



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

NOVEMBER 21, 2003

Initiatives and Referendums

A number of citizen initiative petitions and referendums are circulating throughout Oregon, which may impact the practice of law in the state. Since none of these proposals have yet qualified for the ballot, none have ballot measure numbers.

Much attention has been given to a proposed referral of House Bill 2152. HB 2152 was the legislature's major revenue bill of the session. This bill would raise \$792 million in new revenue through a number of mechanisms including a temporary personal income tax surcharge and a permanent increase in the minimum corporate income tax.

If opponents of the revenue package are successful in collecting 50,420 signatures by November 25th, then a special election will be held on February 3rd at which the fate of the major provisions of HB 2152 will be decided by the voters. In the event the measure fails at the ballot box, automatic budget cuts will result in the amount of \$544 million, including \$13 million to the Judicial Department and \$9.9 million to indigent defense.

Additionally, there are four "Medical Liability Reform" proposals being circulated. Two of these would limit attorney contingency fees and two would limit non-economic damages in medical malpractice cases. These four proposals are constitu-

tional amendments and therefore require 100,840 signatures to go on the ballot.

Other proposals would re-institute term limits, make changes to elections law, make it easier to recall Supreme Court Justices, and make changes to Oregon's land use planning system, as well as over a dozen proposals to make changes to Oregon's tax system. For a list of pending initiatives go to the Oregon Secretary of State Elections Division website at <http://www.sos.state.or.us/elections/other.info/irr.htm>.

Civil Procedure Rules Update

A number of important changes to the Oregon Rules on Civil Procedure have gone into effect this year. While sometimes the legislature changes the ORCP on its own initiative, most of the changes are promulgated by the Council on Court Procedures and merely submitted to the legislature for their review. Such changes can go into force without legislative action.

One significant change made by the legislature is intended to clarify the timing of notices of appeal after motions for JNOV or for a new trial. HB 2761 amends ORS 19.255 to clarify that under ORCP 63D or 64F the 30-day time period for filing a notice of appeal runs from the later of 1) entry of final judgment or 2) a decision on the motion for new trial or

JNOV.

The Council on Court Procedures has amended ORCP 47C to require that motions for summary judgments must be served and filed at least 60 days before the trial date. Previously this rule required only 45 days.

Information regarding changes to the ORCP can normally be found in the Oregon Appellate Courts Advance Sheets. This and other information is available online at the Oregon Judicial Department's website at www.publications.ojd.state.or.us/Rules.htm.

HB 2759: Filing Fees

One of the many mechanisms that the legislature used to fund the court system this year, was to pass HB 2759 which provides for a temporary 30 % increase in most filing fees.

While HB 2759 makes permanent increases to many civil filing fees, it also adds a temporary surcharge to many fees. The surcharge went into effect on September 1st of this year, and has probably been noticed by many practitioners. The surcharge will remain in effect until July 1, 2005 at which time, the surcharge will be eliminated. However any other increases in the bill will remain in effect.

Another important aspect of this bill is that it incorporates the substance of HB 2088. That bill provided for an increase in the civil court filing fee account dedicated to legal services. It also dedicates a portion of the appellate courts fee increase when an appeal or response is filed to legal services.

HB 2759 also raises some additional revenue by increasing the maximum fines which can be imposed on crimes and violations. The exact amount of the increase varies, but is generally in the range of 20 – 25%.

HB 2759 represents a compromise shepherded through the process by Representatives Rob Patridge, Max Williams, and Lane Shetterly. The bill which received strong support from the courts, the Oregon State Bar, and business community was signed by the Governor on August 29, 2003 and went into effect

September 1, 2003.

HB 2341: Public Contracting

As of March 1, 2005, a major overhaul of Oregon's public contracting laws will go into effect. HB 2341 deletes much of the current public contracting law under ORS 279, and replaces it with 3 new chapters which collectively constitute a new "Public Contracting Code."

Part of the purpose of this revision is to allow for greater flexibility for general procurements of goods and services than is generally allowed under current law. Much of this new language is based on the ABA's Model Procurement Code.

The changes made by HB 2341 are extensive, and well worth examination by anyone whose work deals with public contracting issues. Despite the delayed implementation of much of the language of the bill, the bill took effect on passage for rulemaking and other administrative purposes. HB 2341 was signed by the Governor on September 22, 2003.

Oregon Law Commission

One of the many groups that works both during the legislative session and during the interim for the improvement of law in Oregon is the Oregon Law Commission. The Commission, which is housed at the Willamette University College of Law, is statutorily delegated with the task of conducting "a continuous substantive law revision program."

The Commission currently has about a dozen ongoing work groups examining different areas of Oregon law. Among the areas that the Commission is currently examining are Child Support, Eminent Domain, Judgments & Garnishments, Juvenile Code, and Civil Rights.

More information on the Oregon Law Commission and their projects can be found on their website at <http://www.willamette.edu/wucl/oregonlawcommission/>.

ORCP Changes

With little attention at the time, the Oregon Legislature passed a bill that modified the process by which the Council on Court Procedures can make changes to the Oregon Rules on Civil Procedure (ORCP).

Under current law, the Council must notify Bar members at least 30 days in advance of any meeting at which the council plans to take final action on a proposed change. Under HB 2087, the Council must also notify Bar members within 60 days of a meeting if they pass any change to the ORCP which is modified in any way from the proposed changes announced prior to the meeting.

It is hoped that this change will give Bar members a better opportunity to comment on these changes before the change is ultimately submitted to the Legislature.

The Bar's Procedure and Practice Committee sponsored and worked to ensure the passage of this bill at the request of the Council on Court Procedures.

HB 3587: Copyright Infringement

A proposal that proponents said would better protect the motion picture industry from copyright infringement failed to make it through the legislature in the final weeks of session.

House Bill 3587 would have created the crime of "criminal trespass while in possession of an audiovisual recording device" if a person takes such a device into a movie theatre or other place where a movie is being shown. Criminal trespass while in possession of an audiovisual recording device would have been a Class C felony.

Opponents of the bill, including the ACLU of Oregon, argued that the penalty may be disproportionate for the severity of the crime. It is also noted, that since some cell phones and other electronic devices can record audio and video images, many moviegoers who did not attempt to make a copy of the movie could unknowingly violate the statute.

The bill was discussed in the House Rules and Public Affairs Committee on July 31st, but the committee declined to move the bill to the House floor.

Interim Judiciary Appointments

Senate President Peter Courtney and House Speaker Karen Minnis recently announced their Interim Judiciary Committee appointments for the 2003-05 interim.

The Senate Judiciary Committee retained the previous chair and vice-chair however, the Senators have swapped positions. The Senate President appointed one additional lawyer to the committee who is also the Democratic Senate Leader, Senator Kate Brown.

Representative Max Williams, a strong supporter of the justice system, will again Chair the House Judiciary Committee and is joined by a number of representatives returning to the committee.

Also noteworthy is the high number of legally trained representatives appointed to the Interim House Judiciary Committee, of which over half have a background in law.

Senate Interim Judiciary Committee

* legally trained legislator

House Interim Judiciary Committee

Sen. Ginny Burdick, Ch.	D	Dist. 18 – Mult. and Washington Cty.
Sen. John Minnis, VCh.	R	Dist. 25 – Mult. Cty.
Sen. Jason Atkinson	R	Dist. 2 – Jackson and Josephine Cty.
Sen. Ted Ferrioli	R	Dist. 30 – Baker, Clack., and Wasco Cty.
Sen. Charles Starr	R	Dist. 13-Hillsboro and Tigard
* Sen. Kate Brown	D	Dist. 21-Clack. and Mult. Cty.
* Sen. Charlie Ringo	D	Dist. 17 – Beaverton
Sen, Vicki Walker	D	Dist. 7 – Lane County

* legally trained legislator

OSB Public Affairs Department

* Rep. Max Williams , Ch.	R	Dist. 35-Tigard
Rep. Vic Backlund	R	Dist. 25-Keizer
* Rep. Robert Ackerman	R	Dist. 13 Eugene
Rep. Jeff Barker	D	Dist. 28-Beaverton
Rep. John Mabrey	R	Dist. 59-North-central Oregon
* Rep. Greg Macpherson	D	Dist 38- SW Portland, Lake Oswego
* Rep. Floyd Prozanski	D	Dist. 8-Eugene
* Rep. Dennis Richardson	R	Dist. 4-Medford
Rep. Gene Whisnant	R	Dist. 53-Redmond

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, Roseburg; 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/lawimprove/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; or David Nebel at ext. 317 or by e-mail at dnebel@osbar.org.



Want to be involved?

The Public Affairs Department is developing a grassroots legislative network. As issues develop in a particular legislative district or in a particular practice area, this network of interested individuals will be asked to help get the word out on issues and participate in developing strategies to respond to issues. If you are interested in becoming more involved in the legislative process, please fill out the following information and send it to **Public Affairs Department, Oregon State Bar, 5200 SW Meadows Rd., Lake Oswego, OR 97035, email it to brichley@osbar.org, or fax it to (503) 598-6976.**

Name: _____

Home Phone: _____

Home Address: _____

Your Legislator’s Name (if known): _____

Other Legislators/Candidates and relevant information i.e. Basis of relationship.

Your area (s) of practice: _____