



# CAPITOL INSIDER

*OSB Public Affairs Newsletter for Bar Leaders*

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November 16, 2001

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## **The Shape of Things to Come**

*By Susan Grabe & Bob Oleson*

A number of events could dramatically affect the composition of the 2003 legislature. Term limits, redistricting, which party will control the House and Senate, and who will be the next Governor for the State of Oregon are some of the factors that will shape the 2003 legislative session in Oregon.

**Term Limits.** The term-limits law was declared unconstitutional by a Marion County Circuit Court. Judge Dick Barbur held that the 1992 term-limits initiative violates the Oregon Constitution in two ways: it violates the separate-amendment provision, which requires voters to vote on separate amendments individually and it violates the single-subject requirement, which requires that the issues voted on be closely related.

Under term limits, legislators may serve in the Oregon House of Representative for six years or three terms; members of the Oregon Senate may serve eight years or two terms. Total service is limited to 12 years of service. Currently, approximately 26 legislators (13 from the Senate and 13 from the House) are "termed out." This automatic transition translates into an annual turnover of about 1/3 of the legislative assembly, which creates a void in institutional knowledge and leadership. Thus, legislators who are unfamiliar with government structure, ongoing government issues, and the political

process turn to the professional staff and lobbyists for education on those subjects.

**Redistricting.** Another important development that will affect the 2003 legislative assembly is the decennial redistricting process. Every 10 years, the Oregon Constitution requires the Legislative Assembly to redraw district lines for legislative and congressional districts to account for shifts in population.

If the legislature fails to reach an agreement, the responsibility falls to the Secretary of State. In response to a challenge to the Secretary's plan, the Supreme Court recently upheld the Secretary's plan with minor tinkering. The redistricting will play a major role in determining who is in control of the House. Some speculate that the new district lines favor the Democrats, who will take control of at least one chamber next session.

Also noteworthy is the prospect of a special legislative session to remedy a budget shortfall. This, in turn, raises concern about the impact that adjustments to the state budget might have on the justice system in Oregon.

## **January Special Session?**

The current revenue forecast for the state of Oregon shows a \$600 million deficit that appears to be increasing. In response to this information, the governor has asked agencies to prepare budgets with 2% - 10% budget cuts.

The budget outlook for FY 2002 is worrisome because fiscal conditions are expected to get worse before they get better. It now appears likely that there will be a special session in late January to deal with the budget crises.

Bar representatives will closely monitor potential budget shortfalls that could affect the judicial branch and the legal profession. If the budget continues to shrink, some of the programs and positions created last session could be endangered.

## Interim Judiciary

### 2001-2002 Committee Members:

#### House

Max Williams, Co-chair  
Robert Ackerman  
Kathy Lowe  
Rob Patridge  
Lane Shetterly  
Cherryl Walker

#### Senate

John Minnis, Co-chair  
Ginny Burdick  
Peter Courtney  
Verne Duncan  
Charles Starr

The Interim Judiciary Committee held its first meeting at the 2001 Oregon State Bar Convention in Seaside. After the adoption of the interim rules and work plan, the committee moved to the more substantive portions of the meeting. Most of the meeting was spent on the issue of the need to provide notice of their rights to detained foreign nationals under Article 36 of the Vienna Convention. Testimony from the Mexican, Korean, and British Consuls was heard with respect to concerns regarding interaction of local police with foreign nationals.

The committee also heard Tom Ewing from the Employment Department talk about the Central Hearings Panel. OSB Board President Ed Harnden gave the committee an overview of the court facilities maintenance issue

during the session and future goals. The bar's Computer and Electronic Information Workgroup gave an update on issues surrounding the Uniform Computer Information Transactions Act (UCITA).

Future meetings for the Interim Judiciary Committee are as follows:

December 11, 2001	Portland
March 12, 2002	Salem
June 21	Bend
September	to be determined

## HB 3248 CCB Lien Notice

HB 3248 (enacted in the 2001 session) amends ORS Chapter 93 to require a seller of real property to disclose to the purchaser anyone who has performed work on the property in the last two years and has not been paid or the payment is in dispute. Also, the seller must provide the purchaser with a copy of any lien notices or lien claims, foreclosure pleadings, satisfactions of liens, or releases or waivers of rights to liens that the owner has received in the last two years. Other clarifications are included.

Staff of the Construction Contractors Board and Rep. Merkley have been leading a task force to develop a cautionary notice that is workable. Although intended to be an important new consumer protection, this law creates a misdemeanor crime for the unwary. The task force is trying to address a number of difficult implementation questions. For more information or a current draft of the notice, contact the public affairs staff at 1 (503) 431-6376.

## Civil Commitment

The bar held its first multidisciplinary CLE on Civil Commitment on Friday, November 2, in Eugene. Over 200 lawyers, judges, and mental health workers from the entire state of Oregon converged on the University of Oregon Law School to hear from judges, lawyers, legislators, and citizens about the civil commitment process.

Cosponsored by the bar, the Oregon Criminal Defense Lawyers Association, the Oregon District Attorneys Association, the Interim Judiciary Committee, the Department of Health and Human Services, and the Oregon Judicial Department, this was a first effort to deal with a controversial and difficult issue.

It is hoped that this CLE will mark the beginning of a concerted statewide effort to focus on best practices in each county. For more information, contact Marilyn Odell at (541) 343-5539.

## Bar Convention Follow-up

**Bar Convention.** At the 2001 OSB Convention in Seaside, the Government Relations Program produced a successful 2001 Legislative Review CLE. The *2001 Legislation Highlights* book, a joint project with CLE Publications, served as materials for the program. Four lawyer-legislators were recognized for significant contributions in the legislative process and service to the bar: Sen. Peter Courtney, Rep. Lane Shetterly, Rep. Max Williams, and Rep. Kathy Lowe.

**HOD.** At the September 22 House of Delegates meeting in Seaside, the delegates considered a number of issues. Below are the highlights of the actions of the House:

- Approved an increase in fee for inactive members.
- Directed Board of Governors to conduct complete study of OSB disciplinary system.
- Adopted amendment to DR 1-102 to address *In re Gatti*.
- Defeated Board of Governors resolution proposing that House of Delegates assumes responsibility for election of OSB's delegates to American Bar Association House of Delegates.
- Proposal to amend DR 5-103(B) dealing with lawyers underwriting costs of litigation for clients was dropped.

## OSB Legislative Process

### May 2002 deadline for bar group bills

If your bar group intends to file proposed legislation for the 2003 Legislative Session, then the deadline to submit the proposal for BOG approval is **May 1, 2002**.

Yes, it's true. Even though we just finished the 2001 Legislative Session, we are encouraging bar groups to meet the pre-session filing deadline. We strongly recommend pre-session filing because, in general, these bills are introduced and have hearings scheduled at the beginning of the legislative session. As a result, legislators and other groups have more time to consider the merits of the proposed bill.

### What is law improvement?

In general, bar groups are encouraged to participate in law improvement activities. This includes proposing legislation to improve statutory schemes; clarify statutory ambiguities; modify "glitches" in major legislation passed in previous sessions; or codify case law.

In addition, bar groups are also encouraged to provide technical analysis of proposed legislation to the Legislature through oral testimony or letters. And, remember, routine law improvement measures can turn into major policy issues. Procedural change to one person is policy change to another.

### Positions on bills, rules etc.?

OSB sections and committees must receive approval from the BOG Public Affairs Committee before taking a position on proposed legislation. These written requests must include the intended position of the group and an explanation of how this position is appropriate under the legislative guidelines established by the BOG. For legislative contact information, see end of newsletter.

## OSB Scorecard

The following is a list of bills introduced this session by the bar and its sections and committees:

Summary	Status
HB 3260: House of Delegates governance changes (3 bills)	6/4 Governor signed
HB 2938: <i>Pro hac vice</i> appearance fee	5/29 Governor signed
HB 2372: Simultaneous testimony	6/15 Governor signed
HB 2374: Prevailing party attorney fees	6/18 Governor signed
HB 2375: Nonparty depositions	5/30 Governor signed
HB 2361: Allows stipulation w/o waiving appeal rights.	6/22 Governor signed
SB 118: Minority shareholder rights in closely held corp. (3 bills)	6/8 Governor signed
HJM 3: Resolution to eliminate discrimination against women	Dead
HB 2363: Unlawful trade practices act	Dead
HB 2364: Medicaid payment for guardianship fees/ costs	Dead
HB 2365: Continued validity of power of attorney	6/15 Governor signed
HB 2366: Medicaid trust and protective proceedings	Dead
HB 2367: Notice in guardianship/conservatorship	6/19 Governor signed
HB 2368: Review of advanced directives in protected proceedings	6/15 Governor signed
SB 120: Notice to creditors after death of settlor	6/25 Governor signed
SB 123: Uniform transfers to minors act	5/30 Governor signed
SB 122: Uniform disclaimer of property interest act	5/30 Governor signed
SB 124: Divorce judgments by affidavit by stipulation	6/4 Governor signed
SB 713: Counseling for consenting birth parents	6/25 Governor signed
HB 2369: Clarify conflict of interest for public officials	5/25 Governor signed
HB 2370: Technical clean-up of ORS Chs. 197 & 215	6/28 Governor signed
HB 2371: Defines de novo review after admin.	6/15 Governor signed

hearing	
HB 2175: Unearned income credit	6/22 Governor signed
SB 171: UCC Article 9, title loans	6/19 Governor signed

## Ballot Measures/Initiatives 2002

Proposals to amend the constitution have been filed that could affect the practice of law and the judicial system. Below is a list of some of the more interesting ballot titles that have been filed in the Secretary of State's office:

**No. 67** - Revises procedure for filling judicial vacancies, electing judges; allows vote for "none of the above"

**No. 90** - Requires Oregon Supreme Court justices and Court of Appeals judges to be elected by district

**No. 105** - Establishes one state senate district per county regardless of population; increases size of state legislature

**No. 107** - Requires that judges take oath limiting interpretation of law by following framers' and legislature's intent

**No. 132** - Requires petitioners/legislative counsel to correct invalidated initiatives; requires submission of rewritten initiatives to voters.

**No. 133** - Requires state legislative assembly to correct judicially invalidated initiative measures, submit rewritten measures to voters

**No. 137** - Prohibits courts from invalidating voter-approved measures on "technical grounds"; allows reinstating measures recently invalidated

**No. 138** - Secretary of State must insure initiatives comply with "technical, procedural" requirements before allowing their circulation.

## Legislative Redistricting

The court recently upheld the Secretary of State's redistricting plan with minor modifications. If you are interested in the redistricting plan, visit the Web site at [www.sos.state.or.us](http://www.sos.state.or.us). Below is a list of the new districts and representative for each district.

House District	Representative	Senate District	Senator
1	Wayne Krieger	1	Bill Fisher

2	Susan Morgan		
3	Carl Wilson	2	Jason Atkinson (3)
4	Cherryl Walker		
5	Alan Bates	3	Lenn Hannon
6	Rob Patridge		
7	Jeff Kruse (1)	4	Tony Corcoran
8	Cedric Hayden		
9	Joanne Verger	5	Ken Messerle (1)
10	Alan Brown		
11	Al King	6	Bill Morrisette
12	Terry Beyer		
13	Vicki Walker	7	Susan Castillo (6)
14	Robert Ackerman (13)		
15	Betsy Close	8	Cliff Trow
16	Kelley Wirth		
17	Jeff Kropf (23)	9	Roger Beyer
18	Tootie Smith		
19	Dan Doyle	10	Gene Derfler (12)
20	Janet Carlson (19)		
21	Jackie Winters	11	Peter Courtney
22	Cliff Zauner (18)		
23	Lane Shetterly	12	Gary George
24	Donna Nelson		
25	Vic Backlund	13	Charles Starr
26	Jerry Krummel		
27	Mark Hass	14	Ryan Deckert
28	Bill Witt (33)		
29	Jim Hill	15	Mae Yih (8)
30	Bruce Starr		
31	Betsy Johnson	16	Joan Dukes
32	Elaine Hopson		
33	Chris Beck	17	Tom Hartung
34	Charlie Ringo		
35	Max Williams	18	Ginny Burdick
36	Mary Nolan		
37	Richard Devlin	19	Randy Miller
38	Carolyn Tomei (41)		
39	Kurt Schrader	20	Verne Duncan
40	Kathy Lowe		
41	Dan Gardner	21	Kate Brown
42	Diane Rosenbaum		
43	Deborah Kafoury	22	Margaret Carter
44	Gary Hansen		
45	Jackie Dingfelder	23	Avel Gordly (22)
46	Steve March		
47	Jeff Merkley	24	Frank Shields
48	Randy Leonard		

49	Karen Minnis	25	John Minnis
50	Laurie Monnes Anderson		
51	Jan Lee	26	Rick Metsger
52	Patti Smith		
53	Ben Westlund	27	Bev Clarno
54	Tim Knopp		
55	Phil Barnhart (11)	28	Steve Harper
56	Bill Garrard		
57	Mark Simmons	29	David Nelson
58	Bob Jenson		
59	Greg Smith (58)	30	Ted Ferrioli
60	Tom Butler		

\*\*Legislators who reside in the assigned districts are in bold. Legislators who are assigned to a district that is a portion of their old district are in italics. Legislators who are assigned to other districts are in regular. For those who do not reside in their assigned district, the district number where they reside appears after their name.

## OSB Public Affairs

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; James Brown, Salem; William Carter, Medford; Malcolm Scott, Eugene; Charles Williamson, Portland; and public member Mary McCauley Burrows, Eugene. Ed Harnden, OSB President, is also an ex-officio member of the PAC.

If you have questions on legislative issues, contact the Public Affairs Committee chair John Tyner at (503) 648-5591 or the Public Affairs staff at (503) 620-0222 or in Oregon at (800) 452-8260. You can reach Bob Oleson, Public Affairs Director, at ext. 317 or by e-mail at [boleson@osbar.org](mailto:boleson@osbar.org); contact Susan Grabe, Public Affairs Attorney, at ext. 380 or by e-mail at [sgrabe@osbar.org](mailto:sgrabe@osbar.org).