2008 Public Affairs Committee
Ann Fisher, Chair, Beaverton
Gerry Gaydos, Vice-Chair, Eugene
Kellie F. Johnson, Portland
Stephen Piucci, Portland
Carol Skerjanec, Vale
Robert Vieira, Portland

Twelve Measures on November Ballot

Measure numbers have been assigned to the four legislative referrals from the 74th Legislative Assembly and the eight initiative petitions that have qualified for the November 4, 2008, General Election Ballot.

Measures included would prohibit teaching a student in a language other than English for more than two years in public schools, remove seniority as a factor in teachers’ raises, exempt some property owners from the building permit process if the project value is less than $35,000, and create an open primary.

In addition, there are competing measures that would increase sentencing for certain property crimes.

Visit this site to see the measure summaries:
http://www.oregonvotes.org/nov42008/nr_meas_numbers.pdf

September 2, 2008

2008 House of Delegates Resolutions

This year the Annual Meeting of the OSB House of Delegates will be held at Sunriver Resort, September 13, 10:00 a.m. Although only delegates may vote on resolutions, all bar members are encouraged to attend and participate in the discussion and debate of agenda items.

There are a total of eleven resolutions submitted by the House of Delegates (HOD) and Board of Governors (BOG). They include: 1) encouraging the Oregon Supreme Court to adopt a new court rule for provision of legal services following a major disaster; 2) allowing the designation of alternate HOD delegates; 3) adopting Oregon RPC 1.6(b)(7), an additional exception to the duty of confidentiality; 4) encouraging the BOG to implement policies to promote sustainability by encouraging telephonic and video court appearances; 5) recommending that the BOG study the feasibility of creating an OSB paralegal certification program; 6) recommending that the BOG study the issuance of fiscal impact statements on sentencing; 7) recommending that the BOG create a HOD Executive Committee to encourage preparation and communication among delegates for the HOD annual meetings; 8) amending the HOD quorum requirement; 9) encouraging the bar’s continuing participation in the establishment of a plan to achieve fair compensation for public defense providers; 10) supporting adequate funding of legal services (two separate resolutions filed).

Bar members that are unable to attend the meeting are encouraged to contact their delegates to express their views on the items to be considered. For more information about the House of Delegates, or to read the resolutions, click here:
http://www.osbar.org/leadership/hod/meeting.html

If you have questions concerning the meeting, please contact Teresa Wenzel, Executive Assistant, at (503) 431-6386 or twenzel@osbar.org.
Measure 59

Oregonians will vote in November on a number of significant ballot measures, but perhaps none with implications as far reaching as Measure 59. Sponsored by tax limitation activists Bill Sizemore and Russ Walker, Measure 59 would create an unlimited deduction for federal income taxes on individual taxpayers’ state tax returns. A similar measure appeared as Measure 91 on the November 2000 ballot and was voted down 55 percent to 45 percent.

Measure 59 would provide a tax cut for about 500,000 Oregon taxpayers. The other 1.3 million taxpayers can already deduct all their federal taxes under current law, and would see no change in their Oregon tax bill from passage of this measure.

Passage of Measure 59 would have a significant fiscal impact on the state’s general fund. It would reduce expected general fund income by $1.3 billion, nearly 9 percent, during the next two year budget cycle (2009-2011), and by $2.4 billion, nearly 14 percent, in the 2011-2013 biennium.

Measure 59 would also reduce the state’s bonding capacity by $130 million per year, 21 percent, over a six year period. The state uses bond proceeds to build prisons, public buildings, and other public facilities, including the Oregon Judicial Department’s eCourt Project.

Several factors could magnify the revenue losses that Measure 59 would cause:

- If federal taxes increase, especially for higher income people, the fiscal impact will be more extreme. The more people pay in federal taxes, the higher the deductions allowed under this measure and the lower the revenue to the state. Some increase in federal taxes is likely given the expiration of the Bush tax cuts in the next several years.
- State general fund budget cuts would also reduce income to the state from the federal government, since much federal funding is in the form of federal matching funds. For every dollar the state cuts from a matching fund program – for example, Medicaid – the state loses two dollars of federal funding.

The 2007 legislature worked to restore budget cuts made during the 2001-2003 recession and began to address some nagging problems in Oregon’s justice system, including judicial salaries and adequate funding for indigent defense. Passage of Measure 59 would likely take further improvements off the table for the foreseeable future.

New Oregon Law Commission Work Groups Formed

The Oregon Law Commission met in July and approved the formation of work groups to study the following issues:

- Review and recommend changes to SB 1092 (2008), which requires notice to schools of certain juvenile delinquency petitions
- Implement the Uniform Interstate Depositions and Discovery Act
• Implement the Uniform Environmental Covenants Act, dealing with “brownfield” issues
• The interplay between Oregon’s various child abuse reporting statutes
• Emergency preparedness: liability of responders and their employers for torts committed in the course of responding to disasters, storms, and other kinds of emergencies

The Commission will also form an internal group to consider reviving parts of bill they introduced in 2001 and 2003 dealing with judicial review of governmental action. The group will not consider provisions of the former bill that would affect cases under the Administrative Procedures Act.

Some of the work groups are likely to recommend bills for consideration in the 2009 legislative session. One likely candidate is SB 1092. The bill was passed in 2008 but included a note requiring the Commission study it further, and set the effective date for Jan. 1, 2009. The study on child abuse reporting statutes will be a more lengthy study and will not be completed prior to the 2009 session due to the complexity of the issue.

Work groups are made up of commissioners, volunteers selected by the Commission based on their professional areas of expertise, and volunteers representing community interests particularly affected by the law in question. The bar works closely with the Commission to ensure participation by bar members who practice in the areas affected.

For more information about the Oregon Law Commission, click here: http://www.willamette.edu/wucl/oregonlawcommission/

**New Workers’ Compensation Rule Creates Controversy**

The Workers’ Compensation Division adopted a temporary emergency rule in July that involves the intersection of workers’ compensation medical practice with preferred provider organizations (PPOs). The new rule changes the rates doctors are paid to treat injured workers. Medical providers argue it will affect medical practice directly and will reduce the number of doctors who are willing to take workers’ compensation patients.

PPOs channel patients to a network of doctors at reduced rates, and doctors discount their fees to PPO patients in order to gain business volume. PPOs are maintained by separate business entities, which charge insurance companies to access that PPO list. The benefit to insurers is lower premiums, which in turn brings that insurer more business.

Likewise, the physicians on the panel receive the promise of increased volume in exchange for decreased rates. But payments to doctors in workers’ compensation cases have been higher than payments for general health care, since workers’ compensation payments must cover the paperwork and the oversight burden of caring for injured workers.

Medical providers contend that until this new rule was imposed, the Workers’ Compensation Division had been requiring insurance companies to pay doctors at non-discounted rates, even if the doctors were under contract with PPOs that would seem to
cover workers’ compensation cases. Current law does not prohibit providers and PPOs from entering into contracts for discounted rates. When a number of physicians successfully challenged decreased payments received from Coventry, its insurer Liberty Mutual contacted the Workers’ Compensation Division, which promulgated the new emergency rule. The recently adopted rule requires that payments to doctors under PPO contracts that cover workers’ compensation cases be at the reduced PPO rate.

The Workers’ Compensation Division contends that the temporary rule is a matter of clarification, and was promulgated in response to a number of fee disputes filed between providers and insurers about discounted rates in PPO contracts. The Division explains that it was put in place to maintain the status quo while the issue is studied further, and that without the temporary rule, Workers’ Compensation costs for employers would increase.

The temporary rule is in effect for six months and the Division is in the process of seeking comments on replacing it with a permanent rule. Medical providers have objected to the new rule, have filed an appeal, and are litigating a number of cases in the administrative process. This issue is likely to make its way to the legislature in 2009.