



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

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Budget Help Needed

By Bob Oleson

Now is the time to communicate with legislators on important issues involving state judicial programs and resources.

In their initial budget drafts, both the Governor and legislative leaders are proposing that the amount of funding for the current service level of the state Judicial Department (OJD) be reduced or underfunded by \$15 million. This includes a \$4.5 million cut in the indigent defense services program. During upcoming weeks, the Chief Justice and bar leaders will try to persuade legislators that the proposed budget is inadequate and that reducing the Chief Justice's \$416 million base budget, HB 5020, (or current service level funding) is a move in the wrong direction.

If the Judicial Department budget cuts remain in place, OJD stands to lose about 100 staff positions around the state. On Friday, March 30, the reduced base budget passed out of the Ways and Means budget committee. This action was taken on an expedited basis to avoid another \$4 million in cuts now being proposed by Governor Kitzhaber and Senate President Derfler.

State officials who developed the preliminary budget are arguing that demands from other programs (such as public education) and Oregon's weak economy may

prevent them from funding any of the \$76 million general fund packages (or add-ons) being aggressively requested by the Chief Justice and his allies. The components of these packages include judicial salary and benefit increases, new judicial positions, critical workload staffing, court technology and equipment improvements, fee increases for indigent defense attorneys, etc.

It is critical that the legal profession learns to give more attention to the legislative arena. Increased lawyer participation in the process would make it more difficult for future legislators to ignore important concepts like judicial independence and the need for adequate funding of the judicial branch.

Ways and Means (Joint) House	Ways and Means (Joint) Senate
Ben Westlund,	Lenn Hannon, <i>Co-Chair</i>
Tom Butler.....	Bev Clarno
Gary Hansen.....	Joan Dukes
Cedric Hayden.....	Verne Duncan
Jim Hill.....	Ted Ferrioli
Betsy Johnson.....	Tom Hartung
Susan Morgan.....	Randy Miller
Rob Patridge.....	Cliff Trow
Kurt Schrader.....	May Yih
Jackie Winters.....	

***To access the legislative Web page and contact your legislator, go to www.leg.state.or.us .Or dial 1(800) 332-2313.*

Some legislators with a narrow and short-term focus continue to see the judiciary, especially the appellate courts, as an obstacle to quickly constructing "fixes" to major policy problems. Moreover, in recent years the effort to advance new budget requests for the judiciary has been derailed by the vague but active opposition of several key legislators. Thanks to term limits, most of these legislators are gone and have been replaced by friendlier leaders.

Unfortunately, in the next biennium the state could see a billion-dollar revenue shortfall. Nobody seems to be a champion for new or higher taxes. Without new taxes, it is impossible for the current legislature to fully remove state judicial branch programs from the financial quagmire in which they have been placed. The Ways and Means Committee that controls the state budget also listens to other legislators as it prepares to finalize the next set of appropriations. Different interest groups and community leaders like you can make a difference in a concerted effort to educate lawmakers about the entire justice system.

Local Bars

Now is the time to communicate with legislators about judicial programs and resources. Leaders of several county bar associations have had productive meetings with their legislative delegations. The first county bar to host a meeting with their local judges and legislators was Washington County. More recently, Clackamas County judges met with legislators in Salem on March 28. Legislators are generally sympathetic but do not have the resources to maintain current state court programs. Presiding Judge Selander got the legislators' attention when he asserted that the lack of adequate funding for the Judicial Branch is creating a "constitutional crisis" for the State of Oregon. According to Selander, judges are being forced to decide which categories of cases they will hear and which ones they will not hear.

HJR 23: Impeachment of Judges

Under House Joint Resolution 23, introduced by Rep. Cliff Zauner, Republican of Marion County, a simple House majority could trigger an impeachment trial by the Senate. Senators could remove an official with a two-thirds vote. Zauner and numerous citizens with complaints about judges and other public officials testified in favor of the constitutional amendment.

Lawmakers are interested in the idea, but made no commitment that they will send the bill to the full House. Rules Committee chair, Rep. Carl Wilson, R-Grants Pass, fears lawmakers could unduly influence a judge by attempting to impeach judges. In addition, the OSB Judicial Administration Committee has expressed concern to committee members that this mechanism for removing judges (in addition to time-tested recall) would further undermine judicial independence.

HB 2938 Pro Hac Vice Fees

The bar's enabling legislation to allow pro hac vice fees to be used for legal services passed the House on March 30. HB 2938 authorizes the collection of an application fee for *pro hac vice* appearances dedicated to low-income legal services. The bill is limited to court appearance fees; thus, there would be no fee for appearances by out of state attorneys in administrative proceedings. The bill allows the Supreme Court to adopt a rule requiring a *pro hac vice* appearance fee to be administered by the Oregon State Bar, with funds dedicated to low income legal services.

SB 118: Business Issues

For legislative efficiency, all four legislative proposals of the OSB Business Law Section have been merged into SB 118. SB 118 has passed the Senate and is on its way to the House for consideration. In addition, at the request of the Department of Consumer and Business Services, the bill also addresses fraudulent banking activity.

Highlights of the bill include the following: clarifies remedies, other than dissolution, for shareholders in closely held corporations to address minority shareholder oppression; allows corporate shareholder action by less than unanimous consent; clarifies law regarding conversion and mergers of business entities; prohibits fraudulent bank activity by more strictly regulating formation of corporations with "Bank" in title.

Groups Become Active

Although the time is limited to strengthen the justice system this session, the united voices of affected parties could help. For example, the state Judges' Association is successfully spearheading a campaign to develop political support for a judicial pay raise. The "Gleaves Committee" on New Judgeships and the state bar's Judicial Administration Committee, chaired by Salem attorney Mary James, are assisting in educating legislators about the need for new judicial positions. In addition to helping maintain at least current judicial program funding levels, the bar's Board of Governors and Public Affairs Committee have made access to justice a priority this session. This means trying to increase support for legal services and indigent defense.

HB 2460: SLAPP Suits

HB 2460, Strategic Lawsuits Against Public Participation, would indemnify residents who speak on public policy issues before public bodies. According to the bill, defendants could petition the court for an expedited dismissal and recovery of attorney fees if they can demonstrate a high probability that they will prevail. This controversial bill received a hearing in the House Judiciary Civil Subcommittee. Similar to a bill that passed the House in 1999 but failed in the Senate, this bill will likely move through both chambers this session. The bar's Procedure & Practice Committee has been working with the interested parties to improve the procedural aspects of the proposed legislation.

HB 2246: Judicial Review

The saga of judicial review of state and local government action continues. The Oregon Law Commission introduced HB 2246, a comprehensive approach to judicial review. The fate of that bill is uncertain. However, portions of HB 2246, and concepts that have arisen since the bill was introduced, may survive (for example, creating a safe harbor for filing proceedings in both the appellate and trial court levels, which would eliminate the need for double filing.) Another concept still under consideration would allow, at the local government level, conversion of one writ to another writ. In addition, there are still attempts to resurrect the original bill and move it forward. Whether the proponents are successful is yet to be seen.

HJR 7 Judicial Selection

House Joint Resolution 7, regarding the adoption of a judicial selection commission for the appointment of statewide appellate courts, has been scheduled for hearing on April 13 before the House Judiciary Committee. The current version of a bill relating to a judicial selection commission is expected to receive serious consideration before the session is over. The Public Affairs Committee will work closely with bar and legislative leaders on this proposal. In addition, the Judicial Administration Committee will review and provide comment on the proposals as necessary.

Bills of Interest

The following is a list of legislation related to different practice areas.

Administrative Law

HB 3935 Permits transfers of admin. proceeding

Appellate Law

HB 3677 Judicial construction of statutes
HJR 23 Judicial impeachment
SB 823 Req. judge to determine leg. intent

Civil Rights

HB 2352 Revises law on unlawful employm't practices

SB 114 Penalties for genetic privacy law violation

Computer and Electronic Information

HB 2112 Uniform Electronic Transactions Act
HB 3163/3910 Creates Uniform Computer Information Transactions Act task force and statute

Criminal Law

HB 2092/SB 156: Expands list of death penalty crimes
SB 914 Drug courts

Debtor/Creditor

HB 2386 Revises laws relating to garnishments
SB 171 UCC Article 9 revision

Estate Planning

HB 3248 Repeals certain elective share provisions
HB 3862 Creates Trust Law Reform Task Force

Family Law

HB 2062/3559: Rebuttable. presumption that joint custody is in child's best interest
HB 2427 Troxel fix rebuttable presumption. favoring parents' custody first

Government

HB 2425 Uniform definition of public bodies

Litigation/Procedure and Practice

HB 2381 Attorney fees if claim is \$5,000 or less
HB 2414 Rules governing conflicts of laws
HB 2460 Anti-SLAPP
HB 3258 Shortens statute of ultimate repose for negligence from 10 years to 9 years
SB 437 No privilege for intent future crime statements

Real Estate and Land Use

HB 3259 Extends Adverse Possession SOL from 10 to 12 years
HB 3541 Eliminates Adverse Possession
HB 3673 Clarifies recording requirements
n/a Measure 7

Workers' Compensation

SB 354/485 Revises comp. for certain conditions

Contacts

The OSB Public Affairs Committee ("PAC") oversees legislative activities and makes

recommendations on major policy issues. Chaired by Hillsboro attorney John Tyner, other members include William Carter, Medford; Malcolm Scott, Eugene; Charles Williamson, Portland; James Brown, Salem; and public member Mary McCauley Burrows, Eugene. Ed Harnden, OSB President, is also an ex-officio member of the PAC.

If you have questions or comments about this newsletter or legislative issues feel free to contact the Public Affairs Committee chair John Tyner at (503) 648-5591 or the Public Affairs staff at the bar office at (503) 620-0222 or toll-free in Oregon at (800) 452-8260. You can reach GR Assistant Judy Coons at ext. 376 or by e-mail at jcoons@osbar.org.