



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

MAY 9, 2003

Judicial Selection Process

The 2003 legislative session is seeing renewed efforts to transform Oregon's judicial selection process. Two resolutions in particular are worth noting.

House Joint Resolution 42 was heard in the Senate Rules committee on April 29th, after having narrowly passed out of the House on a vote of 31 to 27 on April 15. HJR 42, introduced by Representative Rob Patridge, R-Medford, would refer to the voters a constitutional amendment that would require Senate confirmation of gubernatorial appointments to the State Supreme Court, Court of Appeals, or circuit courts.

Tom Kranovich and Marilyn O'Dell testified before the House Rules Committee on behalf of the Oregon State Bar's Judicial Administration Committee expressing concern that this change could politicize the judicial appointment process. Other groups testified in opposition to the bill including representatives from the Multnomah Bar Association, the American Judicature Society, the League of Women Voters, and the American Civil Liberties Union. The Senate Rules Committee took no action on the resolution, other than simply taking public testimony. To date, a work session, at which the committee might vote on the resolution, has not been scheduled. The Bar will continue to monitor this resolution.

Also noteworthy is Senate Joint

Resolution 29. SJR 29, introduced by Senator Ted Ferrioli, R-John Day, and supported by a number of his fellow Senators and Representatives, would refer to the voters a constitutional amendment that would create seven judicial districts from which the seven Supreme Court Justices would have to be appointed or elected. This kind of structural change could dramatically change the makeup of the Court. The Senate Rules Committee held a public hearing on this resolution on April 3, but whether SJR 29 receives a work session has yet to be decided.

In some respects, both of these resolutions tie in to the broader issue of the process through which the Governor fills judicial vacancies. The discussion of balancing the competing interests of judicial independence, judicial accountability, and public participation in the selection process will certainly be ongoing.

Judicial Department Budget

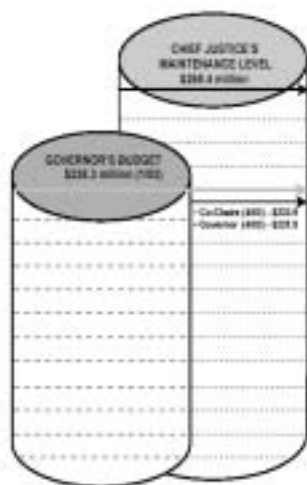
April 17 heralded that point in the legislative session where budgets will become the focal point for the remaining months of the session. On that date, Senator Kurt Schrader, D-Canby, Representative Randy Miller, R-West Linn, Co-Chairs of the Joint Committee on Ways and Means, and Vice-Chair Senator Steve Harper, R-Klamath Falls, announced their 2003-2005 Budget Proposal. This budget includes about \$234 million for the Oregon

Judicial Department (\$238 million minus \$4.3 million obtained by eliminating three new judgeships and self-funding the second round of judicial salary increases).

The Chief Justice's maintenance level budget needs \$268 million. The Governor's Balanced Budget that was issued last December contained \$238 million for the Judicial Department. The Governor's Revised Balanced Budget has about the same amount as the Co-Chairs' budget, but it is allocated differently. For example, indigent defense funding in the Chief Justice's budget equals \$172 million, while indigent defense would receive \$168 million in the Governor's revised budget and \$151 million in the Co-Chairs' budget.

In addition, the Co-Chairs' budget reduces funding for the Judicial Fitness Commission by 50% and suspends all funding for the Council on Court Procedures (the body responsible for drafting and revising the Oregon Rules of Civil Procedure).

Although the Judicial Department fared well in the list of priorities coming out of the Joint Ways and Means Public Safety Subcommittee, chaired by Representative Rob Patridge, R-Medford, there is no doubt that extremely difficult decisions will have to be made in the coming weeks when a revised version of the Co-Chairs' budget will be released.



Excerpt from
2003 - 2005
JUDICIAL DEPT.
BUDGET –
SB 5523
(Courts – General
Funds)

HB 2646 Judgments Statute Overhaul

House Bill 2646 is another bill that should be of interest to anyone who ever has to go to court to get any kind of judgment. Proposed by the Oregon Law Commission, HB 2646 is a comprehensive bill that updates a large number of statutes dealing with judgments, and modernizes language to reflect the way courts operate today. It redefines "judgment" and "appealable judgment," and clarifies language relating to the expiration of judgments. Representatives from a number of bar groups including the Appellate, Debtor/Creditor, Family, and Real Estate and Land Use Sections have been involved in this two-session project. This bill will affect every area of practice and will be a legislative change that every practitioner will need to know.

Criminal Justice System Changes

There may be big changes in store for the criminal justice system. The state's budget crisis has spawned many legislative proposals to modify the current criminal justice system, all in the name of fiscal responsibility. One example currently making its way from the House to the Senate is HB 2877. This bill requires that early disposition programs allow the district attorney to make a resolution offer to offenders prior to arraignment. Sponsors of the bill believe this provides an opportunity to reduce indigent defense costs. However, concerns have been raised regarding how this bill might reduce access to indigent defense services.

Other bills being discussed involve various diversion programs and decriminalization of certain types of crimes. One of the big questions is whether lawmakers have the will to adjust state laws and public policy to reflect lower levels of funding. When it comes to diversion and decriminalization, this question becomes both sensitive and challenging. Stay tuned.

Update on HIPAA Bills

HB 2305 through HB 2307 passed out of the Senate with amendments. The House subsequently re-passed all three of these bills on April 21. HB 2309 passed out of the Senate on April 16. HB 2305 revises state policy and requirements for use and disclosure of certain health information. HB 2306 revises information privacy requirements for certain health insurers. HB 2307 revises requirements for disclosure of or access to certain health information to conform to federal law relating to privacy of health information. HB 2309 allows a physician or psychologist with patient authorization or a court order to provide certain information to a court visitor in a protective proceeding. The bills will now go to the Governor for signature. These bills all have an emergency clause that would result in the legislation taking effect upon its passage.

2003 OSB Legislative Proposals

In an effort to continue to update you on the status of the Bar's 2003 legislative proposals, the following additional House Bills have moved to the Senate side:

The following Senate Bills have moved to the House side:

BILL	SUMMARY	STATUS
HB 2057	Provides that election not be held for position on Board of Governors of Oregon State Bar	To SJ on 4/14/03
HB 2059	Sets procedure for filing bond or depositing money when possessory chattel lien is claimed for storage of chattel and amount of lien claimed is \$750 or more.	To SJ on 4/14/03
HB 2063	Enacts 1997 Uniform Principal and Income Act.	To SJ on 4/3/03
HB 2279	Enacts Revised Uniform Arbitration Act.	To SJ on 5/1/03

The following bills have moved through both chambers and are awaiting the Governor's signature:

BILL	SUMMARY	STATUS
SB 33	Creates rebuttable presumption that sums remaining on deposit in joint account at death of one party belong to surviving party or parties.	To HJ on 3/31/03
SB 40	Modifies factors used to determine status of worker as employee or independent contractor.	Passed the Senate on 5/7/03
SB 43	Exempts certain activities of title insurers, title insurance agents and escrow agents from prohibitions on unauthorized practice of law.	To HJ on 4/4/03
HB 2060	Allows interested person to request trustee to provide written statement of specified information concerning sale.	5/8/03
HB 2061	Modifies law relating to property that is exempt from execution for purpose of application against debt.	4/24/03
HB 2075	Revises laws relating to form of business entities.	4/18/03
HB 2087	Modifies procedures for promulgation amendment or repeal of rule of civil procedure by Council on Court Procedures.	4/24/03
HB 2269	Establishes rules governing operation of nontestamentary trusts.	4/24/03

Key: HJ — House Judiciary
SJ — Senate Judiciary

The Life of a Bill

After a bill has passed both houses in the identical form, it is signed by three officers: the Speaker of the House, the Senate President, and the Chief Clerk of the House or Secretary of the Senate, depending on where the bill originated.

The enrolled bill is then sent to the Governor who has five days to take action. If the Legislative Assembly is adjourned, the Governor has 30 days to consider it.

If the Governor chooses to sign the bill, it will become law on the prescribed effective date which is typically January 1 of the following year (in this case 2004) unless the bill contains an emergency clause or a prescribed effective date. The Governor may allow a bill to become law without his/her signature, or the Governor may decide to veto the bill in which case he/she must give a five day notice of intent to veto the bill. The Governor's veto may only be overridden by a two-thirds vote of both houses.

The signed enrolled bill, or act, is then filed with the Secretary of State, who assigns it an Oregon Laws chapter number.

Staff in the Legislative Counsel's office insert the text of the new laws into the existing Oregon Revised Statutes in the appropriate locations and make any other necessary code changes.

Bill Information

To access information about committee hearing schedules, the text of a bill or its status, you can do so at <<http://www.leg.state.or.us:8765>>. You can also receive one free copy of a bill from Legislative Publications and Distribution at (503) 986-1186.

OSB Public Affairs Department

The OSB Public Affairs Committee ("PAC") oversees legislative activities and makes recommendations on major policy issues. Chaired by William Carter of Medford, other members include: Gerry Gaydos, Eugene; James Brown, Salem; Mary McCauley Burrows, Eugene; Mark Comstock, Salem; Jonathan Hill, Tillamook; and Lisa LeSage, Portland. Charles Williamson, OSB President, is also an ex-officio member of the PAC.

Please visit our website for other legislative information and updates on bar legislation at <<http://www.osbar.org/2practice/lawimprovement/legislation.html>>.

If you have questions about this newsletter or legislative issues, contact the Public Affairs Committee chair William Carter at (541) 773-8471 or the Public Affairs staff at (503) 620-0222 or in Oregon at (800) 452-8260. You can reach staff, Susan Grabe at ext. 380 or by e-mail at sgrabe@osbar.org; Bob Oleson at ext. 317 or by e-mail at boleson@osbar.org; or contact Joyce Patton at ext. 358 or by e-mail at jpatton@osbar.org.

Times Are a-Changin'

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