



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

JULY 10, 2003

Budget Discussions

Recent developments at the Capitol have shifted budget discussions away from a larger group process to a group of three. Budget negotiators have agreed on public safety spending but have yet to reach agreement on numbers for the human services, natural resources or education budgets. It is hoped that the smaller group made up of House Speaker Karen Minnis, Senate President Peter Courtney and Governor Ted Kulongoski will be able to reach agreement sooner than the larger, more unwieldy group.

Unfortunately, the one budget on which there is agreement, the Public Safety Budget, of which the courts are a part, has been pushed off until agreement can be reached on the other, more controversial budget areas. But despite concerted efforts, there is yet to be any real progress on budget negotiations. In an effort to move things along, the House passed a procedural bill on Monday which would allow budget bills to originate in other committees and bypass the Ways and Means process. This essentially splits the joint budget process in which the two chambers have engaged since 1917.

The only session where the legislature departed from this joint budget process was in 1993 – one of the longest sessions on record. This procedural maneuver will allow the House to pass budgets with-

out requiring agreement from the Senate, where there is a 15-15 split in the chamber, as opposed to the House which is solidly Republican with a 35-25 split.

The Speaker believes that this change in the budget process will encourage movement in the budget negotiations. Others contend that it will create a more partisan atmosphere and be more costly in the long run. Whether Speaker Minnis' strategy is successful remains to be seen.

Meanwhile, a two week long series of discussions on potential revenue sources and Oregon's tax structure is in process in the House Revenue Committee chaired by Rep. Lane Shetterly. The discussions have been championed by the Chair and Rep. Max Williams.

Special Committee on Budget

The House has revived the Special Committee on Budget created during the "sixth" special session, as it was referred to, at the beginning of the 2003 session. The Committee, chaired by Rep. Randy Miller, held its first hearing Wednesday, July 9, to discuss budget issues facing the state and ways to resolve the state's fiscal crisis. Other members of the Committee include Rep. Susan Morgan, Vice Chair, Rep. Gary Hansen and Rep. Rob Patridge. The Bar will monitor the progress of these discussions.

HIPAA Legislation

The legislature has largely completed work on a series of bills designed to bring Oregon into compliance with the federal Health Insurance Portability and Accountability Act ("HIPAA"), which went into effect April 14, 2003. House Bills 2305, 2306, 2307, and 2309 have all passed the legislature and been signed by the Governor.

HB 2305 revises state policy and requirements for use and disclosure of certain health information. This bill is of particular interest to Bar members because among other things, it makes changes to Oregon Rules of Civil Procedure (ORCP) 44 E (Access to hospital records) and 55 H (Subpoenas – Hospital records), and repeals ORCP 55 I (Subpoenas – Medical records).

HB 2306 establishes information privacy standards for health insurers subject to HIPAA. These standards address: (1) use and disclosure of personal information, (2) access of individuals to personal information, (3) notice of privacy practices for personal information, (4) amendment of personal information, and (5) accounting of disclosures of personal information.

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 one HIPAA bill that has not yet passed the legislature is HB 2308, which specifies the fees that may be charged for obtaining patient medical information. This bill passed out of the House on June 6 and was referred to the Senate Judiciary Committee on June 10.

You can access information on these or any other bills in the Oregon Legislature on their web site at <http://www.leg.state.or.us/billsset.htm>.

SB 904: Dispute Resolution

At risk this session is the continued existence

of the Oregon Dispute Resolution Commission (ODRC). Members of the Joint Ways and Means Committee have expressed an interest in eliminating the ODRC to save money. To that end, SB 904 (which would abolish the ODRC) was introduced by the Committee on June 23.

The Oregon State Bar's Alternative Dispute Resolution Section has been in contact with legislators – including Ways and Means Co-Chairs Senator Kurt Schrader and Representative Randy Miller – this session to make the case for continuing state support of the ODRC. However, SB 904 is moving rapidly. A public hearing was held in the Senate Judiciary on June 27 and a work session was held on July 3.

Several educational institutions, including the University of Oregon, Portland State University's Hatfield School of Government, and Willamette University have expressed a desire to work on amendments that could be presented to the Judiciary Committee to preserve the work of the Commission in some form. Chair Minnis agreed to allow a small work group to develop a solution to bring back to the Committee. The Bar's Alternative Dispute Resolution section members have been actively involved in work group discussions to find a satisfactory solution.

Oregon Council on Court Procedures

Another entity whose long-term future is uncertain is the Oregon Council on Court Procedures. The Council is charged with the task of reviewing the Oregon Rules of Civil Procedure (ORCP), and making changes they deem appropriate. Although the legislature can amend or repeal any Council changes to the ORCP, the Council has the unique position in Oregon government of being a non-legislative body with the statutory authority to make changes to the law.

It now appears that the state will completely cease funding the Council in the 2003-2005 budget. The Oregon State Bar has historically contributed \$8,000 per biennium to the Council for travel expenses. The Bar intends to offer this level of support again for the 2003-2005 biennium. However, the big question is whether the Council will continue to exist in a de-funded form. State boards, commissions and certain other entities often cannot legally con-

tinue to exist in the absence of some level of state funding.

The current members of the Council have expressed a willingness to continue to meet without state support for the 2003-2005 biennium and will provide their own clerical support. The University of Oregon will contribute office space and pay for certain other administrative expenses, and the current Executive Director, University of Oregon law professor Maury Holland, has offered to continue to work part-time on a volunteer basis.

The Ways and Means Public Safety Subcommittee held a public hearing and work session on Tuesday, July 8. Representative Max Williams, a strong advocate for the Council, expressed his hope that general fund dollars would once again be available in the future. After amending the bill to delete the appropriation for the 2003-2005 biennium, the Subcommittee moved the bill to the Ways and Means Committee with a Do Pass recommendation.

HB 3329: “No Call” Program

What started out as a simple Department of Justice bill to create a task force to assist in providing services to individuals traumatized by acts of mass violence became the perfect vehicle (with its broad relating clause) for the House Judiciary Committee to add amendments (1) to allow the Attorney General to represent the state in certain class action suits that include persons that are not agencies or officers of the state, and (2) to modify the Attorney General’s duties relating to the federal “do not call” registry.

Not to be outdone, the Senate Judiciary Committee added amendments (1) allowing businesses to participate in Oregon’s “do not call” program and (2) prohibiting the Attorney General from terminating the contract with the “do not call” program administrator before January 14, 2004, except under specified circumstances.

After passing the Senate on June 24, the bill came back to the House. However, the House refused to concur in the Senate amendments, and HB 3329 now appears to be headed to a conference committee.

HB 3330: Declaration of Death

House Bill 3330 would allow the Governor to declare that individual persons had died in a natural disaster, an act or war, or an act of terrorism or sabotage in cases where the death would otherwise be difficult or impossible to prove. This was a problem in cases such as the destruction of the World Trade Center towers, and the eruption of Mt. St. Helens, in which people died, but their remains were never recovered. In these cases, families of the victims found it difficult or impossible to get death certificates and to settle the affairs of the deceased.

The Oregon State Bar’s Estate Planning and Administration Section has provided technical comments on this bill to ensure consistency with existing estate planning statutes. HB 3330 has now passed both chambers and is on its way to the Governor’s desk for consideration and signature.

SB 613: Stop Sports Event Violence

Senate Bill 613 aims to stop violence and inappropriate behavior at sports events. SB 613 gives sports officials the ability to order a player, coach or fan to leave a sporting event, and creates the crime of “criminal trespass at a sports event.” A person commits this crime if they have been ordered by an official to leave an event, and they either fail to leave, or leave and return at a later time. As the bill was amended in the House Judiciary Committee, criminal trespass at a sports event is a Class C misdemeanor.

Senate President Peter Courtney, one of the chief supporters of SB 613, testified before the House Judiciary Committee, saying “Without a doubt in my mind, this bill is a piece of legislation that will halt sports fan violence dead in its tracks.” The House Judiciary Committee passed the bill out of committee on July 2; the bill now moves to the House floor for final approval.

2003 Oregon Law Commission Bills

BILL	SUMMARY	STATUS
HB 2272	Juvenile Code Revision – Recognizes and incorporates summons practices of all counties in the state	Signed into law
HB 2274	Judgments – Clarifies and simplifies garnishments process.	Signed into law
HB 2275	Civil Rights – Cleans up a problem that arose from the 2001 ORS Chapter 659 reorganization bill when “age” (as a protected class) was unintentionally removed from certain provisions.	Signed into law
HB 2276	Civil Rights – Reinstates the availability of compensatory and punitive damages in a civil rights action for violation of certain injured worker rights that was unintentionally removed in the 2001 ORS Chapter 659 reorganization bill.	Signed into law
HB 2277	Admin. & Judicial Child Support – Helps prevent issuance of multiple child support orders (issued from both administrative and judicial for a) for the same family.	Signed into law
HB 2284	Saving Statute – Provides that when an original action is involuntarily dismissed without prejudice on any ground not adjudicating the merits or grounds of ineffective service, a newly filed action (within 180 days) would relate back to filing of original action.	Signed into law
HB 2645	Admin. & Judicial Child Support – Provides process to resolve multiple or inconsistent orders.	Signed into law
HB 3370	Eminent Domain – Consolidates ORS Chapters 35 and 281.	Signed into law
HB 3371	Eminent Domain – Addresses (1) pre-condemnation offer timelines and (2) an exception to the timeline when there is an emergency.	Signed into law
HB 3372	Eminent Domain – Replaces ORS 281.010 with a thorough statute governing pre-condemnation rights of entry for inspections and testing.	Signed into law
SB 67	Juvenile Code Revision – Clean-up bill from last session’s HB 2611 to restore language that permits telephone testimony in juvenile court proceedings.	Signed into law
SB 68	Juvenile Code Revision – Clean-up bill from last session’s HB 2611 to correct cross-references.	Signed into law
SB 69	Juvenile Code Revision – Provides new definitions for “child”, “youth”, and “youth offender.”	Signed into law
SB 70	Juvenile Code Revision – Creates a guardianship as another permanent plan alternative for children who are within the jurisdiction of the juvenile court.	Signed into law
SB 71	Juvenile Code Revision – Permits return receipt service by mail without requiring a court order in dependency and termination of parental rights proceedings.	Signed into law
SB 72	Juvenile Code Revision – Provides that ORS 419B.116 alone governs the process for intervening in a juvenile dependency proceeding.	Signed into law

The Oregon Law Commission (OLC) is having a fruitful legislative session. The following bills have been signed into law as of the publication date of this edition. You can find additional information on the OLC Web site at <<http://www.willamette.edu/wucl/oregonlawcommission>>.

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 Web site 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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