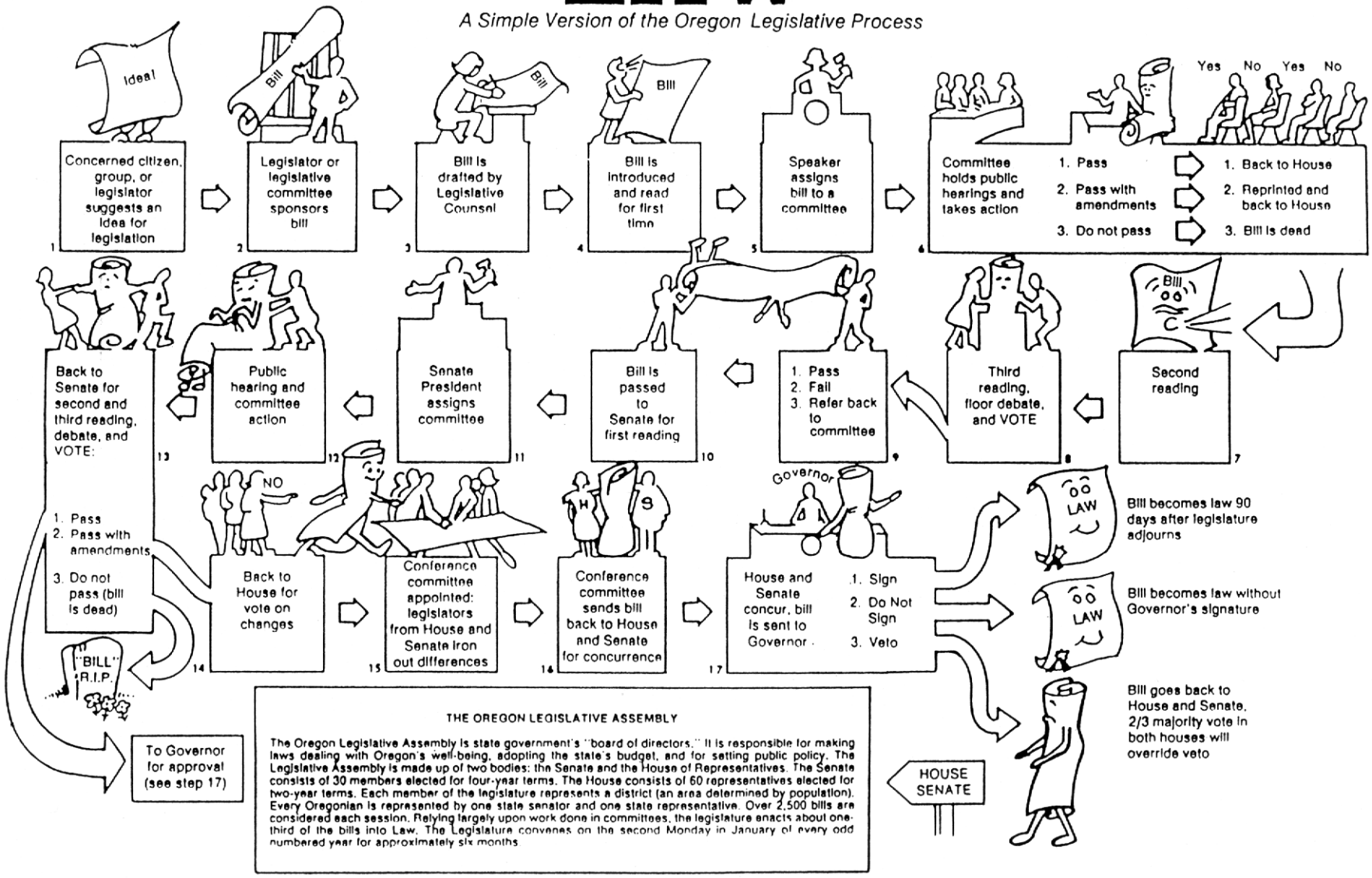
How An Idea Becomes LAW

A Simple Version of the Oregon Legislative Process



THE OREGON LEGISLATIVE ASSEMBLY

The Oregon Legislative Assembly is state government's "board of directors." It is responsible for making laws dealing with Oregon's well-being, adopting the state's budget, and for setting public policy. The Legislative Assembly is made up of two bodies: the Senate and the House of Representatives. The Senate consists of 30 members elected for four-year terms. The House consists of 60 representatives elected for two-year terms. Each member of the legislature represents a district (an area determined by population). Every Oregonian is represented by one state senator and one state representative. Over 2,500 bills are considered each session. Relying largely upon work done in committees, the legislature enacts about one-third of the bills into Law. The Legislature convenes on the second Monday in January of every odd numbered year for approximately six months.

Legislative Summary Format

This is a suggested legislative summary format for bar group sponsored legislation. The legislative summary will be the cornerstone of communications with other legal interest groups as well as the basis for future written and oral testimony provided to legislative committees during session. It may also serve as a useful format to analyze bills under consideration during the session. The summary should be no more than 1-2 pages in length. More in-depth measure analysis may be attached as an additional document if necessary.

OREGON STATE BAR
Legislative Summary of Proposal

RE: Legislative Concept

FROM: Committee or Group proposing legislation

Legislative Contact:

Name:

Telephone:

Fax:

Email:

This bill would amend ORS _____

1. PROBLEM PRESENTED

Briefly state the PROBLEM PRESENTED (include ORS or case citation if applicable)

2. SOLUTION

Identify the SOLUTION to the problem (include proposed language change)

3. PUBLIC POLICY IMPLICATION

Identify any PUBLIC POLICY IMPLICATIONS (this includes legal, constitutional, financial, and any other issues as well as potential sources of opposition)

Sample of Legislative Summary

OREGON STATE BAR
Legislative Summary of Proposal

RE: Requirement that trustee under the Oregon Trust Deed Act file notice of amount necessary to cure or pay off 15 days prior to foreclosure sale. (LC 443)

FROM: OSB – Debtor/Creditor

Legislative Contact:

Name:

Phone Number:

Fax:

Email:

This bill would amend ORS 86.705, et. seq., the Oregon Trust Deed Act and, specifically, we anticipate amending 86.750(3).

1. PROBLEM PRESENTED

The problem arises in that more and more out-of-state "trustee services companies" are conducting non-judicial foreclosures in Oregon. These "foreclosure mills" are nearly inaccessible to borrowers, holders of junior encumbrances and potential investors wishing to bid at foreclosure sales, to obtain information on the amounts necessary to cure or the minimum bid at the sale. Some of these trustee services companies do not even list their telephone numbers on the trustee's notices of sale. Most have automated phone systems that give parties endless options to choose, where a live person cannot be reached. Some have actually disseminated recorded information that is incorrect. Despite repeated requests, it is often difficult for borrowers to obtain cure amounts or payoffs, if they have refinances or sales of their property. Their only alternative is to file an action to enjoin the sale or file for bankruptcy protection.

2. SOLUTION

The solution to the problem is to require the trustee to record an affidavit prior to the sale that sets forth the information that a borrower, junior encumbrancer or investor may need to tender a cure or pay off the loan. In this way, a tender may be made prior to the sale.

3. PUBLIC POLICY IMPLICATION

The requirement to record the affidavit will not significantly burden the trustee nor the existing procedures for non-judicial sales. While the "foreclosure mills" may oppose this additional requirement, it is generally within the contemplations of the act. Currently, ORS 86.753 allows a borrower or its successor in interest to cure the defaults at any time prior to five days before the last date set for the sale. That statute currently does not require the trustee or the beneficiary to give the borrower the amount necessary to cure. In many cases, due to complex interest accruals, late charges, foreclosure costs and attorney's fees, the borrower may not know the amount necessary to tender. We believe that this change will conform with current public policy.

Sample Letter to Legislator

LANE
POWELL
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LLP

Christopher P. Cline
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June 14, 2001

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Senator John Minnis
900 Court Street NE, S-311
Salem, OR 97301

Dear Senator Minnis:

I am writing to you on behalf of the Executive Committee of the Oregon State Bar's Estate Planning Section. I previously had testified before your committee on behalf of two bills which our committee had sponsored. I am writing to you today to express our committee's support for that portion of SB 166 relating to so-called "pet trusts." Our committee previously had supported HB 2739, which incorporated this legislation. I realize that, at first blush, such legislation appears trivial. However, our committee believes that it is nevertheless substantial legislation for the following reasons.

First, believe it or not, many of our clients ask that trusts be established for their pets, and it is not clear under current Oregon law whether such trusts are allowed. Second, this legislation is being introduced together with federal legislation that would provide a charitable income tax deduction for trusts that are created for pets, where the remainder interest on the pet's death passes to charity. Adopting the Oregon "pet trust" bill would allow Oregon residents to create such charitable trusts once the federal legislation is passed. For these reasons, our committee endorses that portion of SB 166 relating to pet trusts, and we respectfully ask for your support and approval as well. If you have any questions, please feel free to contact me.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP

Christopher P. Cline

CPC:jrm
cc: J. Alan Jensen, Esq.
Susan Grabe, Esq.
Craig Heath, Esq.
999999.2001/325984.1

Anchorage, AK
Mount Vernon, WA
Olympia, WA
Portland, OR
Seattle, WA

London, England

Sample Legislation

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

House Bill 2372

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Joint Interim Judiciary Committee for the Procedure and Practice Committee of the Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Allows taking of testimony in civil jury trial by simultaneous transmission from different location. Requires showing of compelling need.

A BILL FOR AN ACT

Relating to testimony in civil trials; creating new provisions; and amending ORS 45.010.

Be It Enacted by the People of the State of Oregon:

SECTION 1. In civil jury trials the court may, on timely notice and for good cause shown, in compelling circumstances and with appropriate safeguards, permit presentation of testimony in open court by simultaneous transmission from a different location.

SECTION 2. ORS 45.010 is amended to read:

45.010. The testimony of a witness is taken by [*five*] **six** modes:

(1) Affidavit.

(2) Deposition.

(3) Oral examination.

(4) Telephone examination under ORS 45.400.

(5) Examination before a grand jury by means of simultaneous television transmission under ORS 132.320.

(6) Examination by simultaneous communication device under section 1 of this 2001 Act.

Sample of Legislative Testimony

TESTIMONY IN FRONT OF HOUSE JUDICIARY COMMITTEE ON FEBRUARY 12,2001 IN FAVOR OF HB 2375 REGARDING USE OF NON-PARTY WITNESS DEPOSITION

My name is Jeff Johnson. I am an attorney and have practiced in the Portland area for the past 19 years. I am currently secretary of the Oregon State Bar's Procedure and Practice Committee, and am testifying on behalf of that committee **in favor of HB 2375.**

The Procedure and Practice Committee is composed of attorneys throughout the state. The Committee is evenly balanced between attorneys who primarily represent defendants and those who primarily represent plaintiffs in civil litigation. Members of the Committee use their experience and knowledge to enhance the effectiveness of the civil justice system and not on behalf of particular clients or particular causes. It is in this context that the Committee proposed HB 2375, which proposes to amend ORS 45.250(2)(c).

This bill was submitted to solve a problem created for parties created by the Oregon Court of Appeals in the case of *Graham v. Brix Maritime Co.*, 760 Or Ap 7 (79991, where the court upheld a trial court decision to disallow the use of deposition testimony at trial because trial counsel failed to serve a trial testimony subpoena on the witness at the time of the deposition.

In the *Brix* case, plaintiff was injured while working on a boat base out of Oregon. The witness, who was the captain of the boat and was employed by the defendant, resided in Washington. He was deposed but not served with a subpoena for trial at the deposition. At the trial, the defendant did not produce the captain to testify, and the witness was outside the jurisdiction of the Oregon court. Thus, plaintiff sought to introduce the witness' testimony under ORS 45.250(2)(c) which provides:

> "(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:
>
> "(c) The party offering the deposition has been unable to procure the attendance of the witness by subpoena."

The Oregon Court of Appeals found that the witness could have been served with a trial subpoena at the deposition, noting that the witness "was in Oregon on a regular basis in connection with his work for defendant ....[and] there was evidence that a trial date had been set and that a subpoena could have been served on him on the day of the deposition itself." *Brix, supra* at 6.

The problem created by this decision is that the parties are at risk if they do not subpoena **all** witnesses for trial at the time of the witness' discovery deposition, because they risk the possibility that the witness may subsequently move out of state or the party may be unable to timely serve a trial subpoena upon the out of state witness. A significant problem is also created for the parties due to the uncertainty of whether a civil trial will begin on the scheduled date due to lack of judicial resources and an ever increasing criminal docket. This uncertainty can significantly adversely affect the witness who may be required to alter a personal or business schedule to appear at a trial date that is less than certain to begin on the scheduled date, and may be postponed.

The proposed amendment is intended to make it clear that in and of itself, a party's failure to serve a trial subpoena at the time of the deposition does not constitute sufficient grounds to deny the use of the deposition. It is important to note that the amendment continues to provide for the court's discretion if there is additional evidence of a party's lack of due diligence in obtaining the witness' appearance.

The Procedure and Practice Committee believes this amendment poses no new constitutional issues, it does not change the application of the Oregon Evidence Code and that it should have no economic impact on the judicial system.

Sample of Legislative Testimony

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE- CIVIL
May 14,2001
IN FAVOR OF HB 2363

My name is Ruth Simonis. I am co-chair of the Legislative Committee of the Elder Law Section of the Oregon State Bar Association.

During the 1998 legislative session, new notice requirements were added in cases involving a petition for guardianship over an allegedly incapacitated adult. These requirements were codified in ORS 125.070(3), which included a statutorily prescribed notice form. The intent was that the traditional notice requirements in ORS 125.070(2) be given in *addition to* the new notice form in ORS 125.070(3).

Unfortunately, due to inartful drafting, the notice requirements under ORS 125.070(2), which was originally required to be given to *all* respondent's in a guardianship are now only required for *minor* respondents in a guardianship. Adult respondents are required to receive *only* the statutory notice form created last session under ORS 125.070(3). Experienced elder law attorneys have continued to give both the traditional notice information and the new notice form to adult respondents, but the statute itself is unclear. Attorneys unfamiliar with this area of law would not know that both kinds of notice should be provided.

This bill would solve this problem by providing that the pre-1998 traditional notice requirements in ORS 125.070(2) would apply only to the appointment of a conservator for a financially incapable respondent, or for a guardian/conservator of a *minor* respondent. The new notice requirements passed last session and codified, as ORS 125.070(3), would be amended to include those notice requirements listed in ORS 125.070(2) which were not included in subsection (3).The result would be one standardized, comprehensive statutory notice form to all adult respondents in a guardianship. The consolidation of notice requirements into ORS 125.070(3) will provide clear direction to practitioners and ensure that the important information about the guardianship proceeding is provided in a readable and uniform manner to all adult respondents in a guardianship.

Sample Letter Requesting a Hearing

BOUNEFF & CHALLY
ATTORNEYS AT LAW
B.B. Bouneff • John Chally
Sandra Hodgson*
*Admitted in Oregon and Montana

Legal Assistants
Leslie East
Shelly Reynolds

March 26, 2001

Senator Bill Fisher
Chair, Senate Health and Human Services Committee
900 Court Street NE S-209
Salem, OR 97301

RE: Senate Bill 125

Dear Senator Fisher:

I am writing to request you to schedule a hearing on Senate Bill 125. I am a member of the Standing Committee on Adoption for the Family Law Section of the Oregon State Bar. Our committee worked with the Coalition of Oregon Adoption Agencies on this bill, and we believe it provides a needed service for birth parents who are placing their children for adoption.

SB 125 adds a new section to the adoption statutes that would require written notice to a birth parent who is voluntarily relinquishing a child for adoption that he or she has the right to receive adoption related counseling in either an independent or agency adoption. The prospective adoptive parents would be required to pay for the uninsured costs of the counseling. The counseling would be limited to three sessions prior to relinquishment and three sessions after relinquishment.

There is no financial or constitutional impact from this bill.

It is currently standard practice in adoption situations for the adoptive parents to pay for birth parents' adoption counseling. This bill would insure that all consenting birth parents were notified of the availability of counseling.

Please schedule a hearing on SB 125 so that it can be considered this session. Thanks for your attention to this matter.

Very truly yours,

Sandra Hodgson

SH:srr
Enclosures
cc: Susan Grabe, Oregon State Bar

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