

2005 Public Affairs Legislative Package With Bill Numbers

2005 OSB Legislative Priorities

1. Adequate funding for indigent defense services.
2. Adequate funding for courts.
3. Participation of women and minorities in the profession.
4. Improving the image of lawyers.
5. Law improvement package of bills.

OSB Public Affairs Committee

SB 272 (LC 449)

BOG Governance Provisions

OSB SECTIONS

Administrative Law

HB 2283 (LC 450)

Mental and physical examinations of licensees

HB 2284 (LC 450-1)

Costs and fees in agency proceedings

HB 2285 (LC 450-2)

Standardizes provisions related to the administrative hearings process; including ex parte communications, discovery, contested case hearings, findings of fact, and model rules

Consumer Law

SB 273 (LC 451)

Increase homestead and automobile exemptions

SB 274 (LC 452)

Create an exemption for child care tax credit

Debtor/Creditor

HB 2286 (LC 453)

Require sheriffs to accept cashier's or official bank checks at judicial sales; sheriff to deliver property upon check clearing

HB 2287 (LC 454)

Allow recording notice of bankruptcy by trustee or debtor in county in which the debtor has real property, instead of requiring petition to be recorded

HB 2288 (LC 455)

Allow for payment of remaining proceeds of sale of personal property in possessory lien foreclosure to junior lienholder

Elder Law

HB 2289 (LC 456)

Amend small estates statute to allow supplemental affidavit to be filed on newly discovered property after the 4 month time period passes

HB 2290 (LC 457)

Enlarge the time for filing estate and conservator accountings from 30 to 60 days

HB 2291 (LC 458)

Allow a trustee to file an elderly abuse petition for an abused trustor or trustor's spouse

Estate Planning

SB 275 (LC 459)

The Oregon Uniform Trust code

SB 276 (LC 460)

Amendment to the Trustee Powers Act adds to the trustees' power a power to split a single trust into two separate trusts under certain conditions

SB 277 (LC 461)

Uniform Transfers to Minors Act provisions regarding the delayed transfer of custodial property to a minor until age 25

Family Law

HB 2292 (LC 462)

Termination of Beneficiary Designation upon Divorce

Health Law

SB 278 (LC 927)

Permit disclosure of some protected health information concerning decedents and incapacitated personal representative provisions

SB 279 (LC 464)

Change the law regarding hearings on DHS applications for waivers from statutory and regulatory requirements

SB 280 (LC 465)

Change the administrative rules for workers compensation regarding subpoenas for medical information to require subpoenas in the same format specified in the ORCP's

HB 2293 (LC 470)

Oregon State inheritance tax fix necessary in light of Oregon's disconnect from Federal tax system. Drafting administrative rules for reporting estate elections unique to Oregon-inheritance tax changes

Real Estate & Land Use**SB 281 (LC 466)**

Sale of county property (ORS 275.190 and 275.220)

SB 282 (LC 468)

Annexation approval by road authorities (ORS 222.120)

Taxation Law**SB 283 (LC 469)**

Allow limited liability companies wholly owned by one or more nonprofit corporation to qualify for property tax exemption; amends ORS Ch. 307

Workers Compensation**HB 2294 (LC 471)**

Workers Compensation Board amendment to "Own Motion" Jurisdiction

OSB COMMITTEES**Procedure and Practice Committee****SB 284 (LC 472)**

Modify existing statute to allow an extension of the statute of limitations upon attorney's death

Public Affairs Committee General Legislation Guidelines

The bar is committed to promoting legislation that serves one or more of the following goals and to opposing legislation that conflicts with one or more of them:

1. To provide access to justice for all Oregonians, including ensuring adequate support for low-income legal services and adequately funding indigent defense services.
2. To improve the efficiency and effectiveness of the judicial system, including adequate funding and facilities for the courts.
3. To increase the consistency and uniformity of laws, including statutes of limitation.
4. To support and improve the ability of attorneys to serve the interests of the citizens of the state competently and to advise the legislature of problems proposed legislation might present to competent representation.
5. To ensure a fair and effective system of criminal justice.
6. To monitor tort reform proposals.
7. To promote access to public records generally and to professional licensing and discipline records in particular.
8. To improve regulation of the legal profession and the lawyer discipline system.
9. To improve the juvenile justice system and encourage better coordination between the different components of the system.

OSB Legislative Contacts — 2005

Below is a list of bar legislative contacts. If you have particular questions or comments regarding legislation we encourage you to contact the appropriate person. Please let us know when a contact assignment changes. (indicates section/committee chair)*

Administrative Law	Lorey Freeman*	Environmental Law	Kristen Tsehai Bonanno*, David Ashton, Anita Winkler, Diane Henkels
Admiralty	Dennis VavRosky*	Estate Planning	Christopher Cline*, Bernie Vail
Affirmative Action	Stephen F. Crew *, Stella Manabe (OSB)	Family Law	Ronald Johnston*, Lauren Saucy
Agriculture	Jean Underhill Wilkinson*, Larry Rew	Adoption Law Subcommittee	Susan Moffet*, Robin Pope
Alternative Dispute Resolution	Les Swanson*, Suzanne Townsend	Government Law	Stephanie A. Smythe*, Dan Olsen
Anti-Trust	Kristin Lee Cleveland*	Health Law	Matthew M. Werner*, Gwen Dayton
Appellate Law	Robert K. Udziela*, Jim Nass	Indian Law	Deneen Aubertin Keller*
Aviation	Patrick J. Kurkoski*	Intellectual Properties	Craig Rogers*
Bar Act and Bar Priorities	Nena Cook*, Susan Grabe (OSB)	International Law	Shannon K. Waage*, Patchen M. Haggerty
Business Law	Timothy J. O'Hanlon*, Andy Morrow	Judicial Administration and Funding	Marilyn Odell*, Michael Bloom, David Hittle
Business Litigation	Julie R. Vacura*, Steve Larson	Juvenile Law	Douglas Killian*, Angela Sherbo, Ingrid Swenson
Civil Rights	Edward Johnson*, Dennis Steinman (chair through 1/31/05), John Geil	Labor & Employment	Nancy Elizabeth Brown*, Adam Morrison, Mike Holland
Computer and Internet Law	Timothy E. Siegel*	Law Practice Management	M David Daniel*, Stephen A. Hutchinson
Constitutional Law	David Euan Leith*, Roy Pulvers	Legal Ethics	William B. Kirby *, Sylvia Stevens (OSB)
Construction Law	Janelle E. Chorzempa*, Angela Otto	Legal Services	Howard Arnett*, Judith Baker (OSB)
Consumer Law	Justin Michael Baxter*, Dick Slottee, Jason Skelton	Litigation	Richard A. Lane*, Sarah Troutt
Corporate Counsel	Kathleen Barsocchini*, Andrea Bushnell	Pro Bono	Jeff Lindberg*, Judith Baker (OSB)
Criminal Law	Daniel Ousley*, Lindsay Partridge, Tim Sylwester	Procedure and Practice	Michael Zusman*, Everett Jack
Debtor/Creditor	Peter McKittrick*, Gary Blacklidge	Product Liability	Charles S. Tauman*
Disability Law	Theodore E. Wenk*, Bob Joondeph	Professional Liability	Barbara Fishleder, Ira Zarov
Diversity	Hon Sidney A. Galton*, Janna Beth Kim	Public Service & Information	Steven Todd*, Kay Pulju (OSB)
Elder Law	Mark M. Williams*, Ryan Gibb	Quality of Life	Thomas S. Smith*
Energy, Telecom & Utility	Edward A. Finklea*	Real Estate and Land Use	Wallace W. Lien*
		Real Estate	Greg Nelson
		Land Use	Chris Crean

Securities Regulation Michael C. Zusman*,
Kim Medford

Sole and Small Firm Practitioners
Vincent A. Deguc*

Taxation Karey A. Schoenfeld*,
Mark Huglin

Unlawful Practice & Independent Paralegals
Daniel Drazan*, Linn Davis (OSB)

Workers' Compensation
Abigail Lee Herman*, Martin Alvey

LAW IMPROVEMENT QUESTIONS
David Nebel (OSB), Jill Mallery (OSB)

OTHER INTEREST GROUPS

Access to Justice Judith Baker (OSB)

Bar, Press and Broadcasters . . . Duane Bosworth*

Defense of Indigent Accused Marilyn Odell

Election Law Margaret Olney

Judgeships and Judicial Efficiency . . . Tim Willis

Medical Profession Doug Schaeffer*

New Lawyers Division Christine Meadows*

Uniform State Laws . . . Carl Bjerre, Martha Walters,
Joe Willis, Henry Drummonds

The Political Process: Roles and Responsibilities

1.0 Introduction

In the public policy arena, the bar plays a significant role in the evaluation and consideration of administration of justice issues in the legislative and political processes. The board encourages bar groups to be involved in legislative activities within their jurisdiction subject to the bar's legislative guidelines and relevant election laws. There is a long tradition of lawyers working through the bar process to improve the quality of laws in the state of Oregon and the bar's law improvement program has served to raise the credibility of lawyers as an resource for expertise in a wide variety of areas.

The Oregon State Bar Board of Governors guidelines for legislative and political activity are set forth in BOG Bylaws Article 12. The guidelines are drawn from the bar's statutory purposes, constitutional limits on the use of mandatory membership fees, and election law limits on the activities of public employees. They also reflect the recognition that the Oregon State Bar has a diverse membership with differing views on many subjects.

1.1 Statutory Authority

By way of background, the Oregon State Bar is a "public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon..." ORS 9.010(1). Although the board

has statutory authority to "at all times direct its power to the administration of the science of jurisprudence and the improvement of the administration of justice" (see ORS 9.080(1)), its actions are still constrained by other applicable law, including *Keller v. State Bar of California*, 496 U.S. 1 (1990). As a state entity, the bar's funds are subject to audit by the Secretary of State pursuant to ORS 297.210 and, for purposes of the expenditure of bar resources, bar "funds" are considered "public funds" and board members are subject to the restrictions on the expenditure of public funds under ORS 294.100 as public officials.

As a mandatory membership organization, the Oregon State Bar cannot engage in the wide-range of activities allowed voluntary organizations. Even though the bar is partially funded by membership fees as opposed to state general fund revenues, its unique statutory composition makes it subject to various laws. Thus, in pursuing any activity, the expenditure of public funds by the board must be related to the purposes for which the bar exists. If it is not, the public officials who permit the unauthorized expenditure may be subject to personal liability under ORS 294.100.

1.2 Keller Standard

The U.S. Supreme Court's decision in *Keller v. State Bar of California* set the parameters for what a mandatory state bar can do under the First Amendment. In *Keller*, a member of the California bar contested the bar's use of compulsory dues to support and/or advocate "political or ideological" views in violation of his First Amendment rights. The U.S. Supreme Court held that a mandatory state bar's use of compulsory dues to finance political and ideological activities violates the First Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

The court did not establish a particularly clear standard on what constitutes permissible or impermissible dues-financed activities. However, it stated that the extreme ends of the spectrum were endorsing or advancing gun control or a nuclear weapons freeze which were prohibited on the one hand and disciplining bar members or adopting changes to the profession's ethics code as acceptable on the other hand. We believe the broad middle area of law improvement is appropriate if it is germane to the bar's role in improving the quality of legal services to the people of the State of Oregon or relates to the regulation of the legal profession. The Board of Governors has set the scope of OSB permitted activities under *Keller* in BOG Bylaws Article 12.

Additionally, the bar's guidelines for legislative and policy activities require that the Board of Governors "endeavor to respect the divergent opinions of subgroups within the profession" and make reasonable efforts to "avoid committing bar funds to issues which are divisive or result in creating factions within the profession." See BOG Bylaws Article 12.

1.3 Oregon Election Law

Oregon election law sets the parameters for permissible bar activity relating to initiatives and elections. Members of the Board of Governors are public officials for the purpose of ORS 294.100(1). ORS 294.100(1) provides that "It is unlawful for any public official to expend money in excess of the amounts, or for any other or different purposes than provided by law."

While bar employees may not be public employees for the purposes of ORS 260.432, the Board of Governors has taken a cautious approach on this subject in light of the lack of judicial precedent on this question. According to ORS 260.432(1) "No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose...the adoption of a measure...." Further, ORS 260.432(2) prohibits public employees from promoting or opposing the adoption of a measure "while on working hours." This prohibition, does not, however, restrict the right of a public employee to express personal political views.

1.4 OSB Board Member ("Elected Official") Roles and Responsibilities

ORS 260.432 could well prohibit board members from asking bar staff to assist them in supporting or opposing initiative measures. However, the board may do the following:

- 1) Advocate support or opposition to a measure or candidate so long as the board member, as a public official, does not use public resources. A board member may, however, use staff-prepared informational materials for reference purposes.
- 2) Use public resources and staff to develop and distribute objective material on the effects of an initiative measure. The material must be informational and must provide a fair presentation of the facts. It cannot advocate a particular position, but it can explain the effects the measure would have on the state bar if approved.
- 3) Take a position on an initiative measure provided public resources are not used to advocate the position taken or to have it distributed. Public announcement of the board's position by way of a press release is permissible.
- 4) Provide, at bar expense, a content neutral forum at which proponents and opponents of an initiative measure may present their views so long as the information is not used to lead voters to support or oppose a particular position in the election.

- 5) Personally campaign for or against a measure so long as they do not use public resources. However, bar employees must campaign on initiative measures in their individual capacities outside of working hours or employment and without expending any public funds.

Board members may not do the following:

- 1) In the role of a supervisor, request bar staff to perform any political activity
- 2) Have an opinion piece or letter advocating a political position published in a publication produced or distributed by bar staff.

1.5 Recent bar activities

The state bar has over the last several years become involved in challenging initiative measures that affect the bar and the judicial system. The board and House of Delegates have taken positions opposing certain measures. However, due to the foregoing election law constraints, the bar has limited its activities to taking a position on an issue and then providing content neutral public forums and information sharing on the pros and cons of an issue. Our activities have also involved general public education on issues important to the justice system.

This year, The Public Affairs Department developed and disseminated informational brochures regarding the impact of Measure 30 on the judicial system and Indigent Defense services.

1.6 OSB Section/Committee Roles and Responsibilities

Sections and committees of the bar operate under the umbrella of the bar and thus are subject to the same legal constraints as the board. In light of the political restrictions outlined above, here are some examples of activities that are permitted and some that are restricted:

- 1) Bar groups may propose legislation within their area of jurisdiction subject to BOG approval.

- 2) Bar groups may take positions or respond to public policy activities on legislation. OSB Section/Committee leaders cannot use bar funds to advocate a position on a ballot measure. This means money, staff time during working hours, travel allowances, facilities or equipment. Section/committee members or officers cannot ask staff to research or write a speech designed to support or oppose a ballot measure or charge travel expenses for attending a meeting at which such a position is advocated.
- 3) Bar groups may coordinate or liaison with any group to engage in information gathering on issues involving the bar, the judicial system, the judicial department budget and issues relating to the administration of justice. Meetings to develop strategies to pass or defeat any measure or candidate are not permitted.
- 4) Bar groups can develop legislation for sponsorship to be included in the bar's legislative package or take positions on legislation that fall within *Keller* and legislative guidelines subject to OSB Public Affairs Committee approval.
- 5) Bar groups may not advocate a political position for or against an initiative or referendum or candidate.
- 6) No bar staff time, money or resources may be spent on political advocacy in support or opposition of a measure or candidate.