



# CAPITOL INSIDER

*OSB Public Affairs Newsletter for Bar Leaders*

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July 29, 1999 (Revised)

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## Is it Really Over?

Yes, the 1999 legislature finally ended on the afternoon of July 24 after a long and sometimes contentious life span. Protecting taxpayers and trying to cut government growth received a higher priority than more funding for public agencies. Within the various partisan cliques there was a total of about thirty new legislators. In this era of term limits and expensive political races largely funded by powerful special interest groups, political observers tended to brand new lawmakers as inexperienced and inflexible.

Here are some general observations about the session by some unnamed Capitol lounge lizards: The rush to enact new laws frequently resulted in frustration and conflict; Thus unstable alliances tended to come and go more quickly; Poorly drafted legislation often forced unwelcome intervention by the judiciary; A record number of ballot measures were referred to the people to circumvent the veto pen of the Governor; This means that everyone will be living with the fallout from the '99 legislature for the next sixteen months.

All in all, it can be said that the past session produced a mixed bag of results and was especially unique—but maybe it's not really over.

## Interim Judiciary Hearing

The Interim Judiciary Committee is scheduled to meet Thursday, September 16, 1999, from 2:30 p.m. to 4:30 p.m. at the OceanView Resort in Seaside during the bar's Annual Meeting.

The main topic of discussion will be SJR 7 regarding the election and appointment of judges. If you have questions, contact Bill Taylor at (503) 986-1694.

## Supplemental Court Funding Thwarted in End

Virtually no additional funding was made available to judges and the legal system during the final stage of this year's legislative session. The co-chairs of the Ways and Means Committee (Rep. Leslie Lewis and Sen. Gene Timms) were allowed to hold the line against numerous late-session requests by the Judicial Branch.

Especially harmful to the judiciary and the public was the lack of action on requests involving sixteen new judicial positions recommended by the joint Committee on the Creation of New Judgeships (otherwise known as the "Gleaves Committee"). In addition, there was no increase in lagging judicial benefits such as salaries. Furthermore, a series of strongly desired non-fiscal provisions trapped in the budget process failed to

advance during the final days of the 1999 legislative session. These amendments included expanding mediation to all stages of juvenile dependency proceedings and establishing needed accounts for court productivity, access improvements and electronic uses for publications. The inaction by legislative leaders of the Ways and Means Committee demonstrated a lack of political support for judicial institutions.

It is difficult to completely understand all the reasons for this rough treatment. There are numerous factors at play. It has long been suggested by some legislative officials that because it refuses to act like a "regular state agency" (which it is not), the Judicial Branch needs to be reined in or punished. There is also the perception at the Capitol that many trial judges should be working harder. Nor did it help to have the *Lakin* opinion, which overturned a major tort reform law, come down at the very end of the session. And last, but by no means least, you will continue to hear about the problem of having fewer legislators who are lawyers--the politicians who generally have the ability to help colleagues to craft workable laws and to see the bigger picture.

Under adverse political conditions, Chief Justice Wallace Carson and his legislative liaison team worked very hard in the legislative trenches this year. It should be remembered that the base budget for the Judicial Branch passed earlier in the session (SB 5517) and generally maintains current service levels. Several important bills involving judicial system planning and access finally passed during the concluding weekend of the session. A broad coalition of interested parties, including state court administrators and bar representatives, joined in these efforts. These bills signal future policy priorities even though almost no funding was attached to any of the following measures:

**SB 82:** Authorizes family law facilitation programs to assist pro se litigants.

**SB 38:** Requires court certified interpreters for state agency adjudicatory proceedings.

**SB 60:** expands family court proceedings.

**SB 1304:** provides additional fees and expenses for jurors.

**HB 3598:** Creates interim Public Defense Services Commission study to address structure, cost, workload, standards and service delivery issues.

**HB 2317:** State Court Facilities finance mechanism funded by interest on criminal fines and assessments (becomes operational in four years).

Forthcoming bar publications and programs will examine the full gamut of new and exciting laws. Let it suffice here to say that the state bar volunteers once again played an important role at the legislature--note attached scoreboard on their wide range of sponsored bills. Our regular package of law improvement bills did well. Volunteers from state bar groups also provided amendments or comments to over 200 hundred other bills affecting the legal profession. Bar committees and sections with legislative projects tended to start early in the cycle and usually experienced at least one of the judiciary committees. Moreover, the legislative judiciary committees had lawyers serving on them where the witnesses could expect a first-rate process of full deliberation on complicated issues.

### Oregon Law Commission Hearing

The commission will meet Thursday, September 16, 1999, from 9:00 a.m. to 11:30 a.m., at the OceanView Resort in Seaside. Contact Bill Taylor for agenda and other details (503) 986-1694.



### Legislative Stars

The list of lawyers serving on the judiciary committees in 1999 who were especially helpful to bar groups included Sen. Neil Bryant, Rep. Lane Shetterly, Rep. Max Williams, Rep. Judy Uherbelau, Rep. Kathy Lowe, Rep. Floyd Prozanski, Rep. Kevin

Mannix, Sen. Kate Brown and Sen. Peter Courtney. Several non-lawyers on the judiciary committee with strong government backgrounds also provided valuable assistance to bar volunteers, such as Sen. Dave Nelson, Rep. Vicki Walker, Rep. Larry Wells and Rep. Gary Hansen.

Because several effective lawyer-legislators are now being “termed out” of office, many of our bar group participants are beginning to understand the critical need for new lawyer-legislators to enter the fray. All of us need to give this situation more attention as we begin the next political cycle. It is almost time to begin reexamining the unfinished business of the 1999 legislative session that affects the legal profession.

## HB 2998: MCLE Changes

Interesting bills always spring up at the end of session. The final version of HB 2998 was put out very late by a group of lawyer-legislators. It is worth noting that HB 2226, which deals with child abuse reporting and liability issues, originating with Rep. Kevin Mannix, was the springboard for the changes in HB 2998. It mandates that the Oregon State Bar require active members to complete training on child-abuse reporting. Each attorney must complete one hour of training every three years, and the training counts as ethic credits under the MCLE rules.

Section 3 of HB 2998 places the Board of Governors in control of MCLE, bypassing the existing MCLE board. The bill provides that the Board of Governors must establish MCLE requirements for all active members of the bar. The rules adopted by the Board of Governors are subject to review by the Supreme Court.

The intent of the bill was to make the MCLE scheme less bureaucratic, and to increase the MCLE program’s responsiveness to attorney groups (e.g., lawyer-legislators, who wish to have MCLE credit for their work in the legislature). If signed into law, it will be

interesting to see what happens to this legislative effort to rearrange a set of Supreme Court Rules.

## 1999 OSB Legislative CLE

If you are planning to attend this year’s convention in Seaside, Oregon, be sure to sit in on the 1999 Legislative Review Session. This CLE is scheduled for Friday, September 17, from 10:45 am to 4:30 pm. Rep. Lane Shetterly, Rep. Max Williams and Sen. Kate Brown will present the general legislative session overview. Recent statutory changes in various practice areas will also be highlighted.

## HJR 2: Damages Cap

This last-minute legislation was a response to the recent *Lakin* decision by the Oregon Supreme Court. In *Lakin*, the court overturned the half-million dollar cap on damage awards for pain and suffering. The court held that the limit, enacted as part of the tort reform package from the 1987 legislature, violates the state constitution’s guarantee of trial by jury.

In response, some legislators tried to pass SB 1340 which would have restored the \$500,000 cap on non-economic damages. However, something like SB 1340 could be enacted if the voters pass HJR 2 allowing the Constitution to be amended to place limits on civil jury verdicts. HJR 2 will be before the voters on the May 2000 ballot.

## OSB Scorecard

Of the 30 bills proposed by and actively advocated by the bar, and various OSB sections and committees, 27 passed. This is approximately a 90% passage rate. These bills include:

- SB 29 Makes permanent temporary child support provisions from '97 Welfare Reform
- SB 46 Technical changes to LLP statute (amended into SB 51)

- SB 47 Learned treatise exception to hearsay rule
- SB 49 Impeachment for bias and interest
- SB 50 Increases attorney fee cap \$4,000 to \$5,500
- SB 51 Amends LLC Act to incorporate fiduciary duties
- SB 82 Court facilitation bill
- SB 145 Cross entity mergers
- SB 415 Judgment lien filing requirements
- SB 601 Probate/statute of limitations
- SB 938 Electronic filing of proxy votes
- SB 1304 Jury service improvements
- HB 2280 Eliminate notice requirement under LU statute ORS Ch. 215 (amended into 467)
- HB 2281 Certificate of mailing with date of deposit under LU statute ORS Ch. 197
- HB 2282 Cleanup of LU statute ORS Ch. 197
- HB 2283 Staggered terms for LUBA administrative judges (amended into HB 2105)
- HB 2290 Revision of survivorship laws on simultaneous death
- HB 2291 Adopt unfunded trust revision to Uniform Testamentary Additions to Trust Act
- HB 2292 Repeal common-law spouses for intestacy purposes
- HB 2293 Adopt federal rule re: conditional plea or no contest plea
- HB 2295 Statutory deed forms to include land use disclosure
- HB 2297 Non-attorney expenses in indigent defense cases
- HB 2298 Extend psychological parent consent notice
- HB 2317 Court facilities funding study
- HB 2318 Exempts Roth IRAs from execution on judgment
- HB 2451 Confidentiality of lawyer assistance programs; annual bar dues date

Three proposed law improvement bills did not pass. In addition, the bar's bill to increase the indigent defense hourly rate did not pass, although overall funding for indigent defense did increase. The law improvement bills that failed are:

- SB 45 Aligns minimum wage law with federal changes
- SB 48 Modify future medical liens
- HB 2296 Modify class order support obligation for ineligible child

In addition, six consumer law bills floated for discussion purposes did not advance. These bills are:

- HB 2284 TILA and FDCPA as recoupment or setoff
- HB 2285 Dealer title change
- HB 2286 Technical changes in UTPA and OUDCPA
- HB 2287 New Car Lemon Law
- HB 2288 Attorney fees under UTPA
- HB 2289 Used Car Lemon Law

The following are some examples of proposed legislation that the bar and bar groups successfully worked to help stop, delay for further, more deliberative study or helped to significantly redraft:

- SJR 7 would have politicized the judicial selection process
- SB 397 attempted to expand unauthorized practice of law activities
- SB 546 would have changed minority shareholder protections in closely held corporations
- SB 854 would have subjected meetings of the State Professional Responsibility Board to the open meetings law
- HB 2383 would have eliminated the doctrine of adverse possession
- HB 2853 would have provided broad authorization for police officers to practice law in court

## House of Delegates Resolutions

Remember to mark your calendars for the House of Delegates Meeting in Seaside, Saturday, September 18.

The deadline for the submission of House of Delegate Resolutions is August 4, 1999.

BOG-approved agenda items thus far include:

- DR 5-105(G) and 8-101 Lawyer-legislators/matters against the state of Oregon
- DR 5-106 Lawyers as mediators

For more information contact Sandy Hise at (503) 620-0222, ext. 386 or 1 (800) 452-8260, ext. 386.

## Legislative Factoids

- The Legislature adjourned sine die on July 24, 1999.
- The effective date for most legislation is October 23, 1999.
- This was the third longest session ever, 195 days.
- There were 21 referrals to the people for votes from Nov. 2, 1999 to Nov. 7, 2000.
- This year's "Christmas Tree" bill included \$162 million worth of amendments for such areas as the environment, education,

housing, the Criminal Justice Commission, and legislative administration.

- After the Legislature adjourns sine die, the Speaker and President have 25 working days to sign a bill.
- Once a bill arrives on the Governor's desk, he has 30 working days to sign it or allow it to pass into law.
- The governor must give a 5 day prior notice of intent to veto.
- As of July 26, the Governor has vetoed 37 bills.

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

If you have questions or comments, 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](mailto:boleson@osbar.org); Susan Grabe at ext 380 or by e-mail at [sgrabe@osbar.org](mailto:sgrabe@osbar.org); or Anastasia Meisner at ext. 358 or by e-mail at [ameisner@osbar.org](mailto:ameisner@osbar.org).