



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

SEPTEMBER 20, 2002

The Not-So-Special Sessions

The length of the 4th and 5th special legislative sessions reflects not only the severity of the state's budget problems, but also the combative election year, with control of the Oregon House and Senate hanging in the balance. In addition, pressure mounts to enact changes to PERS to forestall a more severe budget crisis in the future. Unfortunately there is no consensus on how to fix the system. Finally, no one knows when Oregon's economy will turn around. With the special sessions now over, October is the best possible time for lawyers to be talking to their legislators and legislative candidates about issues of concern to their clients and the justice system.

4th Special Legislative Session

The legislators came to town on August 16 with one charge—to consider the Governor's vetoes of Senate Bill 1022 (borrowing \$211 million for K-12 schools and \$56 million for community colleges by shifting the last payment for schools to the next budget cycle) and House Bill 4056 (allowing the state to float \$50 million of bonds for schools based on future cigarette-tax revenues and an additional \$175 million of bonds to offset any additional budget shortfalls). The legislators left four days later, after overriding the Governor's veto of Senate Bill 1022 and failing to override the veto of House Bill 4056. This set the

stage for a record-breaking 5th special session.

5th Special Legislative Session

The 5th special legislative session began on Sunday, September 1. On September 18 the legislators finally went home. They cobbled together a budget re-balancing package for the 2001-03 biennium that eliminates the state's \$482 million shortfall with a combination of borrowing, budget cuts, and a tax increase referral. The package includes \$150 million from bonds secured by the tobacco settlement agreement and \$48.2 million from a combination of General Fund budget reductions and one-time revenue transfers to the General Fund.

The most uncertain and controversial component of the package is the \$313 million income tax increase to be referred to the voters in a January 28, 2003 special election. The three-year hike would generate \$313 million for immediate budget assistance and another \$412 million for the upcoming 2003-2005 budget that is anticipated to have a \$1.5 billion shortfall.

Although the Judicial Department was spared from specific budget cuts, if voters reject the tax increase in January, the re-balancing package also includes \$310 million in pro-rated agency

budget cuts. The Department would suffer significant additional cuts enacted to offset the potential \$313 million shortfall.

Pro-rated reductions in the Judicial Department would include \$7,977,360 in the Operations budget; \$5,108,280 in Indigent Defense; \$532,562 in Mandated Payments; and \$21,996 in operations relating to new judge-ships. In addition, the two Emergency Board special purpose appropriations for new judicial positions and judges' retirement benefits would also take prorated reductions of \$6,682 and \$9,936, respectively.

The potential \$8 million reduction to the Operations budget, if taken over the five months remaining in the biennium, results in a 25% cut to funds available for reduction. The full impact of these prorated cuts is substantial. The cumulative effect of budget cuts from all special sessions would result in almost a 30% reduction in the Court Operations budget over this five-month period. Because the majority of the Operations budget funds people, a corresponding reduction in staff support for the operation of the Court would be required. In Addition funding for the 2001-2003 Indigent Defense Account would be \$3.3 million less than that for the 1999-2001 biennium. As a result, funding for the Indigent Defense Account is projected to run out by April 1, 2003.

Court Closures

The State Court Administrator's office has compiled a helpful listing of court hours for the Circuit and Appellate Courts. The OSB plans to post this listing on its web site in the near future. For more information, contact Beth Richley at (503) 431-6376 or by email at brichley@osbar.org.

Candidates Forum Reminder

The OSB Administrative Law Section is sponsoring a Candidates Forum on Tuesday, September 24, from 6:00 p.m. to 7:00 p.m. at the Home Builders Association, 15555 SW Bangy Road, in Lake Oswego. This is your opportunity to meet local legislative and other candidates and hear what they have to say

about issues of interest to our profession.

For more information, contact Janice Krem at (503) 293-8470.

Open Court Programs

The Multnomah County Courthouse anticipates holding an Open Court program in early October. These programs have been ongoing throughout the summer, providing an opportunity for the court to discuss key issues in a county's justice system with legislators, lawyers, and the local community. These courthouse open houses are a joint effort between the OSB and judicial districts.

HOD Meeting Final Reminder

The annual HOD meeting will take place on October 5, 2002, at the Valley River Inn, 1000 Valley River Way, in Eugene, beginning at 10:00 a.m.

This meeting will be busy with nine Board of Governors resolutions and five House of Delegates resolutions to consider.

BOG Resolutions:

- 1 Increases annual membership fees
- 2 Directs the BOG to pursue and implement recommendations of the Disciplinary System Task Force
- 3 In Memoriam
- 4 Supports indigent defense funding
- 5 Opposes Ballot Measure 21 regarding new procedure for appointing and electing judges
- 6 Opposes Ballot Measure 22 requiring election of appellate judges by district
- 7 Supports adequate funding for legal services for low-income Oregonians
- 8 Supports adequate funding for the Judicial Department
- 9 Approves new DR 2-105: Compensation from non-lawyers

HOD Resolutions:

- 1 Requests the BOG to seek a legislative amendment making child abuse reporting a one-time Mandatory Continuing Legal Education (MCLE) requirement for all members
- 2 Requests the BOG to seek a legislative

amendment making child abuse reporting a one-time Mandatory Continuing Legal Education (MCLE) requirement for out-of-state members

- 3 Urges the Oregon Supreme Court to allow for electronic filing projects
- 4 Requests the BOG to ask the Oregon Supreme Court to make “diversity” a one-time Mandatory Continuing Legal Education (MCLE) requirement for all members
- 5 Requests the BOG to ask the Oregon Supreme Court to make “diversity” a one-time Mandatory Continuing Legal Education (MCLE) requirement for out-of-state members

For more information, contact Teresa Bowen at (503) 620-0222, ext. 386, or by email at tbowen@osbar.org.

Secrets of the Legislature



It's that time again. Dave Barrows Associates and the Oregon State Bar Public Affairs Program are co-sponsoring a one-day workshop designed

for lawyers who are “occasional” lobbyists. Speakers will include House and Senate leaders. The workshop will feature practical information on:

- Realities of the 2003 legislative session
- Lobbying ethics—registration, conflicts, case studies
- Strategies and tactics—who counts and who cares
- Committee testimony—overcoming the “lawyer” stigma
- Lobbying legislators—who to talk to, and how
- Written testimony—why and how much

The workshop will be held on Thursday, November 21, 2002, from 8:30 a.m.–4:30 p.m. at the Doubletree Hotel, Lloyd Center, in Portland. The registration fee is \$150 before November 14, and \$175 after November 14.

For more information, contact Lara Smith, Dave Barrows Associates, at 503-227-5591 or by email at lsmith@davebarrows.com.

There will be a limited number of discounted registrations available for bar volunteers. For more information, contact Beth Richley, OSB Public Affairs Department, (503) 620-0222, ext. 376, or by email at brichley@osbar.org.

Proposed Changes to the ORCP

The Council on Court Procedures held a public meeting on Saturday, September 14, 2002, to hear reports and recommendations for amendments to the Oregon Rules of Civil Procedure. The proposed amendments encompass several rules:

- ▶ 21—Defenses and Objections (new defense regarding forum-selection clause)
- ▶ 34—Substitution of Parties (notice regarding death of defendant)
- ▶ 43—Production of Documents (continuing obligation to produce documents)
- ▶ 44/55—Physical and Mental Exams; Reports/Subpoena (medical records language changes due to HIPAA rules)
- ▶ 47C—Summary Judgment Motions (change from 45 days to 60 days before trial)
- ▶ 59—Jury Instructions (clarify written jury instruction rule)
- ▶ 62F—Effect of Findings of Fact (technical statutory reference change)
- ▶ 68C(4)(c) - Award of Attorney Fees; Hearing (other factors to consider including ORS 20.075 and other statutes)

These proposed amendments will be published shortly for public comment.

The Council will consider any written comments received before voting on the proposed amendments at its December 14 meeting. Any amendments promulgated by the Council must be sub-

Legislative Races Up for Grabs

mitted to the Legislative Assembly at the beginning of each regular session and must take effect on January 1 following the close of that session unless the Legislative Assembly by statute amends, repeals or supplements them. ORS 1.735 (1).

For more information, contact Maurice Holland, Executive Director, Council on Court Procedures, at 541-346-3990.

OSB Public Affairs Department

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; Nena Cook, Portland, David Hytowitz, Portland; and Charles Williamson, Portland. Angel Lopez, OSB President, is also an ex-officio member of the PAC.

The Public Affairs Department works to apply the knowledge and experience of the legal profession to the public good by advising governmental bodies, proposing and responding to legislation for law improvement, and advocating on matters that affect the legal profession.

If you have questions about this newsletter or 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 email at boleson@osbar.org; contact Susan Grabe, Public Affairs Manager, at ext. 380 or by email at sgrabe@osbar.org; or contact Joyce Patton, Public Affairs Attorney, at ext. 358 or by email at jpatton@osbar.org.

CANDIDATES/ LEGISLATORS	DIST.#/VOTER REG.R/D
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Bryan Johnston (D) Jackie Winters (R)	SD 10 (Leaning R) Salem
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<u>Charlie Ringo (D)</u> <u>*Bill Witt (R)</u>	SD 17 (Leaning D) Beaverton
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Martha Schrader (D) Wayne Scott (R)	HD 39 (Even) Oregon City
Jan Lee (D) Linda Flores (R)	HD 51 (Even) Estacada, Gladstone

*Not admitted to Oregon State Bar
Underlined individuals are lawyers or candidates with legal training