not have been possible under the Emergency Board’s rules, and Senator Jackie Winters, the deputy Republican leader and a long-time legislative budget writer, says that’s a plus.

“The board is an elite group making decisions for the total legislature,” she says, “If we are going to have an open and comprehensive process, you want to continue a budget committee of the full legislature.”

Rosenthal bolsters the point, saying that while special sessions and an emergency board for financial matters can fill the gap, “it really should be the entire legislature that is making crucial decisions.”

Hanna, who also sits on the budget committee, says legislators must link the opportunity for an annual review of proposed spending with an enhanced capability for audits of how the money was spent.

“Part of the case for annual sessions is that, if they are done properly, taxpayers get better management, agencies have less room to roam and the legislature has better oversight over the process,” he says.

The session took a step toward increasing legislative auditing through a new joint committee on agency performance.

Marge Easley, president of the League of Women Voters of Oregon, says it was a timely response by the legislature to give voters a choice.

“It has long been a goal of the league to support annual sessions, and we feel the February session was a good experiment in that regard,” she says. “We felt it did help make budget realignments on a timely basis, and it is preferable to doing them with just a few members on the emergency board.”

Wilhelms said some critics did not consider the session a real trial run of annual sessions because there were no real emergencies.

“Admittedly, I have a bias,” he said. “But I believe if there was a test, the legislature passed it. The trial was successful.”

Rosenthal adds a caveat emptor for lawmakers considering the switch: “Annual sessions will not make the legislature more popular because the most popular legislature is a legislature that is not in session,” he says. “A legislature that is not doing its job is popular because the job of the legislature is dealing with conflict.”