



2011 Session Overview

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incarceration rates through criminal justice reform, maximizing efficiencies in government through consolidation and modernization of processes, and establishing a closing fund that will help attract new business to the state. The Legislature also was faced with the task of redistricting which occurs after every decennial census.

Agriculture

Legislators made changes in several areas including those related to trespassing, farmed cervidae businesses, hunting regulations, swine farm regulations, and other agriculture-related businesses.

SB 828 requires that people notify landowners and hunting lease holders when entering land and increases the fine for hunting; pursuing game; discharging a firearm within 440 yards of any church, schoolhouse, or public place; or shooting from across a public road, highway, highway right-of-way, or railroad right-of-way. A violation can result in a fine of at least \$500 but not more than \$1,500 for the first offense and of \$1,500 to \$2,000 for subsequent offenses. The measure also prohibits shooting from across a public road, highway, or railroad right-of-way into a facility licensed pursuant to the Oklahoma Farmed Cervidae Act or a big game commercial hunting area.

Two other measures also make changes to farmed cervidae regulations. **HB 1474** increases the fine for willfully entering a facility licensed pursuant to the Oklahoma Farmed Cervidae Act or a commercial hunting area licensed pursuant to Oklahoma law without permission. The maximum fine will be \$1,500. **HB 1473** removes the double-fencing requirement for cervidae farms. Double fencing was required to keep

Introduction

The 2011 session of the Oklahoma Legislature was largely defined by the \$500 million budget shortfall caused, in part, by the loss of federal stimulus funds. The Legislature developed a budget agreement of \$6.5 billion that focused on mitigating cuts to core services including education, health and human services, transportation, and public safety. Cuts to agency budgets ranged from less than 1 percent to 9 percent.

Legislators addressed a number of policy issues that included reforming the worker’s compensation system, continuing efforts at tort reform by addressing non-economic damages, building in greater academic and financial accountability in the state’s education system, shoring up the state’s pension systems, addressing high

wild deer separate from animals raised on cervidae farms.

Another measure dealing with hunting regulations, **HB 1338** lowers the minimum age for hunters allowed to purchase apprentice licenses to age 8. This allows them to hunt with a licensed hunter at least 18 years old. It also requires all persons under age 10 to be accompanied by a licensed hunter who is at least 18 years old. **HB 1339** requires that dealers issue hunting and fishing licenses electronically by January 1, 2013.

With regard to swine feeding operations, **HB 1957** requires that new operations established after November 1, 2011, using liquid swine waste management systems and housing swine in roof-covered structures, not be located within three miles of the outside boundary of any facility with an average annual registered attendance of 2,000 people or more and owned or operated as a camp or recreational site by a nonprofit organization established prior to the swine feeding operation. For facilities with an average annual attendance of 2,000 or less, the setback will be one mile from the outside boundary of the facility.

SB 228 makes changes to procedures for reporting damages to crops by pesticide applicators. Those alleging damage to growing crops or plants must file a written complaint with the Department of Agriculture, Food, and Forestry and allow the applicator and the applicator's representatives access to the property to assess the alleged damage.

SB 420 specifies that Oklahoma City and Tulsa and their respective airports; the Oklahoma Department of Agriculture, Food, and Forestry; the United States Department of Agriculture; and the United States Custom and Border Patrol will cooperate to establish international and domestic livestock exporting services.

Children and Families

The Legislature acted upon the recommendations of the Adoption Review Task Force by passing **SB 510**. The measure:

- Directs the Administrative Director of the Courts to develop a form to collect demographic information regarding the adoption of each child in Oklahoma and requires each court clerk to collect the information and make an annual report. The Department of Human Services will compile the data and report it to the public;

- Modifies the list of allowable adoption-related costs and expenses that a person may pay for in connection with an adoption to include reasonable and necessary costs associated with an international adoption and a one-time gift from the adoptive parents to the birth mother valued at no more than \$100;
- Clarifies what constitutes reasonable and necessary living expenses of the birth mother and requires certain verification of living expenses paid for on behalf of a birth mother;
- Modifies the list of persons or agencies that are authorized to conduct a home study of prospective adoptive parents;
- Increases from 22 to 99 years the length of time records of adoptions finalized in the state are required to be maintained; and
- Authorizes the court to disclose to an employee of an out-of-state entity licensed to perform home studies in that state whether a prospective adoptive parent has relinquished or had parental rights to a child in Oklahoma terminated.

Another measure, **HB 2136**, provides greater protection for children in state custody being reunited with their parents. The measure requires the Department of Human Services to conduct a criminal background check of any adult in the home prior to a trial reunification and requires that the department submit service provider progress reports and critical incident reports to the court and certain parties in a deprived action so that a more informed decision about the child's placement can be made. The bill also requires the department, upon receiving a report alleging abuse or neglect, to conduct an investigation rather than an assessment under certain conditions and allows the Oklahoma Commission on Children and Youth to disclose any previous child welfare encounters or investigations involving a child who has died or nearly died and whether the person responsible for the child was charged.

Corrections and Public Safety

The Legislature focused its efforts on meaningful corrections reform this session by examining the types of criminals who should be imprisoned and those who can be rehabilitated through extensive community corrections programs. Legislators also enacted measures to reduce incidents of drunk driving and domestic

violence. The rights of citizens to protect themselves were also enhanced with the passage of gun legislation.

Major efforts at the reform of the corrections system in Oklahoma culminated in the passage of **HB 2131**. One of the major provisions contained in the measure limits the role of the Governor in the parole process for nonviolent offenders. Under this new system, the Governor has 30 calendar days to review parole recommendations for nonviolent crimes, and if no action is taken within the 30 days, parole is granted. Parole recommendations for crimes of violence are exempted from the 30-day requirement, and the Governor must grant or deny parole for persons convicted of a violent crime. Another reform item establishes qualifications for eligibility to be appointed as a member of the Pardon and Parole Board. The bill requires that future board members have a college degree and experience in the criminal justice field.

Another reform contained in the measure expands the number of offenders who can participate in community corrections programs. Community sentencing allows a court to impose a punishment as a condition of a deferred or suspended sentence and allows the offender to engage in programs within the community rather than be sentenced to prison. All offenders are given a level of services inventory assessment to determine if they are amenable to community placement. To increase the number of eligible participants, the bill modifies the definition of *eligible offender* to include offenders who have been assessed at a range other than the low range and who have been convicted of at least one prior felony offense.

Lastly, steps also were taken to alleviate the overcrowded conditions at Oklahoma's prison facilities by expanding the use of electronic monitoring. The bill lowers from 180 days to 90 days the time which an offender must be incarcerated before the offender can be considered for electronic monitoring. Inmates serving a sentence of more than five years who have 11 or more months left on a sentence or any inmate serving a sentence of five years or less whose initial custody assessment requires placement above the minimum security level are not eligible for community placement.

The Erin Elizabeth Swezey Act was created by **SB 529** as an attempt to reduce the number of drunk drivers operating on Oklahoma roadways. The measure requires persons subject to a court order for the installation of an ignition interlock device to submit their

driver license or identification card for a replacement license that bears the words "Interlock Required." The bill requires an ignition interlock be placed on an offender's motor vehicle during any modification of a revocation for Class D motor vehicles. An ignition interlock device is required on a first revocation for a period of one and one-half years following the mandatory period of revocation if the person had a blood alcohol content of .15 or more. The mandatory period for an ignition interlock device increases to a period of four years on a second offense. For third and subsequent offenses, the person must have an ignition interlock device for five years. The bill limits the cost for the ignition interlock device to not more than \$25 per month. The bill also requires that upon a third conviction, a person is subject to the cancellation or denial of driving privileges, an assessment of the person's degree of alcohol abuse, and the continued installation of an ignition interlock device after the mandatory period of cancellation, denial, or revocation.

Another measure aimed at protecting the public is **SB 324** which applies the same standards placed upon the motoring public to boat operators. The bill lowers the blood alcohol concentration from .10 to .08 for the determination of being under the influence while boating and provides that any person who operates a vessel on the waters of the state has given consent to blood or breath tests to determine alcohol concentration. Persons who refuse the blood or breath test can be fined up to \$1,000.

Impacting gang activity was also addressed by the Legislature this session. **SB 923** increases the punishment from not more than one year to not more than five years in prison for any person convicted of encouraging, soliciting, or recruiting a minor to participate in a gang. The fine also is increased from \$1,000 to not more than \$5,000. A second offense is increased from not more than five years to not more than 10 years in prison. The measure also creates a new felony offense for committing a gang-related offense as a condition of membership in a gang. Punishment is five years in prison in addition to any other penalty imposed for the original offense. School employees are required to report any suspected gang members to a designated school official who is to report the information to local law enforcement.

Sex offenders also received attention this session. Reacting to a situation whereby numerous sex offenders were residing in a trailer park, **SB 852** clarifies the

definition of *multi-unit structure* as used to determine the dwellings in which registered sex offender are allowed to reside. The measure defines *multi-unit structure* to mean a structure with multiple residential units that provide independent living facilities for living, sleeping, cooking, eating, and sanitation within each individual unit. Manufactured homes, mobile homes, trailers, and recreational vehicles that do not meet the descriptions are not to be considered multi-unit structures. The measure further prohibits any person or entity from knowingly establishing, leasing, operating, or owning any structure or portion of a structure where persons required to register pursuant to the Sex Offenders Registration Act are allowed to reside together. The penalty for violation is a misdemeanor, subject to a fine of not more than \$500, imprisonment in the county jail for not more than one year, or both fine and imprisonment. A second violation is a misdemeanor, punishable by a fine of not more than \$2,500, imprisonment in the county jail for not more than one year, or both fine and imprisonment. A third or subsequent violation is a felony, punishable by a fine of not less than \$2,500 nor more than \$5,000, imprisonment for not more than five years, or both fine and imprisonment. The measure becomes effective July 1, 2012.

Protecting persons from domestic violence was the aim of **SB 952** which creates two new felony crimes relating to domestic violence. A new felony offense of domestic assault or domestic assault and battery with a dangerous weapon is established with a punishment of imprisonment in Department of Corrections custody for not more than ten years or by imprisonment in a county jail for not more than one year. The new felony crime of domestic assault and battery with a deadly weapon is created with punishment of imprisonment in the custody of the Department of Corrections not exceeding life imprisonment. Additionally, the measure adds aggravated assault and battery upon any person defending another person as an 85 percent crime, which is a crime that requires the person to serve a minimum of 85 percent of the sentence imposed before the person is eligible for good time or other earned credits. The measure also requires the court to order any offender to counseling as a condition of a suspended sentence or probation for a conviction for domestic assault and battery with a dangerous weapon or domestic assault and battery with a deadly weapon. The bill also prohibits a police officer or sheriff from releasing a person arrested for an act constituting domestic assault and battery or domestic assault and battery with a deadly weapon

without the person appearing before a judge or court and prevents a person arrested for an act constituting domestic assault and battery or domestic assault and battery with a deadly weapon from being considered for pretrial release programs.

Another provision of the measure allows state charges to be brought if a law enforcement officer who is assaulted is employed by the federal government and increases the punishment for aggravated assault and battery upon a law enforcement officer to a term of incarceration not to exceed life in prison, a fine not exceeding \$1,000, or both fine and imprisonment. If the assault results in maiming, a conviction results in punishment of not less than five years nor more than life imprisonment, a fine of not more than \$5,000, or both fine and imprisonment. The bill modifies the crime of maiming by increasing the punishment upon conviction to a term of incarceration not exceeding life imprisonment, a fine of not more than \$1,000, or both fine and imprisonment. The current punishment is a term of incarceration not exceeding seven years in Department of Corrections custody or up to one year in the county jail.

Two measures enhance gun rights of Oklahoma citizens. **HB 1439** extends the provisions of the Make My Day Law to the person's place of business when the person is in fear of imminent peril of death or great bodily harm. A person or owner, manager, or employee of a business is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to themselves or others when using defensive force that is likely to cause death. A second measure, **HB 1652**, allows a person who is a carry concealed permit holder to store his or her weapon in a locked vehicle while on a career technology center campus.

Economic Development and Financial Services

A major focus of the 2011 legislative session was economic development. The Legislature enacted measures related to the Quality Jobs Act and the Local Development Act intended to grow business in Oklahoma.

HB 1953 creates the Oklahoma Quick Action Closing Fund. The fund is to be used to further the state's economic development efforts, specifically in situations where spending these dollars would likely be a determining factor in locating or retaining a high-impact

business project or facility in Oklahoma. The Director of the Oklahoma Department of Commerce (ODOC) may recommend expenditures from the fund after analyzing certain economic benefit factors. After approval by the Governor, ODOC may enter into an agreement establishing conditions for payment from the fund.

Two other measures are intended to enhance Oklahoma's business climate.

SB 13 amends the Local Development Act to allow cities, towns, and counties that are not contiguous to form incentive districts or increment districts.

SB 154 amends the 21st Century Quality Jobs Incentive Act so that incentive payments for an establishment are stopped if its gross payroll falls below the required threshold for four consecutive quarters during a 28-quarter period.

Education

Legislators concentrated much of their attention on reforming the education system to help students develop better reading and math skills in the early grades, offer parents more choices, and give administrators more flexibility. In addition, legislators made efforts to address the financial situation of school districts.

As a result of **SB 346**, students not having necessary reading skills by third grade will not be promoted to the fourth grade, ending the practice of social promotion starting in the 2011-12 school year. Districts must provide intensive reading instruction to students with lower reading scores in grades kindergarten through third grade. Third grade students who do not pass to the fourth grade also must receive additional reading instruction and remediation through an altered instruction day. Students will not be retained more than two years. **HB 1269** requires teachers to teach the five elements of reading to help students receive improved reading instruction. **HB 1918** turns the focus to math by requiring that the Oklahoma Commission for Teacher Preparation establish a math professional development program in the elementary schools contingent upon funding.

To insure quality in the schools, **HB 1456** requires that the State Board of Education give schools letter grades according to school performance and provide that information to parents, and **SB 2** requires the adoption of graduation rate targets with the goal being 100 percent.

Districts will calculate graduation rates using four-year cohorts to get more accurate numbers. Schools not meeting targets at the end of the initial two years or in subsequent years must make graduation improvement plans and participate in training provided by the State Board of Education.

One measure makes changes to the process of teacher termination. **HB 1380** repeals the section of law that gives teachers the right to trial de novo. Trial de novo allows teachers a new trial in district court after local boards vote to terminate them. It also makes districts follow the same termination procedure for career and probationary teachers.

Two measures made changes to the State Department of Education and the State Board of Education. **HB 2139** gives the State Superintendent of Public Instruction more flexibility in overseeing the State Department of Education. The Superintendent will have the right to oversee daily operation of the State Department of Education and hire staff without approval from the State Board of Education. The board will maintain supervision of the public school system of Oklahoma. The second measure, **SB 435**, alters the State Board of Education membership. It directs the Governor to appoint one member from each congressional district and one member from the state at-large. The Superintendent of Public Instruction will be the chairperson of the seven-member board. Terms will be for four years, and members will serve at the pleasure of the Governor.

Another area of concern for legislators was the financial situation of schools. A number of bills addressed directing more funds toward classroom expenses. **HB 1372** requires that staff for certain administrators count as administrative expenditures and thus would be subject to the cap on the amount of money districts can spend on administration. **SB 664** lowers that cap on school district administrative expenditures. The cap varies from 5 percent of total expenditures to 8 percent of total expenditures depending upon the average daily attendance of the district, with smaller districts having a higher percentage. **SB 536** creates the Task Force on Creating Administrative Efficiencies to study ways to reduce spending on administration in school districts. **HB 2115** expands the school consolidation assistance fund to allow districts to receive funds for sharing superintendents, and **SB 260** delays the requirement for full-day kindergarten to allow districts to continue to use Title I money for kindergarten.

Two measures are designed to provide scholarships and grants to students and school districts. **SB 969** creates the Oklahoma Equal Opportunity Education Scholarship Act which allows tax credits for those contributing to organizations granting scholarships or eligible educational improvement grant organizations. **HB 1852** allows contributions to the Public School Classroom Support Revolving Fund which will be used for grants to teachers.

Elections

Three measures intended to keep the state in compliance with federal election requirements were passed.

SB 115 creates the Uniform Military and Overseas Voters Act, which directs the Secretary of the State Election Board to make available to covered voters information regarding voter registration procedures and procedures for casting military-overseas ballots and directs the Secretary to develop standardized absentee-voting materials, including a declaration for use by a covered voter to affirm the voter's identity and eligibility to vote. The bill establishes procedures for registering to vote and for the processing of ballot applications and transmittal of ballots.

HB 1615 creates the Let the Troops Vote Act and modifies:

- The dates for primary elections;
- The time frame for forming a recognized political party;
- The time frame for changing political affiliation;
- The dates for holding special elections and the filing period dates;
- The required time frame for the transmission of absentee ballots upon application; and
- The date of the Presidential Preferential Primary.

SB 328 modifies the state's Election Management System to be consistent with the requirements of the federal Help America Vote Act, including specifying procedures for counting votes in a declared election emergency. The measure suspends local elections in December of 2011 and January of 2012 to allow for an orderly transition to the new system.

HB 1664 removes the requirement that ballot titles be written on the eighth grade reading comprehension level. The measure authorizes the Attorney General to

respond in writing to certain comments on ballot titles made by the Speaker of the House or President Pro Tempore of the Senate. The measure also authorizes the President Pro Tempore or Speaker to appeal to the Supreme Court and offer a substitute ballot title and provide procedures for such appeals.

SB 54 modifies qualifications for the office of District Attorney and requires a candidate to be a registered voter in the district and reside within the district for six months preceding filing. Similarly, **SB 117** requires candidates for county commissioner to have been registered voters in the district and reside in the district for six months preceding filing.

Energy and Utility Regulation

The Legislature passed several bills this year that involved modernizing Oklahoma state statutes to reflect new, growing industries and technological innovations. **HB 1821** creates the Exploration Rights Act of 2011 to try to mitigate potential conflicts between industries that rely upon the reasonable use of the surface estate, namely the wind, oil, and gas industries. The measure outlines mineral owner rights with regard to the surface estate, and stipulates that certain parties may not unreasonably interfere with the mineral owner's right to make reasonable use of the surface estate. **HB 1909**, known as the 2011 Shale Reservoir Development Act, modifies state statutes related to the regulation of horizontal drilling in shale reservoirs to harmonize Oklahoma laws with innovations in technology that have developed in the oil and gas industry. Among other things, the act outlines the jurisdiction of the Oklahoma Corporation Commission with regard to multiunit horizontal wells and horizontal well unitizations. Additionally, **HB 1079** establishes the Electric Usage Data Protection Act to protect the confidentiality of consumer information gathered by smart meters now used by electric utility companies in Oklahoma. The bill establishes certain requirements related to access to and maintenance of the confidentiality of customer information and stipulates provisions under which certain types of information may be disclosed without customer consent.

SB 885 clarifies provisions in the tax law relating to horizontal and deep depth wells that qualify for a reduction in the gross production rate that were previously amended under HB 2432 in the 2010 legislative session. That legislation inadvertently excluded qualifying wells which exist prior to July 1, 2011.

Environment

The Legislature addressed issues related to waste, water, and conservation practices this session.

HB 1939 increases used tire recycling fees to \$2.50 for all motor vehicle tires 19.5 inches in rim diameter or less. The measure also requires that 28 percent of the annual amount that accrues in the Used Tire Recycling Indemnity Fund be allocated to the Department of Environmental Quality's Revolving Fund to implement provisions related to air pollution.

HB 1059 requires individuals serving water to the public from a water system that was constructed without a permit to apply for a permit by a specified date.

In addition to prohibiting a person from operating a commercial composting facility without a Department of Environmental Quality permit, **SB 19** requires the owner/operator of the facility to assess a \$1.25 per ton fee on composting material received. It also requires the owner/operator of a solid waste landfill to maintain certain exterior and interior slopes.

General Government

In an effort to control costs for Oklahoma's cities and save taxpayer dollars, **HB 1593** repeals the Oklahoma Municipal Employee Collective Bargaining Act, a law which required cities with at least 35,000 residents to have collective bargaining if non-uniformed employees unionize. Oklahoma City, Tulsa, Norman, and Muskogee, all of which had collective bargaining agreements prior to the 2004 passage of the Oklahoma Municipal Employee Collective Bargaining Act, will not be affected by the new law.

Also in response to the budget shortfall, **HB 1665** discontinues the Oklahoma Art in Public Places program for three years but allows current projects to be completed to avoid any potential breach of contract. Under current law, anytime the state has a building project or renovation costing \$250,000 or more, 1.5 percent of the cost must be dedicated to public art.

HB 2172 transfers all powers, duties, and functions of the Oklahoma Indian Affairs Commission to the Oklahoma Native American Liaison in the office of the Governor effective July 1, 2011.

HB 1075 requires that public construction contracts must specify up to 5 percent of all partial payments based on work completed be withheld as retainage. Currently, 10 percent of the payments must be withheld and then reduced to 5 percent after the contractor has completed 50 percent of the total contract amount.

SB 331 modifies the number of resident taxpayers required to institute actions for the recovery of money or property belonging to the governmental entity. The measure deletes certain penalties and rewards for plaintiff taxpayers. If the claims in the relevant taxpayer action are deemed meritorious, the contract will be void and property will be returned to the subject governmental entity. Resident taxpayers will be entitled to attorney fees and court costs.

SB 708 provides requirements and guidelines for municipalities that adopt ordinances, resolutions, or regulations to collect development fees. The development fees must be based on actual system improvement costs or certain reliable estimates. Development fees must be calculated to fund only the costs of improvements related to certain listed public infrastructure systems. The measure also:

- Requires that fees not exceed a reasonably determined proportionate share of the cost of capital improvement and requires an established functional nexus between the purpose and the amount of the fee.
- Restricts municipalities from using fees on repairs or maintenance to existing public infrastructure systems.
- Requires the relevant ordinance, resolution, or regulation to include a schedule of development fees and a component capital improvement plan which may only be spent on capital improvements for that particular public infrastructure system to serve the area encompassing the development or only within that service area. In the alternative, municipalities are authorized to establish certain service areas to collect development fees.

HB 1414 makes the Oklahoma Certified Real Estate Appraisers Act applicable to appraisal review reports which are reports of the process of developing and communicating an opinion about the quality of another appraiser's work. The measure modifies the duties of the chairperson of the Real Estate Appraiser Board when dealing with grievances and modifies the board's powers

and duties to include establishing standards and criteria for approving course providers and instructors. The amount of the Federal Registry Fee the Insurance Department must collect is modified from \$25 to an amount to be assessed by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. Several licensing requirements for temporary permits, original certifications, and nonresidents are modified.

Government Modernization and Agency Oversight

The Legislature enacted two measures intended to maximize efficiencies in state government through consolidation of agencies themselves or of various agency functions.

HB 2140 creates the State Government Administrative Process Consolidation and Reorganization Reform Act of 2011. The measure consolidates the following agencies into the Office of State Finance (OSF):

- Department of Central Services
- Office of Personnel Management
- Oklahoma State Employees Benefits Council
- Oklahoma State and Education Employees Group Insurance Board

The Director of OSF is required to consolidate all of the agencies' administrative functions by December 31, 2011, and to demonstrate a 15 percent overall cost reduction and further requires the Director to make recommendations on the streamlining, reduction, or elimination of the governance structures and statutorily-established positions of each agency.

HB 1304 creates the Information Technology Consolidation and Coordination Act for the purpose of consolidating certain information technology (IT) functions and personnel. Provisions of the measure include:

- Prohibiting state agencies from purchasing or leasing any IT equipment without the prior approval of the state's Chief Information Officer (CIO);
- Requiring all state agencies to provide to the CIO a list of IT assets of the agency that are integral to agency-specific functions and a list of IT positions associated with those assets;

- Requiring the CIO to identify all IT assets and associated positions of all state agencies that are not integral to the agency's specific functions and directs the identified IT assets and positions of appropriate state agencies be transferred to the Information Services Division of the OSF; and
- Requiring the CIO to submit quarterly progress reports, including the net savings realized through the consolidation of resources and personnel, to the Director of OSF and to the Legislature.

A related measure, **HB 1086**, creates the Transparency, Accountability and Innovation in Oklahoma State Government 2.0 Act of 2011 that includes a number of provisions aimed at updating administrative processes and increasing public access to various agency records and expenditures. The bill:

- Requires, effective July 1, 2012, that all payments disbursed from the state treasury be made only electronically and that the number of exempted payments and a list of causes be published in a report on the State Treasurer's website.
- Requires the state's CIO to maintain a website to allow public access to electronic documents and requires each state entity to submit to the CIO searchable electronic versions of all publications they are required to produce;
- Requires the CIO to maintain a website to allow public access to forms produced by state agencies and requires agencies to submit their forms to the CIO in a searchable electronic format;
- Requires OSF to include as part of the data.ok.gov website all spending data subject to publication by the School District Transparency Act.
- Directs the State Geographic Information Coordinator to develop a website that will allow public access to geodata collected by state entities;
- Directs the CIO to promulgate rules for state agencies to enter into a shared-services arrangement with OSF for payroll processing services;
- Requires that all state expenditures published on the data.ok.gov website include the name and address of the recipient of the expenditure, the

amount and description of the item or service purchased, and the agency making the expenditure;

- Directs the CIO to maintain a website to allow the public to monitor the status of every information technology project costing more than \$100,000;
- Requires the Department of Central Services to utilize a wiki venue to provide two-way communication between procurement officers and potential vendors; and
- Prohibits state travel reimbursement for expenses if the filer of the claim has benefited from the personal receipt of frequent travel miles unless the miles are used to offset future claims against the state.

SB 772 creates the Business and Professional License Facilitation Task Force to study the governmental models of states that have a central contact point or agency facilitating professional licenses and applications. The 15-member task force is to evaluate the feasibility of establishing a similar model in Oklahoma.

Health

A number of measures related to public health passed this session, including those addressing hospital fees, abortion, and agency functions.

Health Care

Creating the Supplemental Hospital Offset Payment Program (SHOPP) Act, **HB 1381** authorizes the Oklahoma Health Care Authority to assess an annual fee on certain hospitals until January 2015 to receive federal matching funds. The fee is 2.5 percent of each hospital's net patient revenue for the first year and cannot exceed 4 percent in any following year. The measure prohibits the fee being charged to patients.

Hospitals exempt from the fee include state, federal, tribal, children's, long-term acute care, specialty, and critical access hospitals. The measure requires that the assessment funds be used only for certain purposes, including supplemental payments to participating hospitals for Medicaid and State Children's Health Insurance Program (SCHIP) inpatient and outpatient services, supplemental payments to critical access hospitals, and administrative program costs not to exceed \$200,000.

With the passage of **SB 722**, Oklahoma joins a national health care compact that authorizes member states to suspend the operation of federal health care regulations which are inconsistent with certain state laws while still retaining the right to federal health care funding. The compact requires the consent of Congress.

HB 1271 amends the existing statutory definition of a person requiring treatment for mental illness or drug or alcohol dependency by providing that the individual must pose a substantial risk of immediate physical harm to self or others. The mental health and substance abuse history of the individual may be taken into consideration in determining if treatment is required. The measure adds treatment advocates to the list of those who can petition the court for treatment services on behalf of the individual. It also modifies the definition of *dangerous person* by deleting the phrase "one who poses a substantial risk of harm to self or others" and replacing it with "a person requiring treatment."

Abortion

The restrictions in **HB 1888** prohibit an abortion at or after 20 weeks of pregnancy unless it is necessary to save the mother's life or prevent major injury. The measure makes it a felony to knowingly perform an abortion in violation of the provision. It also requires physicians to determine the age of a fetus before an abortion and to report the procedural details to the State Department of Health which will issue the data in an annual report of related statistics.

SB 547 prohibits health insurance policies offered in the state from including elective abortion coverage except through optional supplemental coverage with a separate premium.

Expanding the current restrictions on RU-486 (mifepristone), **HB 1970** includes any drugs with abortion-inducing properties that are prescribed with the intent of causing an abortion. It requires physicians to administer the drugs according to the drug label and FDA protocol, to document the gestational age and location of the pregnancy, and to schedule the patient for a follow-up appointment.

Agency Operations

Several agencies requested modifications to their operating procedures through the following legislation.

HB 1397 makes changes to various sections of the public health code, including:

- Insurance Reimbursement – The measure allows the Department of Health or city-county health departments to be reimbursed at the regular plan rate for services provided to an individual with health insurance;
- Vital Records – The measure deletes the requirement that birth and death certificates be filed with local registrars and replaces it with the requirement that they be filed with the State Registrar. The measure increases the penalty from a misdemeanor to a felony for violating certain provisions related to birth and death certificates. The measure defines disinterment and makes it a misdemeanor to violate provisions of the act related to disinterment. It also requires that a copy of a court order for exhumation be provided to the Department of Health; and
- Disease Prevention and Control – The measure replaces the term *venereal disease* with *sexually transmitted infection* and expands the definition. It removes the requirement that the State Plan for the Prevention and Treatment of AIDS be reviewed and reported on annually. It also exempts from the Open Records Act confidential information related to individuals thought to have certain diseases.

HB 1715 modifies the Social Worker’s Licensing Act to include requirements for applicant criminal background checks and full-time postgraduate supervision and restrictions on independent social work practice. All applicants will be required to pay for a national criminal history record check and supply two sets of fingerprints. If the background check reveals a felony or certain misdemeanors, the application may be rejected. A social worker with an expired license who applies for reinstatement after January 1, 2012, must also submit to the background check.

Making changes to the State Dental Act, **SB 574** requires a dentist to maintain a professional liability insurance policy with exceptions for dentists who are covered by a group or hospital malpractice policy, are practicing in certain state or federal facilities, or are volunteering with a special volunteer license. It authorizes the investigators of the Oklahoma Board of Dentistry to perform necessary services, investigate certain records, and, after retirement, to continue to possess a sidearm and badge.

Insurance

The Legislature enacted measures related to entities that the Insurance Department regulates.

HB 1243 modifies reexamination, continuing insurance education, and license renewal requirements under the Oklahoma Producer Licensing Act. The measure eliminates experience requirements and application fees for some insurance producer licenses and modifies several classes of business covered by insurance adjuster licenses and application, examination, and continuing education requirements under the Insurance Adjuster Licensing Act. In addition, the bill modifies and adds several application procedures and requirements for bail bondsman licenses and makes it a felony to engage in certain acts as a bail bondsman without a valid license.

Another bill, **HB 2072**, modifies various operating procedures of the Insurance Department. Provisions of the measure include:

- Creating the Insurance Commissioner Revolving Fund to fund operations of the Insurance Commissioner;
- Creating the Insurance Department Anti-Fraud Revolving Fund to fund anti-fraud investigations within the agency;
- Making the imposition of certain taxes or other obligations on state insurers optional;
- Authorizing the commissioner to enter into Non-admitted Insurance Multi-State Agreements to carry out the Non-admitted and Reinsurance Reform Act of 2010;
- Creating the Unauthorized Insurers and Surplus Lines Insurance Act and providing that only certain surplus lines premiums will be subject to surplus premium taxes pursuant to a Non-admitted Insurance Multi-State Agreement or other agreement entered into by the commissioner;
- Requiring every health benefit plan to file specified rates and adjustments with the commissioner. The commissioner will determine if the rate or rate adjustments are reasonable, excessive, or discriminatory; and
- Creating the Uniform Health Carrier External Review Act which requires all health carriers to notify the insured parties of external review rights.

SB 780 creates the Oklahoma Home Service Contract Act and requires that home service contracts may not be issued, sold, or offered for sale unless the provider has given a receipt and copy of the contract to the contract holder. Providers of home service contracts sold in this state must register with the Insurance Commissioner, pay certain fees, and may be subject to prior review before completing registration. Providers are required to maintain a funded reserved account not less than 40 percent of gross consideration received, less claims paid, and place a financial security deposit with the commissioner with a value of not less than 5 percent of gross consideration received, less claims paid, and not less than \$25,000. Providers also are required to maintain a net worth or stockholders' equity of \$25 million and provide the commissioner, upon request, certain Securities and Exchange Commission forms or financial statements. The measure requires providers to purchase an insurance policy, and the insurer must meet specific standards. Providers who are registered in this manner will not be subject to the Service Warranty Insurance Act.

SB 801 provides for insurance coverage of portable electronics and requires a vendor of portable electronics to have a limited lines license to sell or offer coverage under a policy of portable electronic insurance and provide a list to the Insurance Commissioner of all locations in which it offers coverage. Vendors are required to make available to customers information about portable electronic insurance and will not be subject to licensure as insurance producers if they obtain limited lines licenses and develop a training program for employees. The measure allows vendors to charge for specific coverage and requires that charges be separately itemized. The insurer may terminate or change the terms of the policy with a specified amount of notice to the policyholder based on certain circumstances.

Judiciary

The Legislature took action on a number of bills in an effort to improve Oklahoma's business climate, including tort and workers' compensation reform.

Tort Reform

To address the issue of excessive litigation and damages awarded in personal injury and medical malpractice suits, the Legislature passed a series of tort reform bills with the hope of improving the state's business climate by obtaining and keeping more jobs in Oklahoma.

A key part of the reform agenda, **HB 2128** caps noneconomic damages recoverable in a civil action for bodily injury at \$350,000. The measure creates an exception so that there is no limit on the amount of noneconomic damages in a civil action for bodily injury resulting from negligence if the defendant acted recklessly, fraudulently, or intentionally or with gross negligence. In a similar effort to curb noneconomic damages, **SB 272** limits the amount of recoverable damages in an action arising out of an accident involving the operation of a motor vehicle, or for any claim against the motor vehicle liability insurance coverage of another party, if the plaintiff is not in compliance with the compulsory insurance laws. Damages are limited to the amount of medical costs, property damage, and lost income and must not include any award for pain and suffering, with provided exceptions.

In another effort to limit recoverable damages, **SB 862** makes a defendant only responsible for the portion of damages that the defendant actually caused. The measure removes a requirement that a defendant, in certain civil actions, be jointly and severally liable for all damages if the defendant is found to be more than 50 percent at fault. The measure also removes the requirement that a joint tortfeasor will be jointly and severally liable for all damages if the tortfeasor acted with willful and wanton conduct or reckless disregard for the consequences.

SB 865 requires the Oklahoma Uniform Jury Instructions in a civil case to include an instruction that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax, and the jury should not consider income taxes when determining a proper compensation award.

For clarification of damages in a civil case involving personal injury, **HB 2023** requires that the actual amount paid for certain medical bills will be admissible at trial, instead of the amounts billed for expenses incurred. The measure provides that a lien filed by a medical examiner for an amount in excess of the amount paid for certain medical bills will be admissible.

HB 2024 authorizes a court to order that future damages incurred after the date of judgment that exceed \$100,000 be paid in whole or in part in periodic payments rather than by a lump-sum payment. The periodic payments cannot exceed seven years from the date of entry of judgment. The measure provides requirements for the judgment ordering the payment of

future damages and the defendant must provide evidence of financial responsibility. The orders for future payments will constitute a release of the health care liability claim filed by plaintiffs. Upon termination of the periodic payments, the security will be returned to the defendants. Upon death of the recipient, money damages for loss of future earnings must continue to be paid to the estate.

HB 1209 provides limited malpractice protection for certain physicians providing emergency medical services to an injured participant at an athletic event except when the physician commits gross negligence or willful or wanton negligence.

Workers' Compensation

The Legislature also sought to improve Oklahoma's business climate by reforming the state's workers' compensation system by reducing legal and medical costs, allowing claims to be processed more quickly, and getting injured workers retrained and back to work. **SB 878** rewrites and re-codifies essentially all of the state's workers' compensation law and creates a new Workers' Compensation Code. Some of the differences between the current law and provisions of the bill include:

- Establishing several new guidelines for treating injured workers by requiring a physician's opinion of the nature and extent of certain injuries be based on the "American Medical Association's Guides to Evaluation of Permanent Impairment" or other certain subsequent editions;
- Establishing reimbursement rates for medical providers who treat injured workers;
- Reducing the cost of medical care by 5 percent, the administrator is directed to develop a new Workers' Compensation Medical Fee Schedule by January 2012 that will establish the maximum rates that medical providers are permitted to be reimbursed for medical care provided to injured workers;
- Decreasing the involvement of private attorneys by requiring voluntary mediation be available to any party to a claim;
- Allowing the court to order mediation in any case;
- Modifying eligibility for workers' compensation treatment by expanding and clarifying which employers are exempted under the code;

- Requiring independent medical examiners be specialists in the injuries they are diagnosing; and
- Preventing doctor-shopping by limiting when injured workers can change doctors.

HB 2038 authorizes the Workers' Compensation Court administrator to compile annual reports relating to characteristics of cases including amount of surgeries, length of temporary total disability, permanent partial disability, and other medical treatments and therapies.

Miscellaneous

HB 1226 requires a portion of real property taken by eminent domain to be offered for resale to the original owner or heirs, at the appraised value or original price, when the property is not used for the purpose for which it was condemned or for another public use. The agency or entity which acquired the real property is required to notify the former landowner of the right of first refusal. The property may be sold at public sale if the offer to repurchase is not accepted. Another measure, **SB 124**, was passed to protect rural landowners from wind turbine companies by prohibiting the companies from using eminent domain for the siting or erection of wind turbines on private property.

Continuing a 2010 legislative effort, **SB 406** strengthens the state's funeral picketing laws. Currently, protesters are banned from funerals for up to an hour before and after a service. They also must stay at least 500 feet from the service. **SB 406** extends the time period to two hours before and after and increases the distance to 1,000 feet.

In a significant rewrite of Oklahoma employment discrimination laws, **SB 837** provides for exclusive remedies for individuals alleging discrimination in employment on the basis of race, color, national origin, sex, religion, creed, age, disability, or genetic information. The bill repeals common law actions in employment discrimination lawsuits, creating the same remedies for all employment discriminatory actions. The measure modifies the definition of a discriminatory practice to include individuals discriminated against because of genetic information or a disability as those protected under the relevant discrimination provisions, unless the employer can demonstrate that accommodation for the disability would impose an undue hardship on the operation of the business. The measure extends protections to employment applicants.

SB 398 modifies state statutes related to telephone solicitation by prohibiting unsolicited telemarketer text messages. The bill expands the Attorney General's statewide registry listing consumers who do not wish to receive unsolicited telemarketing calls or, per the measure, text messages.

Public Employees

Pension Reform

In an effort to address the more than \$16 billion unfunded liability of the state's retirement systems, legislators sent several major pension reform measures to the Governor. **HB 2132** amends the Oklahoma Pension Legislation Actuarial Analysis Act by stipulating that cost-of-living adjustments (COLAs) are to be considered fiscal retirement bills, thus requiring that COLAs be fully funded at the time of authorization. This measure alone is estimated to decrease the state's unfunded liability by \$5 billion.

The Legislature also enacted pension reform measures that increase the normal retirement age for new hires. **SB 377** increases the normal retirement age from 62 to 65 for new members of the Teachers' Retirement System of Oklahoma (OTRS) who join the system on or after November 1, 2011. These new OTRS members may also retire pursuant to the Rule of 90, as long as they are at least 60 years old. Under the rule of 90 members may retire when the sum of their age and years of service equals 90. **SB 794** increases the normal retirement age from 62 to 65 for new members of the Oklahoma Public Employees Retirement System (OPERS) who join the system on or after November 1, 2011. Like new members of OTRS, these new members of OPERS may retire pursuant to the Rule of 90 as long as they are at least 60 years old. **SB 794** also increases the normal retirement age for elected officials who are elected or appointed to office after November 1, 2011, from 60 to 65, or age 62 if the elected official has at least ten years of service. **HB 1010** raises the normal retirement age for new members of the Uniform Retirement System for Justices and Judges from 65 to 67. Justices or judges with at least ten years of service are eligible to retire at age 62.

HB 1007 establishes the Pension Funding Accountability Act of 2011. This act provides for a monthly transfer of revenues from a revolving fund administered by the State Department of Education to OTRS, which has the effect of increasing the recognized state per pupil spending amount. **SB 891** requires school districts employing a retired member of OTRS to pay the

employee's contribution when he or she returns to work for a school system. **HB 1648** removes language from state statutes that allows OTRS members who are absent from teaching while serving as an officer of a local, state, or national education association to continue participating in OTRS. OTRS members elected before January 1, 2011, may continue to participate, but service credit is limited to 12 years. **SB 347** requires a municipal employee convicted of certain criminal activities related to the duties of his or her office or employment to forfeit his or her retirement benefits.

Health Insurance Benefits

A final cost-saving measure deals with state employee health insurance benefits. **HB 1062** allows active state employees covered by a separate group health insurance plan to opt out of the state's basic plan and provides that employees opting out of coverage will receive \$150 a month in lieu of the flexible benefit amount the employee would otherwise be eligible to receive.

Redistricting

Oklahoma's population kept pace with most of the nation, growing by 8.7 percent, which allowed the state to retain its five congressional districts. **HB 1527** creates the Oklahoma Congressional Redistricting Act of 2011. According to the 2010 Census, Oklahoma's total population is 3,751,351. Each congressional district has 750,270 people, except for Congressional District 5, which has 750,271. The Oklahoma Congressional district map was not altered significantly from the existing map.

The State House of Representatives Redistricting Act of 2011 is found in **HB 2145**. Based upon the total state population, each state House district should have an ideal population of 37,142 people. Each new House district (HD) deviates from the ideal population by less than 1 percent.

No state representative incumbents that are eligible for reelection in 2012 are pitted against another incumbent eligible for reelection, but some term-limited members are affected. The most dramatic changes from the current (2002-2010) Oklahoma House district map to the proposed House district map can be found in HD 60 and HD 20, currently represented by term-limited members. These changes add representation for the fast-growing suburban areas in Canadian and Cleveland Counties. House District 60 was moved to Canadian County, encompassing the majority of El Reno and part

of Caddo County. This change caused a major shift in HD 55, to include Roger Mills and a majority of Beckham and Greer Counties.

The new House districts will take effect with the 2012 elections.

SB 821 creates the State Senate Redistricting Act of 2011. In the State Senate, only the even-number Senate districts will be up for election in 2012, but all of the new Senate districts will take effect in November 2012. Based upon the total state population, each state Senate district should have an ideal population of 78,153 people. Each new Senate district deviates from the ideal population by less than 1.3 percent.

Revenue and Taxation

In addition to focusing on the issue of tax credits this session, the Legislature addressed measures related to sales tax collections, tax exemptions, and fees for vending machines.

HB 1634 reduces the annual permit fee from \$150 to \$75 for each coin-operated vending machine, music device, or amusement device requiring a coin or token of 25 cents or more effective July 1, 2011.

Recognizing the significance and importance of the oil industry to the economy of the state of Oklahoma, **HB 1488** extends the sunset dates for two years until July 1, 2014, for existing gross production tax exemptions for certain horizontally drilled wells and deep depth well production.

HB 1285 creates the Task Force for the Study of Tax Credits and Economic Incentives to examine all state tax credits and identify those credits which are beneficial to the economic and financial wellbeing of the state.

HB 1475 requires all retail vendor sites selling fireworks to collect sales taxes and display the sales tax permit in the vicinity of the sales operation to be visible for examination by any enforcement officer. Retail fireworks vendors that fail to collect sales tax will be subject to the penalties prescribed in current law.

HB 1954 extends a sales tax exemption, for certain manufacturers that are expanding or re-tooling their facilities, to their contractors or third parties making purchases on their behalf. The measure applies to manufacturing property, machinery, and equipment for use in a petroleum refinery.

Property Tax

HJR 1002 directs the Secretary of State to refer a proposed constitutional amendment to a vote of the people. Beginning January 1, 2013, the constitutional amendment would limit the increase in the fair cash value for tax assessment purposes of a homesteaded property or a property used for agricultural purposes to 3 percent.

Transportation

Recognizing the need for future expansion and innovation of the transportation network in Oklahoma, **HB 1686** creates the Eastern Flyer Passenger Rail Development Task Force to study and develop a comprehensive plan for expanding passenger and high speed passenger rail service from Tulsa to Oklahoma City.

SB 816 prevents boards of county commissioners and the Department of Transportation from opening a closed section line road if a business makes a minimum capital investment of \$10 million in a facility and hires 25 new employees whose salaries meet or exceed the average county wage where the facility is located.

Several measures were passed during the session focusing on highway safety and rules pertaining to users of Oklahoma roads. **SB 126** requires that the driver of a bus, whether occupied or unoccupied by passengers, must not proceed through a railroad crossing unless the driver stops the bus within 50 feet of, and not closer than 15 feet to, the tracks, listens and looks in each direction along the tracks for an approaching train, and ascertains that no train is approaching. **SB 417** prohibits a solid waste disposal vehicle operator from stopping or parking on a sidewalk, within an intersection, alongside any street excavation or obstruction which would obstruct traffic, upon any bridge or elevated structure, or at any place where official signs prohibit stopping except when instructed by a police officer or traffic control device.

HB 1815 modifies the existing taxation system for compressed natural gas to promote fairness and improved administration of motor fuel taxation by the Oklahoma Tax Commission. The bill reduces the levy of motor fuel taxation for compressed natural gas from 16 cents per gallon or gasoline gallon equivalent to 13 cents per gallon, allows a rate of tax to be imposed at 5 cents per gasoline gallons equivalent for a period of time sufficient to allow the development of compressed natural gas distribution systems. The bill also requires each person who engages in the selling of motor fuel or

compressed natural gas to obtain a fuel vendor license. The bill further exempts compressed natural gas from the definition of special fuels for purposes of vehicles required to obtain a special fuel tax decal.

HB 1232 authorizes the Department of Transportation to close any highway due to flooding and provides that the court may order restitution to emergency responders called to rescue motorists who circumvent traffic control devices due to closed roads and for reimbursement for repair or replacement of any lost or damaged equipment.

Veterans and Military Affairs

In showing respect and reverence for military personnel who die while serving in any branch of the United States Armed Forces, the United States Reserve Forces or the National Guard, **HB 1355** creates the Deceased Veterans Act. The bill clarifies the order of persons responsible for the disposition of the remains of a deceased veteran and allows the funeral director to control final disposition when no person in order of succession can be found. The measure further provides that if a military person dies in the line of duty and has completed a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, the person authorized in the form by the veteran pursuant to that form will have the right to bury the decedent or to make other funeral and disposition arrangements. The act further creates a revolving fund for the Oklahoma Turnpike Authority to be designated as the Honor the Fallen Revolving Fund, to be used to reimburse the authority for tolls incurred by the funeral procession of any member of the United States Armed Forces who is killed in the line of duty.