



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

April 13, 1999

Judicial Funding Update

by Bob Oleson

Right now our legislature is like a racing horse that cannot find the homestretch. The 99 session won't be able to line up for its summer finish until the major budget bills are finalized in the Ways and Means Committee.

The first set of blockbuster decisions involves education funding and the key political players have not yet reached any tentative agreements. If the powerful education lobby ultimately becomes the big winner by getting its interests fully funded, there will be some big losers.

Conservative leaders in the legislature are very reluctant to pursue new revenue sources. Accordingly, increasing expenditures for public education could produce significant cutbacks in virtually all other state agencies. So what does all of this have to do with providing Oregonians an effective court and justice system during the next biennium? Lots. There is growing speculation that only politically favored governmental services will be fully supported and strengthened.

Moreover, the judicial system and various high-profile public institutions are not held in high regard by many politicians. In recent years, judges and other public gatekeepers have lost stature in the Capitol hallways. At least part of the explanation may be in the short-term partisan mindset fostered by term

limits. There is also the related tendency to be hostile toward anyone standing in the way of quick fixes to complicated problems. Less time exists for deliberation and building relationships.

The Judicial Branch is currently in the middle of eight or nine days of budget hearings in the Public Safety Subcommittee of Ways and Means. Over a week of hearings on various topics relating to the courts have already begun. For example, the Gleaves committee asked for an equivalent of 18 new judicial positions to handle the increased workload of the court system. Today bar leaders and others will be appearing on behalf of the indigent defense portion of the funding request. Three of the nine subcommittee members are lawyers--Mannix, Prozanski, and Patridge. The sub is chaired by capable and well-meaning businessman Ben Westlund of Bend.

In his opening presentation, Chief Justice Carson stressed the importance of viewing the judiciary as a co-equal branch of government. Nonetheless, we do not yet know if adequate funding will be made available when the budget limits are finalized by legislative leaders later this spring. To some of these legislators, appearing to shrink the size of state government is more important than the goal of maintaining so-called essential services.

The original rough-cut general fund budget presented to the legislature for the

judiciary was for \$350.5 million. This figure is \$37 million less than the Chief Justice is requesting for a maintenance budget. Nor does it include the other \$60 million being requested for what he considers necessary program enhancements. These include an indigent defense compensation package, juror/interpreter payments, family and juvenile law access packages, technology improvements, employee benefit adjustments, etc.

In short, all of this translates into having a \$97 million budget gap between what was originally recommended and what is now being requested. How the budgetary horse race turns out will affect everyone connected to the legal system in our state. Now is a good time to contact legislators you know (or have a constituent relationship with) in order to share your general views regarding efforts to adequately fund the Judicial Branch budget (including indigent defense services).

Y2K Bills

Three Year 2000 (Y2K) failure bills have been introduced this legislative session. Two of the bills, SB 268 and HB 2556, relate to public body immunity. These two bills create an affirmative defense for a public body against a claim for relief based on Y2K failure if the public body has made a good faith effort to avoid Y2K failure. The third Y2K bill, HB 3245, establishes a myriad of rules for successful civil actions against private entities arising out of Y2K failure.

HB 3245 has specific pleading requirements and a two-year statute of limitations, as well as a five-year statute of repose. The bill also establishes several affirmative defenses based on notice and failure to cure, good faith reliance, and the product's successful passage of tests for repair, replacement or upgrade tests for Y2K failure.

It is likely that all three bills will be merged into one vehicle to deal consistently

with both public- and private- sector Y2K issues. We expect these bills to move quickly in the near future. Bar groups that have been monitoring these bills include the BOG Public Affairs Committee, the Procedure and Practice Committee, the Litigation Section, the Computer and Technology Section, and the Business Law Section.

Volunteer expert Terry Wiener from the Procedure and Practice Committee is trying to attend major hearings and help coordinate amendments information. Other contacts include Computer Law Section members Peter Visnik and Charles Bowers.

HB 2317: Maintaining Courthouse Facilities

HB 2317 was introduced on behalf of the Association of Oregon Counties. This bill would shift the cost of maintaining courthouse facilities from the counties to the state. In addition, the state would be required to pay capital construction costs, including renovations and new construction. HB 2317 also creates a Court Facilities Task Force, charged with studying and recommending a plan for future court facility expansion. This part of the proposal is strongly supported by the OSB Public Affairs Committee

The courthouse facilities bill illustrates the growing political pressures to redefine the relationship between the judiciary and the counties. It showcases the difficult task of balancing the need for new judges and the need to provide additional space to accommodate such requests. According to the counties, this situation is the consequence of the growing difficulty that counties face as a result of declining property tax revenues from Ballot Measures 5 and 50, and state-mandated programs that the counties must carry out.

HB 2317 has moved through the House Judiciary Civil Law Committee and is now on its way to Ways and Means, where it will compete with countless other proposals. It is

predicted, that beyond establishing a task force, little will be done this session.

May 11 Bench-Bar Breakfast

The upcoming Bench and Bar Breakfast scheduled for Tuesday, May 11, will present A Legislative Update on the Courts and the Judiciary. Panel presenters include Sen. Neil Bryant, Chair, Senate Judiciary Committee, Rep. Lane Shetterly, Chair House Judiciary Civil Law Committee; Chip Lazenby, Counsel to Governor Kitzhaber; and Gail Meyer, Lerner and Meyer.

Jointly sponsored by the Oregon Trial Lawyers Association and the Oregon Association of Defense Counsel, the breakfast will be held at the Portland Hilton, West Pavilion Room, 921 SW 6th, Portland, 7:30 am - Registration/continental breakfast. 8:00-9:00-program. Please register with either OADC at (503) 253-0527 or OTLA at (503) 223-5587.

SB 789: Child Custody Jurisdiction

SB 789 repeals Oregon's Uniform Child Custody Jurisdiction Act (UCCJA) and replaces it with the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). The original act, the UCCJA, was designed to defeat kidnapping of children by noncustodial parents who then went forum shopping until they found a court willing to modify the original decree in their favor. SB 789 is an updated version of the act that reconciles certain UCCJA principles with the Parental Kidnapping Prevention Act (PKPA). It also adds interstate enforcement for child custody orders.

Introduced by Sen. Kate Brown at the request of the Uniform State Laws Commissioners, the bill has just had a hearing and is likely to move quickly through the legislative process. The Family Law

Section is working with the sponsor to ensure that language from the model bill conforms with the language in Oregon statutes and does not create inconsistencies or ambiguities in the way it relates to other family law cases or statutes.

SB 82: Courthouse Facilitation

SB 82 authorizes courts to create family law facilitation programs to assist litigants in family court proceedings. Family law facilitation programs may provide educational materials, court forms, assistance in completing forms, information about court procedures, and referrals to agencies and resources that provide legal and other services to parents and children.

SB 82 is the product of a legislative commission appointed by Chief Justice Carson to address the acute, unmet demand for legal services in the family law arena. The commission was directed to focus on legal services to low- and middle-income families specifically on the approaches courthouse facilitation and unbundled legal services.

This bill is in Ways and Means and committee co-chairs Leslie Lewis of McMinnville and Gene Timms of Burns have been reluctant to schedule the bill for a hearing. Their stance seems to originate with current leadership philosophy that generally opposes the expansion of government services. Please let OSB Board member Dick Baldwin know if you have arguments or experiences which would show the need for this bill and why it is in the public interest.

SB 66: Indigent Defense

Two different versions of an independent Public Defense Commission are working their way through the system. HB 2294 (soon to be renumbered HB 3498), Rep. Mannix's version of the bill, proposes a public corporation that would be housed in the executive department.

Further details on the bill will be forthcoming.

On the other side of the aisle, SB 66 scheduled for a hearing on Wednesday before the Senate Judiciary Committee, would create an independent Public Defense Services Commission housed in the judicial branch. The Chief Justice would be responsible for appointing members to the commission to ensure representation of all components of the system.

Historically bar groups have been receptive to this approach if the indigent defense function is politically strengthened

Statutes of Ultimate Repose

Three bills currently in the system affect the statutes of ultimate repose. HB 2311, sponsored by the Oregon Trial Lawyers Association, would establish a useful life standard in product liability cases. HB 3340 modifies the statute of ultimate repose for civil actions against a manufacturer of commercial products. The bill would create a useful life standard for commercial products. anything clears the legislature is another question.

HB 2984: UTPA limitations

HB 2984, as originally introduced would have increased the amount from \$200 to \$1,000 for violations and extended the statute of limitation from one to two years under the UTPA. However, at the hearing on Tuesday before the House Business and Consumer Affairs Committee chaired by Roger Beyer, the bill was gutted and stuffed to limit treble damages to \$50,000. This is an attempt by the RV and manufactured housing industry to remove teeth from the lemon law. This effort to undermine the law should be taken seriously.

HB 2555: Spousal Support

This bill reorganizes spousal support and criteria into three different categories: transitional support, compensatory support, and spousal maintenance. HB 2555 restructures ORS 107.105 to define three types of spousal support: transitional support to provide relatively short term support; compensatory support to replace the enhanced earning capacity statute; and spousal maintenance to provide for a spouse who, as a result of age, extended absence from the workforce or other factors, will need long-term support.

The bill also changes the way a party's enhanced earning capacity is viewed, characterizing the compensation as spousal support instead of property. Previously the statute required that an intangible future economic benefit -- a party's future enhanced earning capacity -- be translated into a present-day dollar value and divided by the court in a divorce proceeding. The Family Law Section supports changes

Bills of Interest

| Bill # | Summary |
|--------|---|
| SB 42 | Increase small claims jurisdiction to \$5,000. |
| SB 43 | Attorney fees in contract actions. |
| SB 50 | Increase attorney fee cap, ORS 20.080. |
| SB 57 | Downward departure sentence for Ballot Measure 11 (1994). |
| SB 62 | \$10/day juror fees for first two days. |
| SB 64 | Eliminates judgment renewals. |
| SB 65 | Increases number of circuit court judges. |
| SB 67 | CJ rules for electronic application in the courts. |
| SB 82 | Court family-law facilitators. |
| SB 206 | Modifies PERS Plan B retirement for judges. |
| SB 208 | Increases judges' salaries. |
| SB 268 | OTCA affirmative defense for Y2K failure. |
| SB 382 | Creates vehicle dealer recovery fund. |
| SB 383 | Investigative demand. |
| SB 396 | Notice to AG re state litigation. |
| SB 397 | Use of lay and agency representatives in contested case hearings. |
| SB 415 | Judgement lien certificate. |
| SB 533 | Simplified probate for estates. |
| SB 539 | Prevailing party fee in contract actions. |
| SB 546 | Minority shareholder protection |
| SB 662 | Waiver of 90-day waiting period for marital dissolution. |

SB 688 Prevailing party fee in contract actions.
 SB 704 Senate confirmation of judges.
 SB 854 Opening up LPRC/SPRB meetings
 SB 938 Electronic Proxy Voting.
 SB 961 State agency loser pay
 SB 5517 Judicial Department budget.
 SJR 7 Senate confirmation of judges.
 SJR 10 Legislative review of administrative rules.
 HB 2223 Notice to AG of punitive damages awards.
 HB 2274 Regular effective date for legislation.
 HB 2294 Increases indigent hourly rate (\$30-\$75).
 HB 2308 Increases available tort limit.
 HB 2311 Product liability statute of repose.
 HB 2313 Increases small claims jurisdiction to \$5,000.
 HB 2317 State pay to maintain court facilities.
 HB 2318 Roth IRA exempt from execution.
 HB 2321 MCLE exemptions for lawyer-legislators.
 HB 2329 Expands clergy-penitent privilege.
 HB 2350 Add mandatory minimums for prior major crimes.
 HB 2383 Expands exceptions to Adverse Possession doctrine.
 HB 2451 Confidentiality of lawyer assistance programs; annual bar dues date.
 HB 2525 ALJ central hearings panels.
 HB 2555 Spousal support changes.
 HB 2556 OTCA affirmative defense for Y2K failure.
 HB 2573 Requires videotape of judicial proceedings.
 HB 2721 Summary judgment changes.
 HB 2853 Legal representation by police.
 HB 2863 Contribution claim under OTCA.
 HB 2985 Reinstates implied assumption of risk.
 HB 3245 Private entity liability for Y2K.
 HB 3431 Eliminates joint and several liability.
 HJR 7 Breakout of SB 936 (BM 40) issues for vote.
 HJR 9 Sobriety checkpoints.
 HJR 65 Prohibits judicial appointment.

How to Obtain a Copy of a Bill

If you would like to obtain a copy of a bill or determine its status, you can call the Legislative Access Line at (800) 233-2313 or you can access legislative information on the internet at <http://www.leg.state.or.us>.

Public Affairs Mission

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 matters that affect the legal profession. The Public Affairs Committee(PAC) is chaired by Salem attorney David Hittle. Other members

include Sarah Rinehart, Salem; David Orf Medford; John Tyner, Hillsboro; Larry Rew, Pendleton; Malcolm Scott, Eugene; Mary McCauley Burrows, public member, Eugene; and Joyce Cohen, public member, Portland.

Remember, the section s or committee s position on a particular proposed bill and how that position correlates to the BOG Policies, *Section 11.800*.

Only legislation designated by the PAC as an OSB priority is actively lobbied by the Public Affairs Department staff. Typical OSB priorities include major public policy and political issues in light of *Keller v. State Bar of California*.

Contacts

If you have questions or comments about this newsletter or legislative issues contact the Public Affairs Committee chair David Hittle at (503) 581-2421 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; contact Susan Grabe at ext 380 or by e-mail at sgrabe@osbar.org; contact Anastasia Meisner at ext. 358 or by e-mail at ameisner@osbar.org. In addition, please visit the OSB homepage at www.osbar.org.