

## Dave Frohnmayer and the Oregon Legislature

|       |   |     |
|-------|---|-----|
| I.    | 1974: Forward to Salem .....                                  | 541 |
| II.   | 1975: The First Session .....                                 | 543 |
| III.  | 1975: The Special Session.....                                | 545 |
| IV.   | 1975–76: A Productive Interim .....                           | 547 |
| V.    | 1977: A Session of House Upheaval .....                       | 549 |
| VI.   | 1978: The Special Session.....                                | 553 |
| VII.  | 1979: The Regular Session.....                                | 554 |
| VIII. | 1980: The Special Session.....                                | 558 |
| IX.   | Dave Frohnmayer as a Legislator: A Closing<br>Retrospect..... | 559 |

*A disposition to preserve, and an ability to improve, taken together, would be my standard of a statesman.*

–Edmund Burke<sup>1</sup>

### I

#### 1974: FORWARD TO SALEM

**D**ave Frohnmayer launched his years of elected public service in 1974 by running for the Oregon House of Representatives from then House District 40 in Eugene.<sup>2</sup> Born and reared in Medford, at age

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\* Member, Oregon House of Representatives, 1975–1985, and Speaker of the House, 1979–1983; Attorney General of Oregon, 1997–2009. The author is grateful to Molly Silver, third-year student at the University of Oregon School of Law, for her valuable help with the research this Article required.

<sup>1</sup> EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 231 (2d ed. 1790).

<sup>2</sup> Curriculum Vitae, Dave Frohnmayer, President Emeritus and Professor of Law, University of Oregon, <http://frohnmayer.uoregon.edu/sites/default/files/frohnmayer/documents/resume.pdf> (last visited March 10, 2016) [hereinafter Curriculum Vitae].

thirty-three he had already accrued a robust set of credentials.<sup>3</sup> He had an elegant formal education (Harvard University degree in government with honors, Rhodes Scholarship, and a law degree from the University of California, Berkeley).<sup>4</sup> He had worked for the United States Department of Health, Education, and Welfare and the United States Department of Justice.<sup>5</sup> He was a member of the University of Oregon School of Law faculty, teaching the law of government processes, and was special assistant (legal affairs) to the university president.<sup>6</sup>

Along with these achievements, he also added important community activity. He served both as a public member of the Oregon Field Burning Committee established by the legislature to identify alternatives to field burning, and as a member of the Select Committee on Conflict of Interest Legislation created by Governor Tom McCall.<sup>7</sup> Further, on a personal level, but one very important politically, he had deep Oregon roots and was a devoted husband and father.

Running as a Republican in 1974, Frohnmayer faced a district with a large Democratic voter registration majority.<sup>8</sup> He also faced a political climate unfavorable for Republicans because of the Watergate scandal and its climax that year with the impeachment and resignation of President Richard Nixon and his later pardon by President Gerald Ford. The political zeitgeist included a widespread distrust of attorneys in public life because of lawyer prominence—from the White House down—in the scandal.<sup>9</sup>

In his Voters' Pamphlet statements, Frohnmayer emphasized a commitment to laws "which are fair, constitutional and understandable,"<sup>10</sup> to protection of Oregon's environment, to Oregon's "tradition of open and honest government," and to cutting bureaucratic

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<sup>3</sup> Alan Sylvestre, *Celebrating the Life of Former UO President, Oregon Attorney General Dave Frohnmayer*, OR. PUB. BROADCASTING (Mar. 20, 2015, 9:19 AM), <http://www.opb.org/news/article/dave-frohnmayers-celebration-of-life/>.

<sup>4</sup> Curriculum Vitae, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> SEC'Y OF STATE, 3 STATE OF OREGON OFFICIAL VOTERS' PAMPHLET GENERAL ELECTION NOVEMBER 5, 1974 105 (1974) [hereinafter 1974 VOTERS' PAMPHLET] (distributed in Lane County); Frank Wetzel, *Conflict of Interest Bill Nears Final Draft*, EUGENE REG.-GUARD, Dec. 21, 1973, at 5A.

<sup>8</sup> SEC'Y OF STATE, STATE OF OR., VOTER REGISTRATION BY SENATORIAL AND REPRESENTATIVE DISTRICTS FOR GENERAL ELECTION NOVEMBER 5, 1974 (on file with author) (12,770 Democrats compared to 8,192 Republicans registered in then Representative District 40).

<sup>9</sup> A popular slogan of the time exhorted: "Defeat all incumbents and attorneys."

<sup>10</sup> 1974 VOTERS' PAMPHLET, *supra* note 7, at 105.

red tape and making government “more efficient and economical.”<sup>11</sup> Despite the challenges noted, Frohnmayer took his unopposed Republican primary nomination to a general election victory over his Democratic opponent by 8,340 to 7,249 votes.<sup>12</sup> As will be noted later, he far surpassed that margin of victory in his 1976 and 1978 legislative races.<sup>13</sup>

This Article reviews the major issues that Representative Frohnmayer supported—or opposed—during his legislative tenure and his work on various committees during regular, special, and interim sessions while he served in the Oregon House of Representatives. Further, it reviews Frohnmayer’s role in certain major events related to House organization and governance. Finally, this Article concludes by illuminating some of the strategies that Frohnmayer employed to eventually earn his reputation of fairness, effectiveness, and integrity.

## II

### 1975: THE FIRST SESSION

Frohnmayer began his legislative service on the day Governor Tom McCall left office and was succeeded by Democrat Robert Straub. Frohnmayer was thus part of a new generation of moderate to progressive Republicans who entered elected public service after McCall and before the Oregon Republican Party began its steady movement to the right. In 1975, Democrats controlled the sixty-member House thirty-eight to twenty-two.<sup>14</sup> Frohnmayer was assigned to the Committee on Judiciary and Committee on Human Resources, his two primary areas of committee work during all his legislative tenure.<sup>15</sup>

Judged by the legislative measures of which Frohnmayer was a sole sponsor or principal sponsor, his first session public policy interests embraced a wide variety of areas. They included, for example, mass transit districts,<sup>16</sup> private rights and responsibilities as affected by the

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<sup>11</sup> SEC’Y OF STATE, STATE OF OREGON OFFICIAL VOTERS’ PAMPHLET PRIMARY ELECTION MAY 28, 1974 96 (1974).

<sup>12</sup> SEC’Y OF STATE, STATE OF OR., OREGON GENERAL ELECTION 1974 OFFICIAL RESULTS 16 (Nov. 5, 1974) (on file with Oregon Secretary of State Election Division).

<sup>13</sup> See *infra* notes 45 and 80.

<sup>14</sup> S. & H. JOURNAL, 58th Legis. Assemb., Reg. Sess. 9 (Or. 1975) [hereinafter 1975 JOURNAL].

<sup>15</sup> *Id.* at 11.

<sup>16</sup> *E.g.*, H.R. 2887, 58th Legis. Assemb., 1975 Or. Laws 145 (relating to contracting procedures); Or. H.R. 2890, 1975 Or. Laws 2074 (relating to taxing authority); Or. H.R. 2938, 1975 Or. Laws 659 (authorizing district appointment of peace officers).

laws of torts, probate, and exemptions from judgments;<sup>17</sup> public safety and corrections;<sup>18</sup> the Oregon Administrative Procedures Act;<sup>19</sup> and the quality of Oregon's cultural life.<sup>20</sup> Frohnmayer's cosponsorships, and certain other support or opposition positions, also showed a sustained concern about personal health and well-being, especially of children, people with disabilities, and the elderly;<sup>21</sup> treatment of juveniles in the justice system;<sup>22</sup> equal treatment under law, with particular concern as to the treatment of women,<sup>23</sup> and energy

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<sup>17</sup> See, e.g., 1975 JOURNAL, *supra* note 14, at H-128 (Oregon House Bill 2905, "[r]elating to appointment of personal representatives in probate proceedings"); *id.* at H-125 (Oregon House Bill 2879, modifying the law governing comparative negligence); Or. S. 229, 1975 Or. Laws 259 (increasing the value of certain items exempt from judgments and the value of homestead exemptions).

<sup>18</sup> E.g., Or. H.R. 2645, 1975 Or. Laws 1287 (modifying Board of Parole procedures).

<sup>19</sup> See, e.g., 1975 JOURNAL, *supra* note 14, at H-138 (Oregon House Bill 2987 making various changes to the Act).

<sup>20</sup> E.g., Or. H.R. 2460, 1975 Or. Laws 966 (requiring dedication of one percent of all capital construction budgets of buildings on the Capitol Mall or adjacent areas to works of art).

<sup>21</sup> E.g., Or. H.R. 2385, 1975 Or. Laws 962 (requiring curb cuts or ramps as part of sidewalk construction, improvement, or replacement); Or. H.R. 2301, 1975 Or. Laws 131 (requiring insurance policies covering family members to cover newborn children from the moment of birth); 1975 JOURNAL, *supra* note 14, at H-143 (Oregon House Bill 3024, providing tax credits for employer-provided day care); *id.* at H-105 (Oregon House Bill 2707, providing rent subsidies through property tax exemption for housing for low income elderly persons); *id.* at H-63 (Oregon House Bill 2387, providing personal income tax credit for employment-related expenses of taxpayer with disabilities); *id.* at H-192 (Oregon House Joint Memorial 8, memorializing Congress to permit waiver at the regional level of regulations governing the ratio of adults to children in day care).

<sup>22</sup> E.g., Or. S. 674, 1975 Or. Laws 1724 (prohibiting transfer of juvenile training school students to adult prisons and restricting temporary detention of juveniles); Or. S. 707, 1975 Or. Laws 1408 (requiring a finding by a juvenile court that a child is not amenable to treatment or rehabilitation with the juvenile corrections system before remand to adult court).

<sup>23</sup> E.g., Or. H.R. 2608, 1975 Or. Laws 1823 (establishing conclusive presumption for inheritance tax purposes that not less than one-half of property passing to a surviving spouse was contributed by the spouse); Or. H.R. 3275, 1975 Or. Laws 1999 (permitting a spouse to retain her surname on entering marriage and, upon request, requiring a court after dissolution or voiding of a marriage to restore the name the spouse held before marriage); Or. H.R. 2616, 1975 Or. Laws 1285 (abolishing civil cause of action for alienation of affection); Or. H.R. 2729, 1975 Or. Laws 1128 (establishing state policy to furnish fair and equal employment and advancement opportunities through a program of affirmative action regardless of race, religion, national origin, age, sex, or disability); Or. H.R. 2241, 1975 Or. Laws 219 (governing admissibility of evidence of previous sexual conduct, sexual character, or chastity reputation of victims of rape, sodomy, or sexual abuse); Or. S. 264, 1975 Or. Laws 73 (establishing trial court filing fees to help support legal aid programs).

conservation and development of alternative energy.<sup>24</sup> Frohnmayer also consistently allied himself with civil procedure reforms,<sup>25</sup> environmental quality,<sup>26</sup> and measures he regarded as improving government.<sup>27</sup> This variety of policies supported by Representative Frohnmayer continued throughout his tenure as a member of the Oregon House.

### III

#### 1975: THE SPECIAL SESSION

Among Frohnmayer's most consistent policy positions beginning in 1975 was opposition to measures he viewed as impairing the basic honesty and openness of public records. Senate Bill 473, which expunged various juvenile records in certain circumstances, offended the former value.<sup>28</sup> Similarly, Oregon House Bill 2579 likely strongly offended his value of openness by allowing only criminal justice agencies, agencies authorized by the governor, and a criminal defendant's counsel to access criminal justice information.<sup>29</sup> In opposing the bill, which ultimately passed thirty-four to twenty-three,<sup>30</sup> Frohnmayer argued that the measure eroded civil liberties, would foster

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<sup>24</sup> *E.g.*, Or. H.R. 2202, 1975 Or. Laws 929 (establishing a real property tax exemption for the positive difference between the true cash value of property equipped with solar heating or cooling system and the value with conventional systems).

<sup>25</sup> *E.g.*, Or. S. 140, 1975 Or. Laws 396 (changing the law of contribution among tortfeasors).

<sup>26</sup> *See, e.g.*, Or. S. 771, 1975 Or. Laws 607 (regulating sale of aerosol sprays); Or. S. 361, 1975 Or. Laws 531, 536 (prohibiting new outdoor advertising signs); 1975 JOURNAL, *supra* note 14, at S-141 (Oregon Senate Bill 5536, supporting the Department of Environmental Quality 1975–77 budget, passed thirty-four to twenty-four in a sharply divided House). Frohnmayer also opposed several bills he regarded as detrimental to the environment. *E.g.*, *id.* at H-147 (Oregon House Bill 3107, exempting agricultural and forestry operations from noise emission regulations); *id.* at S-45 (Oregon Senate Bill 311, authorizing 1975–76 open field burning, one of the session's most contentious environmental issues and perhaps the most sensitive for Eugene because of resulting air pollution).

<sup>27</sup> *E.g.*, Or. H.R. 2022, 1975 Or. Laws 2127 (making various Voters' Pamphlet changes); Or. H.R. 3008, 1975 Or. Laws 2017 (referring to the people a system of voluntary, partial public finance of legislative and statewide executive elections); 1975 JOURNAL, *supra* note 14, at H-198 (Oregon House Joint Resolution 48, a proposed constitutional amendment changing the office of Secretary of State into a nonpartisan Controller no longer in the line of succession to the governorship and with responsibility for laws governing elections and integrity of the political process); *id.* at S-44 (Oregon Senate Bill 307, providing voter registration by mail); Or. H.R. 2756, 1975 Or. Laws 1809 (authorizing the filing of complaints with the Ethics Commission and prescribing procedures after filing).

<sup>28</sup> Or. S. 473, 1975 Or. Laws 1794; *see also* 1975 JOURNAL, *supra* note 14, at S-67.

<sup>29</sup> Or. H.R. 2579, 1975 Or. Laws 2267.

<sup>30</sup> 1975 JOURNAL, *supra* note 14, at H-88.

black market information systems, impede resources available to investigative reporters, and create a serious impediment to those who want to monitor police agency activities.<sup>31</sup>

After the regular session adjourned, further review of the measure by the Office of Legislative Counsel and other attorneys produced an emerging consensus that the new law ended virtually all access to criminal justice information by the media and wider public. As this view was publicized, growing threats of litigation arose and Governor Straub came under increasing pressure to address the concerns by convening a special session.<sup>32</sup> Despite his initial resistance to a special session before judicial interpretation of the new law, Governor Straub eventually changed his mind and convened a September 16, 1975, special session to address what he described as a “menace to basic Constitutional liberties of all citizens by preventing reasonable public access to criminal justice records.”<sup>33</sup>

In preparation for the special session, the Joint Interim Committee on Judiciary—appointed at the regular session’s end with Frohnmayer as a member—took up various alternatives for action. Senate President Jason Boe and House Speaker Phil Lang favored total repeal of the new law and a narrow majority of the committee agreed.<sup>34</sup> Frohnmayer joined with another committee member to submit a minority report which kept all arrest and conviction records open, maintained a council to monitor use of criminal records systems, and enabled an individual to inspect his or her own record and demand correction of any error.<sup>35</sup> The House defeated that minority report and a second version of that report sponsored by two other members, and it then passed a total

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<sup>31</sup> *Id.* at 251.

<sup>32</sup> See Phil Cogswell & John Painter, *Mistake in Law May Ban News of Crime, Trials*, OREGONIAN, Sept. 9, 1975, at A1, A16; Phil Cogswell, *Publishers Plan Suit Over Crime File Law*, OREGONIAN, Sept. 11, 1975, at A1; Letter from Lee Johnson, Attorney Gen., State of Or., to Robert Straub, Governor, State of Or. (1975), in *Johnson Tells Straub of Defects in Criminal File Law*, OREGONIAN, Sept. 10, 1975, at B6 (discussing the shortcomings of Oregon’s criminal file law).

<sup>33</sup> S. & H. JOURNAL, 58th Legis. Assemb., Spec. Sess. SS-11 (Or. 1975) [hereinafter 1975 JOURNAL SPECIAL SESSION] (Proclamation Convening Special Session).

<sup>34</sup> Phil Cogswell, *Crime Records Law: Special Session Groundwork Done*, OREGONIAN, Sept. 13, 1975, at A1, A10; Phil Cogswell, *Legislative Panel Supports Repeal of Crime File Ban*, OREGONIAN, Sept. 16, 1975, at A1, B8.

<sup>35</sup> Phil Cogswell, *Criminal File Law Repealed in Brief Legislative Session*, OREGONIAN, Sept. 17, 1975, at A1.

repeal of the new law fifty-seven to one with Frohnmayer in support.<sup>36</sup> The Senate followed suit thirty to zero.<sup>37</sup>

As further investigation revealed, the public policy blunder of HB 2579 resulted from Senate amendments to the original House measure that parroted language of certain federal regulations but omitted important exemptions in the federal rules.<sup>38</sup> After this omission was brought to the Senate committee's attention, the committee obtained Senate passage of a separate bill incorporating the federal exemptions.<sup>39</sup> The Senate did not alert House leadership to the new measure's importance, however, and the House did not act on it before adjournment.<sup>40</sup>

However the exact causes of the HB 2579 mishap are analyzed and responsibility assigned, the need for a special session to correct the policy mistake was a dramatic vindication of Frohnmayer's objections to the measure. Having voiced his concerns about the measure perhaps more strongly than any other member of the House or Senate, the special session no doubt burnished Frohnmayer's credentials—especially in the eyes of the media—as a supporter of open government.

#### IV

##### 1975–76: A PRODUCTIVE INTERIM

Hard on the heels of the special session, Representative Frohnmayer had an equally hard interim as a member of the Interim Task Force on Medical Malpractice<sup>41</sup> formed by Governor Straub and the Joint Interim Committee on Judiciary.<sup>42</sup> Seeking to address a growing crisis as to the availability and cost of medical liability insurance, the task force authored several proposals—introduced by Frohnmayer on the task force's behalf—that resulted in two measures later enacted by the 1977 regular session.<sup>43</sup> The interim judiciary committee, along with the

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<sup>36</sup> *Id.*

<sup>37</sup> 1975 JOURNAL SPECIAL SESSION, *supra* note 33, at SS-15.

<sup>38</sup> Phil Cogswell, Editorial, *Multitude Contributed to HB 2579 Foul-up*, OREGONIAN, Sept. 20, 1975, at A22.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See S. & H. JOURNAL, 59th Legis. Assemb., Reg. Sess. H-28 (Or. 1977) [hereinafter 1977 JOURNAL].

<sup>42</sup> *Id.* at 16.

<sup>43</sup> Act of July 18, 1977, ch. 448, 1977 Or. Laws 388 (codified at OR. REV. STAT. §§ 41.675, 441.055, 677.415, 743.780 (1977)) (Oregon House Bill 2177, among other provisions, required insurers to report to the Board of Medical Examiners (BME) about

concurrent Governor's Task Force on Corrections, played a crucial role in shaping several measures that the 1977 regular session would approve which made major changes in the criminal justice and corrections systems.<sup>44</sup> The interim also saw Frohnmayer's selection as

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medical malpractice claims and required the BME to forward such reports to the Insurance Commissioner; required hospitals to report revocation or reduction of a physician's staff privileges to the BME which could release the report to other licensed health care facilities; and required hospitals to report medical incompetence to the BME); Act of July 18, 1977, ch. 449, 1977 Or. Laws 389 (codified at OR. REV. STAT. § 441.825 (1977)) (Oregon House Bill 2181, permitted hospitals to require all physicians on medical staff to maintain professional medical liability insurance, or to post a bond in lieu of insurance or annually to demonstrate financial responsibility for a reasonable amount of liability).

<sup>44</sup> The key proposals of the Interim Committee on Judiciary, later enacted by the 1977 regular session, were: Act of July 20, 1977, ch. 577, 1977 Or. Laws 489 (codified at OR. REV. STAT. §§ 377.520, 377.525, 377.530, 377.535 (1977)) (Oregon Senate Bill 3, expanding occasions when fingerprints and photographs may be taken from juveniles in custody); Act of July 14, 1977, ch. 371, 1977 Or. Laws 304 (codified at OR. REV. STAT. §§ 137.540, 161.675, 161.685 (1977)) (Oregon House Bill 2012, making major changes to the law governing crime victims' recovery of restitution from criminal offenders); and Act of July 14, 1977, ch. 372, 1977 Or. Laws 306 (codified at OR. REV. STAT. §§ 137.079, 137.120, 138.040, 138.050, 144.035, 144.345 (1977)) (repealing OR. REV. STAT. §§ 144.175, 144.180, 144.221) (Oregon House Bill 2013, establishing Advisory Committee on Prison Terms and Parole Standards required to propose rules to the Board of Parole establishing ranges of imprisonment duration for felony offenses and variations due to aggravating or mitigating circumstances, and foreshadowing later felony sentencing guidelines that moved the control structure back to the sentencing phase of the criminal justice process).

The key proposals of the Governor's Task Force on Corrections, later enacted by the 1977 regular session, included: Act of July 14, 1977, ch. 373, 1977 Or. Laws 309 (codified as amended at OR. REV. STAT. §§ 135.881, 135.886, 135.891, 135.896, 135.901 (2015)) (Oregon House Bill 2247, governing diversion agreements with criminal defendants); Act of July 14, 1977, ch. 374, sec. 2, 1977 Or. Laws 309 (codified at OR. REV. STAT. § 421.195 (1977)) (Oregon House Bill 2248, requiring the Corrections Division to establish uniform procedures for granting, retracting or restoring sentence deductions for good time); Act of July 14, 1977, ch. 375, sec. 1, § 2, 1977 Or. Laws 311 (codified at OR. REV. STAT. § 144.331 (1977)) (Oregon House Bill 2250, permitting the Parole Board to proceed with a revocation hearing without first arresting or detaining the parolee); Act of July 14, 1977, ch. 376, 1977 Or. Laws 312 (codified as amended at OR. REV. STAT. § 147.005 (2015)) (Oregon House Bill 2278, establishing the crime victims' compensation program); Act of July 14, 1977, ch. 377, secs. 1, 4, 1977 Or. Laws 316 (codified at OR. REV. STAT. §§ 426.510, 426.680) (Oregon House Bill 2279, amending the definition of "sexually dangerous person" and authorizing commitment to an institution for treating such persons); Act of July 14, 1977, ch. 378, 1977 Or. Laws 316 (codified as amended at OR. REV. STAT. §§ 423.400 to 423.450 (2015)) (Oregon House Bill 2280, establishing the office of Corrections Ombudsman to investigate actions of the Corrections Division); Act of July 14, 1977, ch. 380, 1977 Or. Laws 318 (codified at OR. REV. STAT. §§ 137.540, 161.315, 161.325, 161.329, 161.390, 192.690, 428.210 (1977)) (repealing OR. REV. STAT. §§ 161.335, 161.340, 161.345, 161.350) (Oregon House Bill 2382, authorizing, among other provisions, a sentencing court to require a criminal defendant to report to a mental health facility and accept treatment as a condition of provision, authorizing persons with mental disease or defect at the time of crime commission to be found "not responsible" instead of "not guilty," and creating the Psychiatric Security Review Board).

one of fifty state legislators to discuss state government at Rutgers University's Eagleton Institute of Politics.<sup>45</sup>

## V

### 1977: A SESSION OF HOUSE UPHEAVAL

Frohnmayer entered the 1977 regular session after an imposing reelection victory of 13,237 to 5,917 votes.<sup>46</sup> He was again in the minority with Democrats holding thirty-seven of sixty House seats,<sup>47</sup> and was reappointed to the House Committee on Judiciary and appointed to the Committee on Social Services (previously the Committee on Human Resources), the Committee on Legislative Operations and Procedures.<sup>48</sup> He was also appointed as an alternate for Speaker Phil Lang on the Legislative Counsel Committee, a statutory committee.<sup>49</sup>

Among the measures Frohnmayer solely or cosponsored, his most notable sole sponsorship was a measure declaring a state policy to further job opportunities for "handicapped individuals" (as people with disabilities were then commonly described).<sup>50</sup> A second notable sole sponsorship proposal, introduced at the request of Lane County, addressed the sensitive issue of incarcerating alleged mentally ill persons.<sup>51</sup>

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<sup>45</sup> SEC'Y OF STATE, STATE OF OREGON OFFICIAL VOTERS' PAMPHLET GENERAL ELECTION NOVEMBER 2, 1976 66 (1976) [hereinafter 1976 VOTERS' PAMPHLET] (distributed in Lane County).

<sup>46</sup> SEC'Y OF STATE, STATE OF OR., OREGON GENERAL ELECTION 1976 OFFICIAL RESULTS (Nov. 2, 1976) (on file with Oregon Secretary of State Election Division).

<sup>47</sup> 1977 JOURNAL, *supra* note 41, at 10.

<sup>48</sup> *Id.* at 12, 14.

<sup>49</sup> *Id.* at 15. Among other responsibilities, the Legislative Counsel Committee appoints and oversees the legislative counsel, the legislature's chief lawyer whose office provides bill drafting and other services for legislators and committees. OR. REV. STAT. §§ 173.111–.240 (2013).

<sup>50</sup> See 1977 JOURNAL, *supra* note 41, at H-138; Act of July 11, 1977, ch. 304, 1977 Or. Laws 251 (codified at OR. REV. STAT. § 279.015 (1977)) (Oregon House Bill 3093, among other provisions, the measure, which reconfirmed Frohnmayer's abiding concern about disabled citizens, required the Department of General Services to supervise state purchases of products and services of the disabled and required state agencies to purchase available products and services from a procurement list the department prepared).

<sup>51</sup> 1977 JOURNAL, *supra* note 41, at H-171; Act of July 26, 1977, ch. 694, 1977 Or. Laws 657 (codified at OR. REV. STAT. §§ 426.140, 426.175, 426.215 (1977)) (Oregon House Bill 3319, prohibiting such incarceration, before commitment proceedings, in facilities for those charged with criminal offenses unless the allegedly mentally ill person presented a danger to hospital staff or physical facilities or was charged with criminal activity).

Frohnmayer's cosponsorships touched a large variety of policy areas but with renewed attention to such issues as civil legal services for the poor;<sup>52</sup> personal health and well-being, especially of women and elderly citizens;<sup>53</sup> support of veterans;<sup>54</sup> Oregon's cultural life;<sup>55</sup> energy conservation and alternative energy;<sup>56</sup> mass transit and other transportation;<sup>57</sup> and environmental quality.<sup>58</sup>

Among the 1977 measures of which Frohnmayer was the primary sponsor, the most important for governmental reform was House Joint Resolution (HJR) 54, which sought to address the ever-growing time

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<sup>52</sup> H.R. 2001, 59th Legis. Assemb., Reg. Sess., 1977 Or. Laws 58 (renewing district and circuit court filing fees for legal aid programs).

<sup>53</sup> *E.g.*, Or. H.R. 2438, 1977 Or. Laws 901 (requiring alleged or potential assailant in a domestic disturbance case to be taken into custody if police have probable cause and the victim does not object; requiring arrest on probable cause when the accused has violated terms of a properly served restraining order; permitting the victim of abuse, as defined, within a family or household to seek relief from abuse in circuit court and granting the court power to effect abuse cessation); Or. S. 503, 1977 Or. Laws 901 (modifying the definition of deviate sexual intercourse and sexual conduct for certain offenses to include sexual conduct between persons regardless of marital status and repealing affirmative defense of cohabitation for sexual offenses); Or. H.R. 2330, 1977 Or. Laws 457 (requiring hospitals to offer tests for cervical cancer to female patients within the age of risk).

Perhaps surprisingly, Frohnmayer opposed Oregon Senate Bill 438, authorizing a document directing a physician to withdraw or withhold procedures artificially prolonging life after diagnosis and certification of certain terminal conditions. Or. S. 438, 1977 Or. Laws 113. In a vote explanation, Frohnmayer agreed with a terminally ill person's right of self-determination but believed legal uncertainties the bill posed might create greater procedural uncertainties and potential liabilities than under evolving common law. 1977 JOURNAL, *supra* note 41, at 350.

<sup>54</sup> *E.g.*, Or. H.R. 2449, 1977 Or. Laws 639 (increasing the maximum amount of veterans' home loans and farm loans).

<sup>55</sup> *E.g.*, Or. H.R. 2686, 1977 Or. Laws 519 (establishing a state policy and program to foster preservation of buildings of historical, cultural, or architectural significance).

<sup>56</sup> *E.g.*, Or. H.R. 2701, 1977 Or. Laws 852 (providing a personal income tax credit, subject to a specified limit, for weatherization purchase and installation costs); Or. S. 477, 1977 Or. Laws 263 (permitting eligible veterans to obtain subsequent loan to install alternative energy device in home); Or. S. 339, 1977 Or. Laws 134 (providing a personal income tax credit, up to a specified limit, for costs incidental to installing an alternative energy device in principal residence using solar, radiation, wind, or geothermal for heating, cooling or electrical energy).

<sup>57</sup> *E.g.*, Or. S. 999, 1977 Or. Laws 905 (creating study commission to submit recommendations to the next regular legislative session as to the feasibility of rapid rail in the Willamette Valley); Or. H.R. 3000, 1977 Or. Laws 595 (proposing creation of the Oregon Mass Transportation Finance Authority).

<sup>58</sup> *E.g.*, Or. H.R. 3077, 1977 Or. Laws 410 (creating a program under the Environmental Quality Commission for control over used oil recycling); 1977 JOURNAL, *supra* note 41, at H-30 (Frohnmayer opposed Oregon House Bill 2196, renewing and expanding authorization of open field burning in 1977 from 95,000 to 195,000 acres, then 180,000 acres in 1978); *id.* at H-190 (Oregon House Joint Memorial 2, memorializing Congress to provide adequate funding to implement Safe Drinking Water Act standards).

demands on the legislature while preserving the “citizen legislature” character of the House.<sup>59</sup> The proposal emerged from the study and analysis by Frohnmayer and then-Professor Hans Linde, a colleague at the University of Oregon School of Law before Linde’s appointment by Governor Straub in 1977 to the Oregon Supreme Court.<sup>60</sup>

As in 1975, Frohnmayer continued to oppose expunction proposals that modified official public records, and other proposals related to expunction.<sup>61</sup> In turn, he opposed prohibiting discrimination in employment of labor organization membership due to an expunged juvenile record or asking job applicants about an expunged juvenile record in making hiring decisions.<sup>62</sup>

The heavy workload of the House Committee on Judiciary dominated Frohnmayer’s time and energy at the committee level. Part of that work centered on the proposals of the Interim Task Force on Medical Malpractice, Governor’s Task Force on Corrections, and the Joint Interim Committee on the Judiciary,<sup>63</sup> all of which the Speaker

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<sup>59</sup> H.R.J. Res. 54, 59th Legis. Assemb., Reg. Sess. (Or. 1977); 1977 JOURNAL, *supra* note 41, at H-196–97.

<sup>60</sup> Hans A. Linde & David B. Frohnmayer, *Prescription for the Citizen Legislature: Cutting the Gordian Knot*, 56 OR. L. REV. 3 (1977). In the context of the legislature’s growing time demands, the authors argued that legislators are increasingly less able “to combine legislative service with an ordinary, private existence,” and that Oregonians face the resulting dilemma of “[h]ow [to] maintain effective control of government through elected representatives with true ‘citizen representation’ by part-time nonprofessional legislators?” *Id.* at 4. The authors’ proposal was to reallocate Senate and House functions. The Senate would become “an ongoing, year-round body with the capacity to act through standing committees and to meet in deliberative sessions scheduled by itself.” *Id.* at 11. It “would perform most of the preparatory and supervisory functions” of the legislature (e.g., careful study of public policy issues related to potential legislation, oversight of administrative agencies, and confirmation or rejection of major executive appointments). *Id.* The Senate would also succeed the Emergency Board, *id.* at 12, and thus have authority for “reallocation of funds or other flexible approaches to programs in response to changes occurring between sessions,” *id.* at 10.

For its part the House “would remain as the part-time ‘citizens’ house’” convening less often with its membership continuing “to be drawn from persons whose primary roles lie in the occupational and civic life of their communities.” *Id.* at 11. The House, however, “would continue to play its crucial role in the enactment of legislation” with all enactments, including appropriations, requiring both houses to concur. *Id.* at 12–13. “It is here,” the authors assert, “that the consent of the governed, given . . . through the election of the part-time, nonprofessional legislator, remains the essence of representative democracy.” *Id.* at 13. Although the House did not approve HJR 54 as the Committee on Legislative Rules and Operations recommended it do, the measure got twenty-six votes. 1977 JOURNAL, *supra* note 41, at 397–98, H-196–97.

<sup>61</sup> 1977 JOURNAL, *supra* note 41, at H-33 (Frohnmayer opposed Oregon House Bill 2215, providing for expunction of criminal records in certain circumstances).

<sup>62</sup> *Id.* at S-166 (Oregon Senate Bill 952).

<sup>63</sup> *See supra* Part IV.

had referred to the Committee on Judiciary. The committee's large agenda, however, also included many other major proposals.<sup>64</sup>

In early May, the House broke into revolt against the authority of Speaker Phil Lang.<sup>65</sup> Several proposed House rules amendments shifted almost all of the Speaker's powers to a new six-member House Rules Committee, while leaving the Speaker in office to preside over House sessions.<sup>66</sup> The proposed rules changes would leave chairs and memberships of standing committees unchanged while creating the Rules Committee.<sup>67</sup>

Reasons asserted for the rules changes included slow session pace, Lang's lack of communication with other members, his decisions on bill referrals to committee, and poor working relations with Senate President Boe.<sup>68</sup> Frohnmayer was one of only five Republicans to vote against the rules changes approved by a thirty-two to twenty-eight vote with the support of fourteen Democrats and eighteen Republicans.<sup>69</sup> Frohnmayer later voted against further rules amendments, proposed by the Speaker's supporters and defeated twenty-eight to thirty-two, that would restore the Speaker's powers while creating a formal way for members to challenge bill referrals and changes in committee memberships.<sup>70</sup>

The House's daily work resumed under the new rules without more upheaval, but with an unknown residue of anger and resentments among members as a result of the revolt. The rules changes also did not really make any advance toward subjecting the Speaker's powers to

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<sup>64</sup> E.g., Or. H.R. 2203, 1977 Or. Laws 389 (increasing the number of Oregon Court of Appeals judges); Or. H.R. 2205, 1977 Or. Laws 329 (increasing the number of circuit judges); Or. H.R. 2315, 1977 Or. Laws 330 (increasing the number of district judges and creating the Council on Court Procedures); Or. H.R. 2253, 1977 Or. Laws 294 (relating to joinder of claims); Or. H.R. 2258, 1977 Or. Laws 169 (changing the use of the discovery process to obtain admissions); Or. H.R. 3172, 1977 Or. Laws 91 (transferring almost all original civil appellate jurisdiction from the Oregon Supreme Court to the Oregon Court of Appeals); Or. S. 54, 1977 Or. Laws 27 (making changes to peremptory challenges procedure); Or. H.R. 2254, 1977 Or. Laws 90 (relating to joinder of parties).

<sup>65</sup> See 1977 JOURNAL, *supra* note 41, at 322–26.

<sup>66</sup> *Id.* at 323.

<sup>67</sup> *Id.* at 322–26.

<sup>68</sup> Phil Cogswell, *Members of House Challenge Speaker*, OREGONIAN, May 3, 1977, at A1.

<sup>69</sup> 1977 JOURNAL, *supra* note 41, at 326; Phil Cogswell, *House Strips Speaker Lang of Powers: 6-member Committee in Control*, OREGONIAN, May 4, 1977, at A1, E2–3.

<sup>70</sup> 1977 JOURNAL, *supra* note 41, at 330–34.

principled controls and giving the House members a greater, but workable, role in House governance.<sup>71</sup>

Before final regular session adjournment in early July, the House adopted interim rules, with Frohnmayer joining forty-four other members in support, creating a six-member House Management Committee that took over the place of the House Rules Committee.<sup>72</sup> The regular session thus left Speaker Lang in office but without the traditional powers and responsibilities. That decision kept open the possibility of a renewed Democratic-Republican coalition to select the next speaker if the Democrats retained House control in 1979.

## VI

### 1978: THE SPECIAL SESSION

In August 1978, Governor Straub convened a special session for September because the November general election ballot included Ballot Measure 6, a 1.5% property tax limitation initiative measure modeled after an earlier California initiative.<sup>73</sup> In his special session proclamation, the governor urged sending the people proposed amendments to the Oregon Constitution “to provide property tax relief that is fair and meaningful and to limit government spending.”<sup>74</sup> With Frohnmayer’s support the legislature adopted HJR 84 referring the requested amendments.<sup>75</sup> In the 1978 general election, the people rejected both Ballot Measure 6 and the legislative referral which had become Ballot Measure 11.<sup>76</sup>

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<sup>71</sup> Phil Cogswell, *No More Representative: Non-coalition Power Play Solves Nothing*, OREGONIAN, May 4, 1977, at E11.

<sup>72</sup> The interim rules gave the House Management Committee the functions of “[a]dvising the Speaker, review and approval of the decisions of the Speaker, ratification of appointments and the filling of vacancies by the Speaker” to a long list of statutory and non-statutory bodies. 1977 JOURNAL, *supra* note 41, at 470.

<sup>73</sup> S. & H. JOURNAL, 59th Legis. Assemb., Spec. Sess. J-30 (Or. 1978).

<sup>74</sup> *Id.* at J-5 (Proclamation Calling Special Session, Aug. 25, 1978).

<sup>75</sup> *Id.* at C-20. The sweep of the commitments in HJR 84 made clear the intensity of legislative concern about the possible effects of Ballot Measure 6. *See* H.R.J. Res. 84, 59th Legis. Assemb., Spec. Sess., 1978 Or. Laws Spec. Sess. 18. The legislative proposal required legislative provision for payment of fifty percent of the value of an owner-occupied principal residence up to a maximum in tax of \$1,500 beginning in 1979–80. *Id.* The measure also required comparable relief to renters. The measure further limited the biennial rate of growth of state government operating expenses to no more than the rate of growth of Oregon personal income in the biennium. *Id.* After July 1, 1979, the measure required distribution of certain excess revenues to personal income taxpayers proportionately to their tax liability. *Id.*

<sup>76</sup> SEC’Y OF STATE, STATE OF OR., OREGON GENERAL ELECTION 1978 OFFICIAL RESULTS (Nov. 7, 1978) [hereinafter 1978 GENERAL ELECTION RESULTS] (on file with

VII  
1979: THE REGULAR SESSION

During the interim preceding the 1979 regular session, Frohnmayer served on the Interim Committee on Education, the Joint Interim Committee on Judiciary, and the Legislative Counsel Committee.<sup>77</sup> The major work of Frohnmayer's interim bodies came from the Interim Committee on Judiciary and proposed historic changes in the finance and administration of the state judicial system.<sup>78</sup>

During the interim, the issue of leadership loomed large in light of the historic 1977 House revolt against Speaker Lang; this controversy was exacerbated by the regular session's failure to restore the Speaker's traditional powers when the session ended. Representative Dick Magruder (D-Clatskanie), a leading figure in the 1977 revolt and a member of both the House Rules Committee and House Management Committee,<sup>79</sup> was a potential speaker if Democrats kept House control in the 1978 election and the 1977 Democratic-Republican coalition formed again. Certain fateful events, however, dramatically affected the leadership situation. Representative Magruder was defeated in the 1978 primary and later that year died in a farm tractor accident.<sup>80</sup> Speaker Lang lost in the general election in which the Democrats retained thirty-four House seats.<sup>81</sup> And, Frohnmayer was reelected by 12,068 to 4,022 votes.<sup>82</sup>

Soon after the House assembled for the regular session, intense negotiations in the Democratic caucus had united thirty Democrats around one candidate, with four holdout Democrats supporting one of their group and the twenty-six Republicans, including Frohnmayer, supporting their caucus leader.<sup>83</sup> As the deadlock persisted, the

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Oregon Secretary of State Election Division) (the people rejected Ballot Measure 6 by 424,029 to 453,731 votes, and Ballot Measure 11 by 383,532 to 467,765 votes).

<sup>77</sup> S. & H. JOURNAL, 60th Legis. Assemb., Reg. Sess. xix, xx, xxii (Or. 1979) [hereinafter 1979 JOURNAL].

<sup>78</sup> See, e.g., H.R. 2001, 60th Legis. Assemb., Reg. Sess., 1979 Or. Laws 671 (providing for state assumption of almost all costs of operating circuit and district courts while leaving counties responsible for costs of providing courtrooms, office space, and related maintenance and utilities).

<sup>79</sup> 1977 JOURNAL, *supra* note 41, at 13, 470.

<sup>80</sup> Rep. Dick Magruder, 31, *Dies in Tractor Mishap*, BULLETIN, June 20, 1978, at 1.

<sup>81</sup> Charles E. Beggs, *Democratic Conservatives Might Hold Key to Election of New House Speaker*, BULLETIN, Nov. 17, 1978, at 8; Linda Kramer, *Comeback Not Ruled Out: Election Defeat Surprised Phil Lang*, BULLETIN, Nov. 17, 1978, at 8.

<sup>82</sup> 1978 GENERAL ELECTION RESULTS, *supra* note 76.

<sup>83</sup> 1979 JOURNAL, *supra* note 77, at HJ-5.

majority Democrats opened discussions with the Republicans about a possible coalition that would elect the majority Democrats' choice for Speaker while giving the Republicans enhanced power in the committee structure. With the Republicans also negotiating for the four Democratic holdouts, the total Republican demands, which included chair of the Committee on Judiciary for Frohnmayer, were sweeping enough to rekindle negotiations by the majority Democrats with the four Democratic holdouts, and the election of a new speaker by a unified caucus vote.<sup>84</sup>

Frohnmayer's committee assignments again included Committee on Judiciary, Committee on Legislative Rules and Operations, and Legislative Counsel Committee, along with a new assignment: Committee on Education.<sup>85</sup> Frohnmayer was also appointed to the three-member Committee on Rules, a temporary committee that brought forward the proposed House session rules developed by joint caucus discussions.<sup>86</sup> In that position, Frohnmayer supported several major rule changes that subjected the Speaker's power to greater control and increased the minority caucus's control over its own affairs.<sup>87</sup>

As a member of the Committee on Legislative Rules and Operations, Frohnmayer also proposed other adopted House rules amendments related to member office administration and information for constituents.<sup>88</sup>

In terms of measures Frohnmayer solely sponsored or cosponsored, the most significant sole sponsorship in 1979 related to revisions of the Oregon Administrative Procedures Act governing contested case

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<sup>84</sup> *Id.* at HJ-6.

<sup>85</sup> *Id.* at xiv–xv, xx.

<sup>86</sup> *Id.* at xv.

<sup>87</sup> The primary changes included: (1) descriptions of each standing committee's subject matter jurisdiction coupled with a requirement that each bill be referred to the committee whose jurisdiction "most closely approximates to the principal subject matter addressed by the measure" (Rule 9.01(2)); (2) proportional representation of the two parties on each standing committee (Rule 8.05(2)); (3) minority caucus control of the selection of its members of each standing committee and conference committee (Rule 8.05(5)); (4) prohibition of committee structure or membership changes without the affirmative vote of at least thirty-one House members (Rule 8.05(6)); and (5) creation of a procedure by which House members could challenge bill referrals or subsequent referrals (Rule 9.01(6)–(8)). *Id.* at HJ-12–14.

<sup>88</sup> The most important change allowed a House member, within the available expense allowance, to appoint the full-time equivalent of previously separate positions of personal secretary and legislative assistant, or to use the available allowance however a member decided for the session and the interim, within the guidelines adopted by the Committee on Legislative Rules and Operations (Rule 15.05). *Id.* at HJ-18.

proceedings, rulemaking, and final agency orders.<sup>89</sup> His cosponsored measures again ranged over a wide number of subject areas but with continuing attention to areas like personal health and well-being;<sup>90</sup> veterans;<sup>91</sup> conservation and alternative energy;<sup>92</sup> protection of private

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<sup>89</sup> H.R. 2497, 60th Legis. Assemb., Reg. Sess., 1979 Or. Laws 740; 1979 JOURNAL, *supra* note 77, at H-76 (Oregon House Bill 2497 was introduced by Frohnmayer at the request of the Legislative Counsel Committee's Administrative Reform Subcommittee of which Frohnmayer was a member).

<sup>90</sup> *E.g.*, Or. H.R. 2790, 1979 Or. Laws 1035 (allowing a court to grant visitation rights to grandparents of a minor on petition in dissolution or annulment of marriage, death of a parent, or separation); Or. H.R. 2485, 1979 Or. Laws 793 (prohibiting a landlord from retaliating against a tenant by raising rent, decreasing services, or bringing an action for possession after specified acts by the tenant); Or. H.R. 2353, 1979 Or. Laws 792 (requiring smoke detectors in rental dwellings, hotel rooms, and lodging houses, and in residences when sold); Or. H.R. 2805, 1979 Or. Laws 657 (relating to restraining orders, including a requirement of entry of an order into Law Enforcement Data System which is notice of the order to all agencies); Or. S. 396, 1979 Or. Laws 213 (repealing the law terminating insurance payments or reimbursement for psychologists' services); Or. H.R. 2267, 1979 Or. Laws 277 (permitting a physician to lawfully obtain, prescribe, and dispense marijuana obtained from the Health Division for a patient in chemotherapy or glaucoma treatment, and permitting the patient to possess less than one ounce of marijuana); 1979 JOURNAL, *supra* note 77, at H-84 (Oregon House Bill 2550, requiring use of motor vehicle safety belts).

<sup>91</sup> *E.g.*, Or. H.R. 2319, 1979 Or. Laws 247 (authorizing the Department of Veterans' Affairs Director to provide loan cancellation life insurance to a borrower holding a state veterans' farm or home loan and to the borrower's spouse or former spouse).

<sup>92</sup> *E.g.*, Or. S. 337, 1979 Or. Laws 835 (exempting property equipped with solar, geothermal, wind, water, or methane energy gas systems used for heating, cooling, or electricity generation from ad valorem tax in the amount of system value); Or. H.R. 2321, 1979 Or. Laws 668 (extending eligibility for weatherization income tax credit to owners of mobile homes and individual units within multiple-unit residential housing).

records, including media sources;<sup>93</sup> environmental protection;<sup>94</sup> government processes;<sup>95</sup> civil procedure;<sup>96</sup> and cultural life.<sup>97</sup>

As in 1977, the Committee on Judiciary was probably the dominant claim on Frohnmayer's committee time. Although the committee faced fewer major issues coming from interim bodies than in 1977, the most important, noted above, related to state finance of the judicial system.<sup>98</sup>

In terms of the overall 1979 House (and Senate) agendas, the dominating issue was the legislature's next steps to address the property tax revolt fueling Ballot Measure 6 and the 1978 special session that referred an alternative measure to the people.<sup>99</sup> Although the people, as already noted, rejected both measures in the 1978 general election,<sup>100</sup> the legislature did not consider that outcome an end to the property tax issue but instead a renewed challenge—and opportunity—

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<sup>93</sup> Or. H.R. 2418, 1979 Or. Laws 1117 (protecting papers, effects, or work premises from search by any authority having power to compel production of evidence by search warrant or otherwise unless probable cause exists to believe a crime has been, is being, or is about to be committed, or in situations in which a defense is asserted based on the content or source of alleged defamatory information).

<sup>94</sup> *E.g.*, Or. H.R. 2777, 1979 Or. Laws 768 (allowing the Department of Environmental Quality to discharge shrimp or crab processing byproducts into specified estuaries to enhance aquatic life production); 1979 JOURNAL, *supra* note 77, at S-100 (Frohnmayer opposed Oregon Senate Bill 472, which reauthorized open field burning).

<sup>95</sup> *E.g.*, Or. S. 913, 1979 Or. Laws 1085 (creating the Commission on Oregon State Management and Organization to advise and assist legislative and executive branches through proposals for changes in administrative rules or policies); Or. H.R. 2929, 1979 Or. Laws 794 (making various changes to open meetings law).

<sup>96</sup> *E.g.*, Or. H.R. 2954, 1979 Or. Laws 659 (requiring an attorney fee award to the prevailing party in an action for injury to person or property pleading damages up to \$3,000, instead of previous \$1,000 where the defendant did not offer to settle for at least the amount awarded the plaintiff; and increasing pleaded counterclaim amount supporting an attorney fee award from \$1,000 to \$3,000).

<sup>97</sup> *E.g.*, Or. S. 754, 1979 Or. Laws 1175 (establishing the Oregon State Museum of Natural History); Or. S. 381, 1979 Or. Laws 924 (providing a state income tax charitable contribution deduction for art objects donated for charitable use or to a government unit); Or. S. 448, 1979 Or. Laws 928 (establishing, among other provisions, the Natural Heritage Program to identify and conserve selected natural features of Oregon).

<sup>98</sup> *E.g.*, Or. H.R. 2001, 1979 Or. Laws 671. The House Committee on Judiciary reported Oregon House Bill 2001, to the Joint Committee on Ways and Means without recommendation. 1979 JOURNAL, *supra* note 77, at H-1. Ways and Means in turn deleted all funding takeover and administrative provisions, in effect deferring those issues until a future session, and instead appropriated \$6.64 million to the Executive Department to make payments to counties for court expenses paid by counties. *See* Or. H.R. 2001.

<sup>99</sup> *See supra* Section VI.

<sup>100</sup> *See supra* text accompanying note 56.

to address that issue in a way less destructive to local government finance than Ballot Measure 6.<sup>101</sup>

## VIII

### 1980: THE SPECIAL SESSION

Frohnmayer's final special session, in September 1980, arose from the economic downturn that began in late 1979 and that reduced projected state revenues several million dollars below the amount budgeted for the 1979–81 biennium.<sup>102</sup> Careful discussions between the governor and leadership of both parties, coupled with the work of several committees formed before the session, paved the way for a one-day session which enacted several measures without notable disagreement.<sup>103</sup> Among the pre-session committees that continued into the special session, the Speaker appointed Frohnmayer to a Committee on Corrections that reported two measures, with Frohnmayer's support, approved by the special session<sup>104</sup>: increasing temporary imprisonment leave in some cases from thirty to ninety days to reduce corrections costs,<sup>105</sup> and referring to the people a proposed

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<sup>101</sup> There were three main measures in the massive 1979 tax relief and spending control program that Frohnmayer supported. First, Oregon House Bill 2540, requiring state payment (subject to funds availability in the 1980–81 fiscal year) of thirty percent of ad valorem taxes on each homestead; appropriating \$495.5 million for refunds and property tax payments; limiting biennial growth of state governmental appropriations for general governmental purposes to no more than the rate of Oregon personal income growth in the two preceding calendar years; creating the ever-controversial “kicker” program for return of part of personal income and corporate excise tax collections in certain circumstances; and limiting annual increases in property assessments to a statewide average of five percent. Or. H.R. 2540, 1979 Or. Laws 249. Second, Oregon House Bill 2186, authorizing return to individual taxpayers of certain surplus moneys in state General Fund and appropriating \$70 million for return. Or. H.R. 2186, 1979 Or. Laws 248. And third, Oregon House Bill 2589, increasing state personal income tax exemption from \$750 to \$1,000 and increasing maximum amount of federal tax deductible for Oregon personal income tax purposes from \$5,000 to \$7,000. Or. H.R. 2589, 1979 Or. Laws 248. Because the program elements ended in 1981, the legislature referred to the people amendments that would continue the elements in the 1981–83 biennium and thereafter. Or. H.R. 3010, 1979 Or. Laws 811. In the 1980 primary election, the people—unsurprisingly—approved continuation, as Ballot Measure 5, 636,565 to 64,979 votes. SEC'Y OF STATE, STATE OF OR., OREGON PRIMARY ELECTION 1980 OFFICIAL RESULTS (May 20, 1980) (on file with Oregon Secretary of State Election Division).

<sup>102</sup> See S. & H. JOURNAL, 60th Legis. Assemb., Spec. Sess. SJ-1 (Or. 1980) [hereinafter 1980 JOURNAL SPECIAL SESSION].

<sup>103</sup> See *id.* at LS-8 to LS-9.

<sup>104</sup> *Id.* at C-17, C-19 to C20.

<sup>105</sup> H.R. 3179, 60th Legis. Assemb., Spec. Sess., 1980 Or. Laws Spec. Sess. 17 (temporary leave increase).

constitutional amendment letting the state issue bonds for funds to acquire, build, or improve correctional facilities.<sup>106</sup>

## IX

### DAVE FROHNMAYER AS A LEGISLATOR: A CLOSING RETROSPECT

After the 1979 regular session, *The Oregonian* asked all state representatives and all lobbyists registered with the Oregon Government Ethics Commission to rate House members based on the criteria of “fairness,” “diligence,” “effectiveness,” “integrity and courage,” and “perceptiveness.”<sup>107</sup> The newspaper made the same request of all state senators and registered lobbyists as to Senate members.<sup>108</sup> Frohnmayer received the second highest overall rating both in the House and the entire legislature.<sup>109</sup>

In afterlight, given Frohnmayer’s keen intelligence, education, and interest in and knowledge of government, the glowing judgments provided by the closest observers of Frohnmayer as a legislator are hardly surprising; in fact, they may seem inevitable. Still, at the outset of Frohnmayer’s legislative service, there were major unknowns about Frohnmayer—unknowns basically related to temperament—that would bear a lot on his success in a collective and intensely personal process. Could he form friendly working relationships with other members in relation to public policy he supported or opposed? In seeking to do so, would he be able (again, given his intelligence and education) to avoid condescension or pedantry? Would he be able to work across party lines if he were in the minority? The results of *The Oregonian* survey seem to confirm Frohnmayer met all these challenges well.

Frohnmayer no doubt lost some leadership opportunities being in the minority during his three House terms; however, it is hard to say how disadvantaged he really was by minority status or how different his record might have looked if he had chaired a major committee like the Committee on Judiciary or served as Majority Leader or Speaker. As it

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<sup>106</sup> Or. H.R.J. Res. 53, 1980 Or. Laws. Spec. Sess. 25. The people narrowly rejected the bonding measure, which became Ballot Measure 8 in the 1980 general election, 523,955 to 551,383 votes. SEC’Y OF STATE, STATE OF OR., OREGON GENERAL ELECTION 1980 OFFICIAL RESULTS (Nov. 4, 1980) (on file with Oregon Secretary of State Election Division).

<sup>107</sup> ‘79 Legislature ‘Dull, Boring’ in View of Salem Insiders, OREGONIAN, Aug. 19, 1979, at C6.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

was, Frohnmayer was able to ally himself with the policy issues of greatest interest and concern to him, take the stands he wanted to take on policy choices with due regard for constituent and partisan considerations as he judged them, and do good work on many of the issues noted earlier. He also showed over three general elections a growing power to marshal bipartisan voter support. Perhaps most importantly, he built a legislative record that anchored his reputation as a superb public servant, and laid a solid foundation for his future political candidacies and elected service that would take him to the threshold of the Oregon governorship.