



CAPITOL INSIDER

OSB Public Affairs Newsletter for Bar Leaders

December 6, 2000

2001 Legislative Session

The competitive strength between the two parties has increased in both houses. This should result in more extensive deliberations and open decision-making. Moreover, moderate lawmakers will have more influence and they will give renewed attention to the effective delivery of needed public services.

Democrats gained one Senate seat and two House seats. Republicans hold a 16-14 edge in the Senate and a 33-27 margin in the House. A half-dozen of the most conservative legislators are gone and almost all of the new legislators can be described as politically moderate. And it is hoped that the confusion created by 20 new lawmakers will only be temporary!

Legislators of both parties and the Democrat Governor will be looking for common ground on numerous fronts. One set of tough decisions will involve responding to an estimated budget shortfall of \$800 million. There will also be great political pressure to increase education funding. Furthermore, lawmakers will have to deal with the fallout from several expensive and convoluted ballot measures that were just passed.

Closer to home for the legal profession, there will still be some experienced lawyers to serve on such important committees as Judiciary. The legislators whose terms have expired will be replaced by an impressive

foursome: Charlie Ringo (D) of Beaverton, Dan Doyle (R) of Stayton, and Bob Ackerman (D) and Phil Barnhart (D) of Eugene.

The three returning lawyer-legislators in the House majority party—Lane Shetterly, Max Williams, and Rob Patridge—are now top-level leaders who are also political moderates. Throughout their political careers, they have worked hard on the complicated issues affecting the legal system. Other returning lawyer-legislators who have been working closely with us this past year include Kate Brown, Peter Courtney, and Kathy Lowe.

Election Results – Nov. 9, 2000

There will be 14 Legislators with legal training in the 2001 Session, e.g., up from 3 in 1999.

Kate Brown (D) – Sen. Dist. 7, Portland
Randy Miller (R) – Sen. Dist. 13, Lake Oswego
Peter Courtney (D) – Sen. Dist. 17, Salem, Keizer
***David Nelson (R) – Sen. Dist. 29, Pendleton**
***Elizabeth Johnson (D) – H. Dist. 1, Astoria**
Charlie Ringo (D) – H. Dist. 6, Beaverton
***Bill Witt (R) – H. Dist. 7, Portland**
Max Williams (R) – H. Dist. 9, Tigard
Kathy Lowe (D) – H. Dist. 26, Gladstone
Dan Doyle (R) – H. Dist. 30, Stayton
Lane Shetterly (R) – H. Dist. 34, Dallas
Robert L. Ackerman (D) – H. 39, Eugene
Phil Barnhart (D) – H. Dist. 40, Eugene
Rob Patridge (R) – H. Dist. 50, Medford

* Indicates that the designated people have law degrees, but are not licensed to practice in Oregon.

Jan. 19 Special HOD Meeting

On Jan. 19 the HOD will meet in special session to consider proposed language that would amend DR 1-102 (Misconduct; Responsibility for Acts of Others). The amendment would clarify the scope of the prohibitions in DR 1-102(A)(1) and (A)(3) and DR 7-102(A)(5) (Zealous Representation of Clients within the bounds of the law). The new language would allow lawful covert activity in the investigation of violations of the law. This change is in response to Oregon Supreme Court's recent decision in *In re Gatti*, 330 Or 517 (2000).

Judicial Department Budget

This session the state judiciary will again be in cutthroat resource competition with other programs and services. And, unfortunately, judges are not loved at the Capitol. Yet we expect the justice system budgets to be treated somewhat better than last session. This is, in part, the result of county and state bar leaders who are making more of an effort to have ongoing communication with their lawmakers. Nonetheless, some of the very conservative legislators continue to see the courts as an obstacle to their efforts to quickly enact certain policy pronouncements.

Because they have disagreed with a few key court decisions, some legislative leaders continue to say that the appellate judges must be more cooperative with the legislature. Very soon we will know more about what such statements really mean and whether there will be increased conflicts between the branches of government.

Ballot Measures that Passed

Measure 1 Requires Legislature to fund school quality goals adequately.

Measure 3 Requires conviction before forfeiture.
Measure 5 Gun show background check.
Measure 7 Payment to landowner if government regulation reduces property value.
Measure 83 Authorizes veteran's loans for Vietnam vets.
Measure 84 State must continue paying local government for state-mandated programs.
Measure 86 Refund general fund revenues that exceed state estimates to taxpayers.
Measure 88 Increase maximum deductible in Oregon for federal income taxes paid.
Measure 99 Creates commission ensuring quality home-care services for elderly and disabled.

Secrets of the Legislature

As this newsletter is being distributed, Dave Barrows Associates and the Public Affairs Program workshop "Secrets of the Legislature" is being held at the Double Tree Hotel, Lloyd Center, Portland until 4:30 p.m. Participants will receive 6.5 MCLE credits (includes .5 Ethics credit).

The workshop will provide attorneys who are "occasional" lobbyists with helpful legislative information. Chief Justice Wallace P. Carson, Jr., the keynote speaker, and lobbyist Dave Barrows will lead the discussions. Additional speakers include legislative leaders: Senator Kate Brown, Senator David Nelson, Senator Rick Metsger, Representative Lane Shetterly, and Representative Max Williams.

Measure 7: Takings Measure

On Wednesday, Dec. 6, Miller Nash sponsored a Summit on Measure 7, the takings measure passed in the November election. The summit brought together land use attorneys and leaders of various interest groups and organizations that will be affected by the measure. Needless to say the room was packed.

What is the purpose of Measure 7?

Generally, Measure 7 requires state and local governments to compensate property owners, with some exceptions, if a law or regulation reduces the property value.

What does the language mean?

As one legislative source has said, "it is clear that Measure 7 is unclear." Many people are asking questions like, "Is Measure 7 retroactive?" "Would Measure 7 eliminate Oregon's open beach access law?" or "Does Measure 7 so severely limit enforcement of Oregon's land use laws as to render them moot?"

What are people doing?

The AG's office is expected to issue a formal legal opinion in the near future in response to questions from the Governor about possible ramifications of the measure. This report may provide guidance for others. Until then many people are waiting to see what is next.

What does the future hold?

Legislative sources have speculated many legislative possibilities for Measure 7's future. These include outright repeal, clarification of Measure 7, or affirmation to preserve certain laws such as the open beach access. And for some lawyers, litigation seems almost certain.

Legislative Tips Workshop

The bar's Public Affairs Program will be sponsoring a Legislative Tips Workshop to be held in conjunction with the Bar Leader and House of Delegates meeting January 19, 2001. The program will focus on training bar volunteers to be more effective players in the legislative process. Contact Judy Coons at (503) 620-0222, ext. 376 or 1(800) 452-8260, ext. 376 for more information.

Bar Proposals

The following list of law improvement bills was presented as a package to the Interim Judiciary Committee on November 15th. Through the courtesy of the committee, these bills were pre-session filed. This means that our bills will probably be introduced at the beginning of session and move through the

process more quickly, thus avoiding the confusion of later session activities.

A. OSB BOG, ORS CHAPTER 9

1. LC 566 - Changes to ORS Chapter 9 regarding House of Delegate Rules changes

B. SECTION PROPOSALS

2. LC 567 (Appellate Law) - Stipulated judgments
 3. LC 568 (Business Law) - Closely held corporations and shareholders rights
 4. LC 569 (Business Law) - Limited Liability Company clarification bill
 5. LC 570 (Business Law) - Multi-Entity merger clarification
 6. LC 571 (Business Law) - Non-unanimous consent
 7. LC 572 (Civil Rights) - CEDAW memorial
 8. LC 573 (Consumer Law) - Resubmit HB 2286/2288 re Unlawful Trade Practices Act
 9. LC 574 (Elder Law) - Notice in adult protective proceedings
 10. LC 575 (Elder Law) - Medicaid payment for guardianship fees and costs
 11. LC 576 (Elder Law) - Continued validity of power of attorney
 12. LC 577 (Elder Law) - Medicaid trusts and protective proceedings
 13. LC 578 (Elder Law) - Notice of long-term ombudsman in post-guardianship residential placement of protected person
 14. LC 579 (Elder Law) - Review of advance directives in protective proceedings
 15. LC 580 (Estate Planning) - Notice to creditors after death of settlor of revocable trust ("living trust")
 16. LC 581 (Estate Planning) - After-acquired probate property
 17. LC 582 (Estate Planning) - Uniform Transfer to Minors Act
 18. LC 583 (Estate Planning) - Uniform Disclaimer of Property Interests Act
 19. LC 585 (Family Law) - Divorce judgment by affidavit upon parties' stipulation
 20. LC 586 (Adoption - subgroup of Family Law) - Counseling for consenting birth parents in adoption
 21. LC 588 (Government Law) - Clarify conflict of interest provisions for public officials
 22. LC 589 (Land Use subgroup of Real Estate/Land Use) - Technical clean up of ORS Chapter 197 and 215
 23. LC 591 (Land Use subgroup of Real Estate/Land Use) - Clarification of de novo review in land use hearing
- ### **C. COMMITTEE PROPOSALS**
24. LC 592 (Procedure and Practice) - Simultaneous testimony

25. LC 593 (Procedure and Practice) - Prevailing party attorney fees
26. LC 594 (Procedure and Practice) - Non-party deposition testimony

D. JOINT OREGON STATE BAR AND OREGON BANKERS ASSOCIATION PROPOSAL

27. LC 205-1 (UCC Revised Article 9 Workgroup) – Revises UCC Article 9

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”) oversees these activities and makes recommendations on major policy issues. Co-chairs are Portland attorney Edwin Harnden and Medford attorney David Orf. Other members include Malcolm Scott, Eugene; Charles Williamson, Portland; Mary McCauley Burrows, public member, Eugene; and Joyce Cohen, public member, Portland.

Contacts

If you have questions or comments, contact the Public Affairs Committee co-chairs Edwin Harnden at (503) 276-2101 or David Orf at (541) 772-8494, or the Public Affairs staff at the bar office at (503) 620-0222 or (800) 452-8260. You can reach GR Assistant Judy Coons at ext. 376 or by e-mail at jcoons@osbar.org.