



2021-2023 Budget Presentation

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Overview of Office

Overseen by the Legislative Counsel Committee, the Office of the Legislative Counsel provides legal and publication services to the Legislative Assembly and its members and other agencies of state government.

The office:

- Drafts measures and amendments for legislators, legislative committees and state agencies;
- Provides legal opinions, legal advice and other legal services to legislators, legislative committees and legislative staff;
- Analyzes advancing measures for conflicts and drafts conflict amendments to reconcile nonsubstantive differences between measures;
- Reviews state agency rules for legal sufficiency; and
- Prepares indexes and tables for legislative publications.

In addition, for the six months following sine die of the odd-numbered year regular session, LC staff focuses on preparing the updated codified statutes in the official edition of the *Oregon Revised Statutes* (ORS). The office delivers the earliest and only official version of Oregon's statutes. Over 18,000 pages of statutory law, 23 volumes in all, are carefully edited, proofread, annotated and indexed before being sent to a printer and then delivered to customers at cost. The office also publishes and distributes four other legal specialty publications, including the *Criminal Code of Oregon*.

Immediately after publication of the ORS and updating of the ORS database in late December of the odd-numbered year, the office begins drafting measures for the even-numbered year session that commences the following February 1st. Following the conclusion of the even-numbered year session, LC provides an even-year supplement of session laws passed in the even-year session. Because voters have amended the Oregon Constitution to require the Legislative Assembly to meet annually, the even-year supplement is included as a part of the full ORS subscription. Finally, the office publishes the hardbound *Oregon Laws*, the official record of all newly enacted laws of the Legislative Assembly during the past two years, after the conclusion of the even-numbered year regular session.

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Beginning June 1st of the even-numbered year, the office receives and begins work on about 450 requests for legislative measures that are requested by state agencies and statewide-elected officials for consideration by the Legislative Assembly during the next odd-numbered year regular session.

Agency Performance Overview

KPMs for Reporting Year 2020 – Annual Performance Progress Report (page 35 of the budget notebook)

Legislative Counsel’s mission is to provide high-quality legal and publication services to the Legislative Assembly. Legislative Counsel continually strives to improve the quality of its work in the areas of:

Drafting Accuracy – The office strives to draft measures and amendments that are legally sufficient and follow form and style rules adopted by the Legislative Assembly. One of the strategies for accomplishing this goal is to increase the percentage of drafts that receive peer review from sine die adjournment to August 1 of the following year. The ideal of the office’s peer review process is that all drafters submit all drafts to the Chief Deputy, who then assigns the drafts to senior legal staff for review. The reviewers are at senior deputy level or above; they read the drafts for legal sufficiency and to determine whether the drafts accomplish the requester’s intention. A change beginning in the last biennium has been to continue the peer review process on a voluntary basis throughout session.

A second strategy for maintaining very high levels of drafting accuracy is to require each bill draft or amendment to be reviewed by two legal editors before the draft or amendment is delivered. LC strives for two-editor review of all LC work product, although during peak workload periods LC streamlines the editing process to one editor review to ensure that deadlines are met.

Efficiency and Timeliness – The office designs work processes to ensure that all measures and amendments submitted for printing accurately reflect legislative decisions and are printed in a timely manner.

Workload Demands – The office emphasizes communication in order to assist the Legislative Assembly in dealing with complex legal issues while managing the corresponding workload increases.

Legislative Publishing – The office integrates its drafting, editing and indexing work during session with post-session publishing processes, so that LC produces *Oregon Revised Statutes*, *Oregon Laws* and other publications that are timely, accurate and economical. One measurement of this goal is the length of time between adjournment sine die and the publishing of ORS. Keeping in mind that the Governor has 30 business days (six calendar weeks) from final adjournment to consider all remaining unsigned bills that the legislature enacted, it took six months from sine die

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(June 30, 2019) to compile, edit, proofread, annotate, index and publish over 18,000 pages of statutory law (23 volumes in all).

Customer Service – The office takes pride in providing high-quality legal and publication services to the Legislative Assembly. A customer satisfaction survey was conducted in August 2020 to rate LC’s overall customer service. The survey was sent to legislators, legislative staff and lobbyists. There were 89 respondents who chose to evaluate LC’s customer service. An average of 92 percent of the 2020 respondents rated LC as good or excellent in the following specific categories: timeliness, correctness, helpfulness, knowledge and expertise, overall quality, fairness and objectivity, confidentiality, and clear and understandable advice. This is a slight increase from the 2019 survey in which 88 percent of respondents rated LC as good or excellent.

Legislative Counsel will continue to review the key performance measures submitted with the 2021-23 budget request to determine whether they meet with the expectations provided to agencies in the KPM guidelines. LC will continue to work with LFO in deciding whether the outcome measures LC currently has in place are accurately reflecting appropriate performance measure targets.

Legislative Counsel has taken actions to contain costs and improve program delivery. Due to the pandemic and the sudden need for all staff to work from home for the past 14 months, including both interim and session periods, many LC processes and workflows had to be extensively modified, with little opportunity for advanced testing before being deployed. Actions, both pandemic related and generally to improve efficiencies or program output include:

- Developing online editing protocols and techniques, including protocols for collaboration among staff located in remote locations.
- Developing an electronic system for workflow management to increase efficiency of production and decrease need for manual oversight.
- Streamlining the compilation process for incorporating legislative changes into a new edition of the ORS, including developing procedures and protocols for remote compilation in order to ensure that a 2021 ORS edition can be produced even if public health concerns still compel staff to work remotely as of fall 2021.
- Partnering with the Information Services division of LAC to develop and implement electronic delivery of drafts and amendments internally among staff and to members and committees.
- Revamping the E-store to improve citizen ability to purchase LC publications online.
- Expanding available research tools by creation of indexed databases and other internally-created online research sources.
- Producing and marketing specialty publications targeted to specific interest groups (labor, employment and workers’ compensation; landlord and tenant rights; family law; criminal law).
- Charging state agencies for bill drafting services.

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- Streamlining the process for turning a draft into an introduced measure and for engrossing amendments into measures.
- Developing and streamlining computer processes used to generate measures and legislative publications. To that end, LC and Information Services have:
 - Spent the past four years planning for and developing a proposal for a document publishing and management system (DPMS) to replace aging technology the Assembly relies on for creating, amending and publishing legislative measures and for the codification and publication of legislative enactments.
 - Successfully conducted a competitive procurement and placed two vendors under contract to develop a modern, integrated system for document creation, publication and management.
 - Been successfully working with these vendors in the actual development of this system for anticipated deployment for the 2024 legislative session.
- Providing for a secure remote connection and other needed equipment to allow staff to work remotely during the pandemic and during evening and weekend hours or in conformance with interim period legislative branch mobile work policies, following the return to normal public health conditions.
- Streamlining order processing and accounting procedures while maintaining high integrity of internal fiscal controls.
- Revamping the employee performance evaluation process.

Budget Drivers and Environmental Factors

Ongoing – The budget is primarily driven by personal services costs. In the 2021-23 Legislative Request Budget, personal services costs would constitute 87% of the general funds needed to continue all current levels of administrative activity for the general program. During this biennium, the branch undertook a pay equity analysis to comply with recently enacted legislation and a branch-wide compensation plan revision. Moving forward, both the pay equity analysis and the compensation plan revision will serve as major reasons for LC budget increases.

There is a growing demand for increased knowledge, skills and availability of staff to respond to increasingly complex requests. Should the demand for LC staff services continue to grow, additional staff resources will be necessary, putting upward pressure on budget needs.

Demand on office services has increased due to a variety of circumstances, including but not limited to:

- the need for all work to be performed remotely;
- the complexity of drafting requests;
- the scope and length of annual sessions;
- the need and frequency of special sessions to address emergencies and unexpected, complex problems;
- compressed legislative timelines;
- increased pressures on work order turnaround and printing deadlines;

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- the need for staff to work for long periods of time with IT vendors in the development and testing of the DPMS project;
- increased pressures on keeping the cost of LC publications down while maintaining high quality;
- increased demands from members, legislative committees and other legislative service agencies for opinions and informal legal advice;
- increased demand to assist the branch in responding to and processing public records requests;
- preparation of open government impact statements for legislative measures.

During Session – Staff workload in LC is intense and very challenging during session. It is therefore critical that employee compensation levels remain very competitive or LC’s ability to retain highly qualified, experienced and skilled professionals will be compromised. The recently adopted branch compensation plan has aided LC’s competitive position relative to other employers with respect to certain positions, but competitiveness was not enhanced with respect to other positions. The skills necessary to perform consistently at a very high level, under considerable time pressure and with little supervision are hard to find, develop and maintain. One result of the Legislative Assembly moving to an annual session schedule is that workload levels within the office remain very high throughout the interim compared to prior biennia.

Turnover – A major challenge relates to the loss of experience and expertise of legal staff. The office strives to hire lawyers with significant legal work experience. In our view, however, it takes an additional six years of work at LC before an attorney masters the specialty of legislative lawyering. The office has been very successful in retaining staff in recent years and strives to continue this trend in the future.

Technology – Another significant change relates to the office’s reliance upon information management technology. As a result, the office has a continuing need to have staff with skills and experience in building and maintaining databases; accessing, reading, querying and extracting information from various data systems; and developing and maintaining a document management system. The office has begun a major multi-year effort to modernize document management and publishing tools that are critical to achieving the primary missions and duties assigned to the office. Areas of recent technological change include extensive modification of processes and techniques to permit all staff to work remotely and perform all LC services from remote locations; automation of LC draft, legislative printing and ORS publication dockets; scanning of legislative measures for population into the Amend, Repeal and Conflicts program; automation of conflict check queries from committee staff to the LC conflicts team; development of a generic electronic bill back; maintenance of a website and E-store; development of a new indexing system; development of a new system for tracking statutory series; and development of databases for public records request management .

Workload Complexity – Bill drafts and amendments have grown more complex in recent years. The biggest reason for the increased complexity is the growing practice

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of attorneys, interest groups and others attempting to draft mock statutory language and having that constitute all of the materials submitted to Legislative Counsel. While counterintuitive, it takes far longer to prepare a legally adequate bill draft or amendment when the request is based on mock statutory language than when the request is based on an ordinary language explanation of the problem and the desired solution. In addition, existing laws inevitably become more complicated as exceptions and qualifications are added. In addition, Oregon's statutes and federal law continue to become more intertwined. A solid knowledge of Oregon law is only a starting point. Attorneys in the office need to know federal laws and regulations affecting their subject matter areas, and are frequently called upon to address the impact of those laws and regulations on Oregon law. The increasing complexity of the workload also affects the office's editors, who need to understand the substance of the drafts or amendments to do their work. Finally, attorneys in the office spend an increasing amount of time researching legal issues and providing legal advice or opinions in response to requests from members, or in performing other general counsel services.

Annual Sessions – In 2010, voters approved a constitutional amendment that required the Legislative Assembly to meet annually and limited the length of regular sessions. Getting the new edition of the ORS ready for publication using traditional methods takes 16 weeks that must follow the six-week period the Governor has to sign and veto bills. While the Oregon Constitution allows the Legislative Assembly to meet for longer than the stated duration of a regular session, if one assumes that the odd-numbered year session concludes within 160 days, there is just enough time to make the changes necessary to prepare a new edition of the ORS and update the ORS database. There is only just enough time because the ORS database needs to reflect the changes the Legislative Assembly made in the odd-numbered year session before drafting can begin for the 400-500 bills for an even-year session beginning in February. This extremely short timeline leaves little room for error or loss in efficiency and enhances the need for the office to maintain a competent and experienced professional staff. The reliance that LC placed on session staff in prior biennia would be misplaced in the era of annual sessions.

Major Budgetary Issues:

- Assisting the Legislative Assembly in dealing with complex legal issues and managing the corresponding workload increases.
- Having adequate staff capacity to continue providing high quality and timely services during annual sessions, frequent special sessions and interim periods that are growing busier.
- Giving requesters (members, legislative committees, state agencies and other legislative service agencies) high-quality legal services.
- Providing the citizens of Oregon timely, accurate and economical legislative publications.
- Providing support and expertise in the areas of public records and open government impact statements.
- Supporting all assigned interim activities and interim committee work.
- Retaining experienced staff.

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- Providing adequate support for information technology modernization efforts.

Program Priorities

Program Prioritization Form 2021-23 (page 59 of the budget notebook)

There are three principal programs -- a General Program, an ORS Publications Program and a Legislative Publications Program.

The General Program consists of:

Bill Drafting Services – The principal function of the Office of the Legislative Counsel is the drafting of legislative measures at the request of members of the legislature, legislative committees or state agencies. The majority of staff time during the biennium is devoted to the performance of this function. As of March 22, 2021, the office had received 5,875 work requests, of which 3,968 were 2021 draft requests. Total work requests delivered for the 2019 and 2020 Regular Sessions were 9,285 and 1,582, respectively. Historically, the office produces about 4,000 amendments during an odd-numbered year regular session. As of March 22, 2021, the office had delivered 1,151 amendments for the 2021 session. LC will engross about 1,100 bills and enroll about 900 bills during the 2021 session. Finally, LC prepares indexes and tables to reflect legislative action during the session.

Legal Opinions, Research, and Other Legal Services – Subject to policies established by the Legislative Counsel Committee, the Office of the Legislative Counsel performs legal services at the request of legislators, legislative committees and legislative staff, including preparing legal opinions, legal research and ballot explanations, and performing contract review. As of March 22, 2021, LC has produced 169 legal opinions and 12 legal research requests for the period beginning July 1, 2019, (the day after sine die of the 2019 session).

We note for both Bill Drafting Services and Legal Opinions, Research and Other Legal Services that the statistics for this biennium may be distorted because of the 2021 session being conducted under largely remote conditions.

Administrative Rule Review – The office reviews all administrative rules adopted by state agencies to ensure that a rule is within the intent and scope of the enabling legislation and is otherwise constitutional. The office reviews about 1,000 rules annually.

Legal Proceedings – Legislative Counsel is authorized to participate in legal proceedings necessary to protect the official interest of the legislature, its committees and members. For example, in early 2018, LC prepared and filed a brief on behalf of the Legislative Assembly, appearing *amicus curiae*, in AAA Oregon/Idaho Auto Source LLC v. Oregon, 363 Or. 411 (2018).

The ORS Publications Program consists of:

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Oregon Revised Statutes – Costs that are legal and editorial in nature and costs involved in preparing the printer's copy, printing and distribution are borne by purchasers of ORS. All proceeds from sales of ORS are deposited in the ORS Revolving Account and are appropriated continuously for the publication and distribution of ORS. Any unexpended and unobligated balance in the revolving account in excess of \$500,000 as of July 1 of any odd-numbered year must be transferred to the General Fund. The prices of current volumes and other ORS units sold are established to recover, insofar as possible, actual costs of compilation, printing and distribution. Experience since publication of the first (1953) edition of ORS indicates that this objective has been achieved. As of February 2019, ORS-related publication sales were \$1,438,415. Sales for the 2019-21 biennium through February 2021 are \$1,319,495.

Other ORS Publications – The printing and distribution costs of other publications, such as the *Criminal Code of Oregon*, *Family Laws of Oregon*, *Landlord and Tenant Laws of Oregon* and *Labor, Employment and Workers' Compensation Laws of Oregon*, are paid from the ORS account.

The Legislative Publications Program consists of:

Online Oregon Laws – The earliest official source of new and amended laws of the Legislative Assembly is available online and without charge as soon as possible after each legislative session.

Oregon Laws – The hardbound permanent volumes containing the official version of all bills enacted by the Legislative Assembly during a biennium (odd-year session and following even-year session). Receipts from sales of this publication are deposited in a Legislative Publications Account and used to pay the costs of printing and distribution.

For even-numbered year sessions, the office produces a softbound session law publication that contains all legislation passed by the Legislative Assembly during that session. Because voters have now required the Legislative Assembly to meet annually, LC includes the even-year supplement as a part of the full ORS subscription.

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