



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

JUNE 4, 2003

Judicial Department Budget

Proponents of restoring funding to the Oregon Judicial Department (OJD) may have some cause for optimism after a recent press conference by Senate leadership.

On May 23, Senate President Peter Courtney, Senate President Pro Tempore Lenn Hannon, and Senate Ways and Means Co-Chair Kurt Schrader held a joint press conference to clarify their budget guidelines. Stopping short of stating any mandatory requirements of the budget, they announced a list of 20 specific guidelines that they believe should be met by the 2003-2005 budget.

These goals related to the individual budgets for Education, Human Services, Natural Resources, and Public Safety. One of the enumerated guidelines stated that "Our court system will not have to choose between a 5-day court week and leaving non-violent crimes, like car theft, unprocessed." Since March, some Oregon counties have closed courts and court offices on Fridays in order to save money. Additionally, many minor crimes are not being prosecuted until after the new budget goes into effect on July 1.

The Senate leaders did not specifically address the mechanisms for coming up with funding to meet their budget guidelines in light of the May revenue forecast of another \$634 million decrease in projected revenue. Among revenue options that have been recently discussed, is the possibility of

scaling back on tax credits that are available to businesses and individuals.

Three moderate republicans, Rep. Shetterly, Williams, and Patridge, have been instrumental in shaping the discussion and proposals on these issues. This is an ongoing discussion which will not likely be resolved any time soon. The Bar will continue to monitor the OJD budget as the legislative session progresses.

HB 2494: Expert Disclosure

A bill of importance to civil litigators narrowly passed the House on May 27.

HB 2494 would add a new section to the Oregon Rules of Civil Procedure, requiring that the name, address, qualifications, and compensation of expert witnesses be disclosed to other parties to the action at least 90 days before trial. The court would have the ability to refuse to allow an expert witness to testify if the new rule was not complied with.

The bill passed the House by a 37 – 21 vote after a contentious debate. Proponents of the bill said that it would help stop "trials by ambush", and make lawyers more thoroughly evaluate potential experts early, perhaps causing more cases to settle before trial.

Opponents of the bill countered that it would simply cause more delays in our court system, as litigants are forced to seek postponements to their trial dates. Another complaint was that the require-

ment to disclose the level of compensation paid to expert witnesses might discourage some experts from serving as witnesses.

HB 2494 now moves on to the Senate Judiciary Committee, where the debate is sure to be just as lively.

SB 17: Disability Law Changes

SB 17, originally introduced at the request of the Oregon Advocacy Center, addresses what the proponents viewed as a looming problem in the federal Americans with Disabilities Act (ADA).

The problem revolves around the question of whether a disabled person can sue a state for damages due to state discrimination under the ADA. This question was initially expected to be settled by the US Supreme Court in *Board of California v. Hanson*, but this case was dropped before being heard by the Court. However, it is generally expected that this question will come up again in the future.

SB 17 addresses this question for Oregon by essentially creating an Oregon version of Title II of the ADA. The bill then states that public bodies, as well as officers, employees and agents of public bodies may be subject to action under this new law. SB 17 has passed both chambers and is on its way to the Governor's office for consideration. While it did not testify in support of the bill, the Bar's Disability Law Section supported its passage.

SB 42: Leap Year Fix

Another interesting bill is SB 42 proposed by the OSB's Procedure and Practice Committee. Proponents hope that they have addressed a nagging problem in calculating statutes of limitations, which has occasionally been a trap for those who attempt to file on the last day allowable under a statute of limitations.

Currently, there is some ambiguity in Oregon law regarding the legal definition of a "year". However, Oregon law appears to define a year as 365 days long, regardless of whether the year in question is a leap year, which is actually 366 days long. Although the recent Court of Appeals ruling in the *Neff v. Jackson County* case is thought by some to have resolved this question, proponents of SB 42 felt that it was best to resolve the problem legislatively.

SB 42 defines a "year" as a "calendar year". This means that a year beginning on June 1 of one year, will end on May 31 of the following year, regardless of whether that year is a leap year.

SB 42 is now on its way to the Governor's office for consideration. It is expected that the Governor will sign this bill into law.

SB 40: Independent Contractor

Anyone involved in tax preparation for an Oregon business that uses independent contractors is aware that this area of Oregon law is a source of confusion. That is why the bar's Taxation Section decided to introduce SB 40 in order to clarify this section of Oregon law, and to generally modernize the statute.

Currently, Oregon law is very different than federal law when it comes to defining whether someone is an independent contractor. This has increasingly become a source of confusion for Oregon businesses in recent years, as more and more businesses move into types of employment relationships that were not widespread when the current statute was written.

Essentially, SB 40 would redefine an independent contractor as someone who meets the following criteria:

- 1) They maintain a high degree of freedom from the direction and control of their client,
- 2) They can show that their business exists as an entity independent of their client (SB 40 establishes a number of criteria which may show this existence), and
- 3) They have all necessary licenses for the type of business they operate.

This was a vigorously debated bill in the Senate, where it passed 21-9. The major concern that opponents express about SB 40 is that it might expand the definition of an independent contractor, and thus force persons out of traditional employment relationships, and into independent contractor status.

SB 40 has now moved to the House Business, Labor and Consumer Affairs Committee, where it received its first public hearing on May 16.

SB 609: Securities Law Fraud

An interesting change to Oregon's securities law is working its way through the legislature. SB 609 would change Oregon's securities law so that a person or fund who purchases securities on the open market can bring a claim against a corporation which has committed fraud.

This bill was inspired by the Enron scan-

dal, and the corresponding financial losses suffered by its stockholders. Under current Oregon law, individuals and public funds (such as the Public Employees Retirement System) may not bring a claim against Enron under Oregon's securities law because the securities were not purchased directly from Enron, but were instead purchases on the open market.

This bill fixes what the proponents see as a "loophole" in state law. SB 609 also makes Oregon law more consistent with federal securities laws.

SB 609 has already passed the Senate, and received a public hearing in the House Judiciary Committee on May 16.

SB 611: Architect Cause of Action

The House Judiciary Committee has recently taken up a handful of bills that fall into the general category of "tort reform." One of those bills is SB 611, a narrowly tailored proposal that would require the filing of a "certificate of merit" in all actions against construction design professionals arising out of services performed by those persons for which they were licensed. The proponents of SB 611 claim that plaintiffs often file a suit against architects and engineers automatically any time they are filing against a general contractor for defects in construction. Supporters of the bill also believe that this has resulted in higher insurance premiums for architects and engineers.

SB 611 would require that a plaintiff's attorney, with limited exceptions, certify at the time of filing that he or she has consulted with a qualified expert who is "available and willing to testify to admissible facts and opinions sufficient to create a question of fact as to professional liability."

Originally, the bill applied to anyone bringing suit against an architect or engineer, but was narrowed in the Senate. SB 611 was amended to limit its application to owners, managers, or other persons who would be expected to have access to necessary blueprints and witnesses. This amendment satisfied many of the persons who originally opposed the bill.

SB 611 is now on its way to the Governor's office for consideration.

HB 3630: Rural Doctors Insurance

Another more significant tort reform proposal is HB 3630. The bill, as it is currently proposed, would authorize the SAIF Corporation (SAIF) to provide a low-cost reinsurance program to certain doctors in rural areas for a period of four years. This bill is intended to address the issue raised by proponents of the bill that Oregon's rural communities are losing access to medical care, due to the combination of the high cost of medical malpractice insurance in rural areas, and the relatively low earnings potential of many doctors in outlying communities.

This is a hotly debated bill for a number of unrelated reasons. For one thing, in addition to the generally contentious nature of all tort reform proposals, the cost of the reinsurance program would be capped at \$10 million per year. SAIF would then be entitled to offset the cost against the assessment it pays to the Department of Consumer and Business Services.

Additionally, this bill raises the issue of what role SAIF should continue to play in Oregon. The SAIF Corporation is unusual, in that although it is a publicly-owned entity, it operates largely independent of state oversight. Some people have proposed selling SAIF, while others propose that SAIF should be brought under greater state oversight, to better ensure its accountability to the public.

HB 3630 has not yet passed out of committee.



**2003
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islative Proposals

Key: SJ — Senate Judiciary

BILL	SUMMARY	STATUS
HB 2057	Bar Act Changes, ORS Ch. 9	Awaiting Gov. signature
HB 2059	Sets procedure for filing bond or depositing money when possessory chattel lien is claimed for storage of chattel and	Awaiting Gov. signature
HB 2060	Allows interested person to request trustee to provide written statement of speci-	Awaiting Gov. signature
HB 2061	Modifies law relating to property that is exempt from execution for purpose of	Signed into law
HB 2063	Enacts 1997 Uniform Principal and In-	Awaiting Gov.
HB 2064	Use of declarations as alternatives to	Awaiting Gov.
HB 2075	Revises laws relating to form of business	Signed into
HB 2087	Modifies procedures for promulgation amendment or repeal of rule of civil pro-	Signed into law
HB 2269	Establishes rules governing operation of	Signed into
HB 2279	Enacts Revised Uniform Arbitration Act.	To SJ on
SB 32	Guardianship modification re sunset	Awaiting Gov.
SB 33	Creates rebuttable presumption that sums remaining on deposit in joint account at death of one party belong to	Awaiting Gov. signature
SB 34	Impact of real estate licensing laws on	Awaiting Gov.
SB 37	Restraining orders under Elder Abuse	Awaiting Gov.
SB 35	Amends professional fiduciary statute to	Awaiting Gov.
SB 38	Modify UCCJEA jurisdictional provi-	Awaiting Gov.
SB 39	Clarify "voluntary disclosure" under evi-	Awaiting Gov.
SB 40	Modifies factors used to determine status of worker as employee or independent	To HB,L&CA on 5/12/03
SB 41	Contractual attorney fee awards under	Awaiting Gov.
SB 42	Statute of limitations in leap year	Awaiting Gov.
SB 43	Exempts certain activities of title insurers, title insurance agents and escrow agents from prohibitions on unauthor-	Awaiting Gov. signature

BILL	SUMMARY	STATUS
SB 63	Amend multiple employer hearing statute timelines and process	To W&M on 4/1/03

HB,L&CA – House Business, Labor & Consumer Affairs
W&M – Ways & Means

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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