



# CAPITOL INSIDER

*OSB Public Affairs Newsletter for Bar Leaders*

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August 22, 1997

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## **Governor Vetoes 43 bills**

Governor Kitzhaber vetoed a total of 43 bills as of August 15<sup>th</sup>, the cutoff date for him to exercise that opportunity. The governor may veto any bill from the legislature except proposals sent directly to the people for a vote at the ballot box. The legislature, however, has the authority to override the governor's veto of any bill if it can muster the required two-thirds vote in each chamber the next time it meets in regular session.

One of the interesting veto debates in recent weeks has been over HB 2222 and relating to assaults on corrections officers which was amended to include SB 97 on insurance fraud. The bill's fate was influenced by the many plaintiffs lawyers who took the time to let the governor know that they thought the measure was critically flawed. The success of this grassroots effort is an example of how people involved in the process can have an impact.

Several of the vetoed bills may be of interest to practitioners. HB 2383 would have established a state licensing program for private investigators. The governor exercised the line-item veto to eliminate the emergency clause in the legislation. HB2749 would have made child abuse records more available to certain parties if disclosure is in the best interest of the child. The governor expressed concern that looser restrictions could compromise investigations. HB 2948

would have established a centralized, independent hearings officer system for certain state agencies. The governor felt the change was unnecessary. SB 266 was a procedural clean up bill which was amended to increase the at-fault percentage of those exempt from claims who were jointly and severally liable. The governor expressed concern about the ability of defendants to avoid financial responsibility. SB 770 would have allowed the DA and the defendant to stipulate to a sentence outside the sentencing guidelines. The governor felt this bill would weaken the criminal sentencing guidelines structure.

For a complete listing of vetoed bills check the governor's website at [www.governor.state.or.us/governor/bills.htm](http://www.governor.state.or.us/governor/bills.htm) or call the Capitol at (503) 986-1180.

## **1997 Session Ends on High Note for Legal Community** By Bob Oleson, OSB Public Affairs Director

**Successes.** During the final hours of the 97 legislature both houses approved an omnibus court reorganization bill (HB 3737). Among the dozens of provisions in the bill is the bar's piece which delivers over one million dollars per year of additional funding for legal services programs. This money will offset recent federal cuts. Preparation and passage of this part of the measure represented a very rewarding experience for OSB vice-president Barrie Herbold and everyone else involved.

Along with his staff, state senator Neil Bryant was the invaluable inside player who tirelessly guided through the process the important provisions of the bill that redirected filing fee revenues to legal services and implemented court consolidation. The next related political challenge involves establishing the new, limited, state bar funding and oversight functions for legal services. The Board of Governors begins this task in September.

Most of the bar groups working at the legislature experienced a very good session. As shown in our final bill tracking document, approximately 30 law improvement bills were passed and a couple hundred positions and amendments were successfully presented. (A copy of the final tracking sheet is available upon request).

**Issues.** A few of the issues on which state bar representatives assisted include: creating new judicial positions and changing the filing fee structure, containing so-called tort reform proposals, maintaining lawyer access to DMV records, improving access to medical records, influencing efforts to overhaul the criminal justice system (by participating in Measure 11 and Measure 40 work groups), refocusing the debate over the regulation of independent paralegals, increasing the regulation over the sale of living trusts, assisting the continuing evolution of business entities, and maintaining the existence of the Council on Court Procedures. More importantly, bad provisions in many bills were eliminated and other measures were made more workable for practitioners.

**Disappointments.** There were some disappointments. One disappointment was the Procedure and Practice Committee bill, SB 266. This bill was intended to streamline tort claims notice procedures, but was vetoed, because the tort reform coalition used it as a vehicle to make joint and several liability allocation changes not made in the 1995 session. Also, the New Lawyers Division bill on peer courts was not enacted but it has

served as a catalyst for peer court efforts statewide. Other disappointments include the failure to enact any Unlawful Trade Practice Act changes introduced by the Consumer Law Section.

There is a developing trend, and growing concern for the bar, about narrowly focused interest groups with well-connected lobbyists (often lawyer-lobbyists). These lobbyists try to derail broad-based, and meritorious, proposals such as those originating in bar groups. Such situations create friction and present future challenges for the organized bar.

**Star Players.** The lawyer legislators serving on the House Judiciary Committee who were consistently very helpful to bar groups include Representatives Lane Shetterly, Judy Uherbelau, and George Eighmey. Senators Dave Nelson, Kate Brown, and Randy Miller, serving under committee chair Neil Bryant, played the same kind of supportive roles in the Senate. In terms of budget issues important to the bar and judiciary, Senator Hamby's subcommittee on courts and crime met with success, in large part, due to the invaluable assistance of Representatives Bryan Johnston and Floyd Prozanski.

Although other lawyer legislators made contributions on committees, their declining number has reached a crisis condition in our legislature. In this era of novices who are restrained by term limits, and narrow interest groups, many politicians are looking for quick and simple fixes that can be described with a positive sound-bite. Experienced lawyers, as a group, resist these pressures.

**The Judiciary.** A lot of the session's bad news for the legal community involves the treatment of the judicial branch and its requests for resources and benefit enhancements. Very few of the decision packages above the base budget were funded. Most of the requested judgeships were turned into referee positions. In addition, the

proposal to improve the plan B early retirement program for judges was eliminated. There appears to be growing institutional tension as legislative leaders complain that the judicial branch does not perform as a regular state agency and that the courts are not managed as the legislature thinks is best. Fortunately, Chief Justice Carson and his team of dedicated lobbyists and administrators effectively worked to keep the existing judicial boat afloat.

**The Interim.** Although the session is over, the upcoming interim promises to be a busy one. Over a dozen possible law improvement projects have already been identified. (Note accompanying article by consultant Carl Myers). The Public Affairs and Legislation Program expects to be working with an active interim judiciary committee of the legislature.

In furtherance of that objective, Attorney General Hardy Myers is responsible for a new state Law Improvement Commission that will involve law school officials and others in spearheading important changes in the law. This new interim activity could significantly reinforce the state bar's ongoing law improvement campaign—an effort which continues to be skillfully coordinated by Public Affairs Counsel Susan Grabe. In addition, the Chief Justice has identified some cooperative bar-bench projects on public policy topics that require attention.

In short, it is more important than ever to work closely with elected public officials and to involve more lawyers in the public policy process of our state. Please do your part. We hope you will be active in the political and law improvement areas.

### **Interim workgroups gear up for 1999 Legislative Session** by Carl A. Myers, Legislative Consultant

With all the bills that passed through the legislative process this session and were signed into law by Governor John Kitzhaber,

there was an even larger number that did not make it through the process or were vetoed by the Governor. Among those bills that did not become law this year were a dozen or so bills that would have had a significant impact on the bar, our clients, or the legal system in general. A few of those bills came close to passage, because they were supported by powerful interest groups or legislators. An example, is the independent paralegal bill that was presented for the fourth or fifth session in a row and had a groundswell of support from a number of influential legislators.

The paralegal bill and several others will soon be back. We expect there will be interim work done on a handful of issues by the Joint Interim Judiciary Committee, legislative task forces, and other legislative committees in preparation for the 1999 session. If lawyers want to have a voice on these issues, they will have to be involved in the political process through the interim to a greater extent than even before. While the legislature meets only every other year, many important issues are decided when the legislature is not in session. The bar, its representatives and members need to be participants in that process throughout the year.

### **Potential Interim Issues**

Below is a list of the issues bar groups and others expect to consider during the interim:

- Further filing fee changes
- Regulation of independent paralegals
- Centralized administrative hearings process
- Child support and adoption changes
- Future earning capacity as property
- Child attending school legislation
- Criminal Justice system efficiencies
- Post-incarceration civil commitment for sexual predators
- Peer court enabling legislation
- Child abuse training and reporting
- Durable Powers of Attorney Act
- Spouses elective share
- Restructuring of judicial system, e.g., use of referees
- Public filings under Revised Uniform Partnership Act
- Medical records privacy
- Incursions into professional confidentiality
- Clergy-penitent privilege

- Consumer law issues
- New/used car lemon law
- Burden of proof in Summary Judgment, Jones

## OSB Legislation

The following is a list of bills introduced by the bar, its sections and committees that have successfully passed the legislature and will be enacted into law:

Bill #	Sponsor	Summary
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### Board of Governors

SB 0241: Discipline case review  
 SB 0252: Law practice custodian  
 SB 0269 :Council on Court Procedures  
 HB 3737 :Courts/filing fees/legal services

### Appellate Practice Section

HB 2260/SB 246:Letters of credit/UCC Art. 5  
 HB 2262/2261:Civil Stays bill, ORS Ch 19

### Business Law Section

SB 0267: Professional Corporations Act Changes  
 SB 0268: Revised Uniform Partnership Act  
 SB 0811 :Downstream Mergers

### Debtor/Creditor Section

HB 2247:Garnished funds to creditor's attorney  
 HB 2248:Trustee liability on trust deed foreclosure  
 HB 2250:Claim of exemption form revision

### Estate Planning Section

SB 0255: Proceedings in Guardianship/Conservator  
 SB 0256: In terrorem clauses in wills

### Family and Juvenile Law Section

SB 0258: Right to regain custody of child  
 SB 0259: Attorney fees in contempt proceedings  
 SB 0261: Future earning capacity as property  
 SB 0262: Attorney fees against intervening party  
 SB 0263: Ex parte C&V by psychological parent  
 SB 0264: Spousal support retroactive modification  
 SB 0265: Attorney fees in psychological parent statute

### Land Use Section (RELU)

HB 2244:Certificate of mailing timeline  
 HB 2245:Procedural clean up of land use process

### Procedure and Practice Committee

SB 0253: Medical records discovery

### Real Estate Section (RELU)

HB 2255:Lease Assignment Clause  
 HB 2256:Protects debtor from garnishment  
 HB 2257:Trust deed maturity dates  
 HB 2258:Memorandum of trust deed/mortgage  
 HB 2259:Construction Indemnity Agreements

**Unauthorized Practice of Law Committee**  
 SB 0413: Sale of living trusts

## Mission of the OSB Public Affairs Department

The Public Affairs Department works to apply the knowledge and experience of the legal profession to the public good by advising governmental bodies, proposing legislation for



law improvement and advocating on those matters that affect the legal profession. The board's public affairs committee is chaired by Portland attorney Barrie Herbold. Other members include Mark Johnson and

Toby Graff, Portland; Larry Rew, Pendleton; Kevin Lafky, Salem; and public member Joyce Cohen of Lake Oswego.

## Bill Information

If you would like to obtain a copy of a bill you can call the Legislative Distribution Center at (503) 986-1180 or you can access bills, bill history and other information at [www.leg.state.or.us](http://www.leg.state.or.us).

## Contacts

If you have questions or comments about this newsletter or legislative issues feel free to contact the Public Affairs Committee chair Barrie Herbold at 295-3085 or the Public Affairs staff at the bar office at (503) 620-0222 or toll-free in Oregon at (800) 452-8260. You can reach Bob Oleson at ext. 317 or by e-mail at [boleson@osbar.org](mailto:boleson@osbar.org); contact Susan Grabe at ext. 380 or by e-mail at [sgrabe@osbar.org](mailto:sgrabe@osbar.org); contact executive director Karen Garst at ext. 312 or by e-mail at [kgarst@osbr.org](mailto:kgarst@osbr.org).