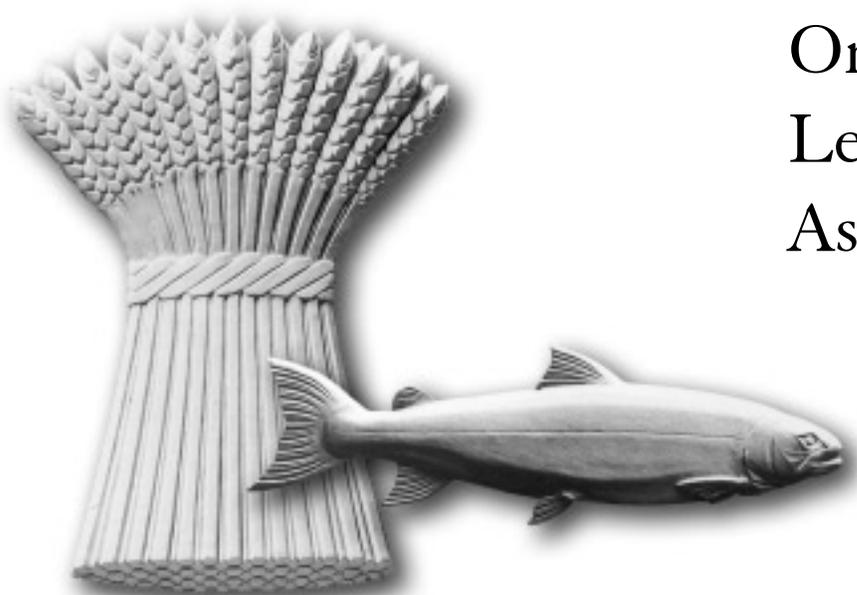


*Oregon
Legislative Assembly* 2001

Summary of Major Legislation



71st
Oregon
Legislative
Assembly

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Committee Services

Summary of Major Legislation

2001

The **2001 Summary of Major Legislation** is a compilation of selected bills, memorials, and resolutions considered by the Seventy-first Oregon Legislative Assembly. Summaries contain background information, effects of enacted measures, and effective dates. Summaries of vetoed bills and text of the Governor's veto messages are included. For ease of use, a subject index and a chapter number conversion table for the 2001 Oregon Laws may be found at the end of this publication.

Although material in this document was reviewed for accuracy prior to publication, specific legal matters should be researched from original sources. The Legislative Administration Committee makes neither expressed nor implied warranties regarding these materials.

Complete measure history and final vote tallies may be obtained by consulting the *Final Legislative Status Report, Regular Session 2001*. Copies of bills, resolutions, memorials, amendments, and the *Status Report* are available from Legislative Publications and Distribution. Information about the legislature is also available on the website <http://www.leg.state.or.us>.

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OTHER RESOURCES

These reports are available from the Legislative Fiscal and Revenue Offices and on the Internet.

- *Budget Highlights: 2001-2003 Legislatively Adopted Budget* - Summarizes major budget actions - Please contact the Legislative Fiscal Office for this document.
Legislative Fiscal Office
900 Court St. NE, H-178 State Capitol
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503-986-1828
<http://www.leg.state.or.us/comm/lfo/home.htm>
- *Revenue Measures Passed by the 2001 Legislative Assembly* - Summarizes legislation related to revenue - Please contact the Legislative Revenue Office for this document.
Legislative Revenue Office
900 Court St. NE, H-197 State Capitol
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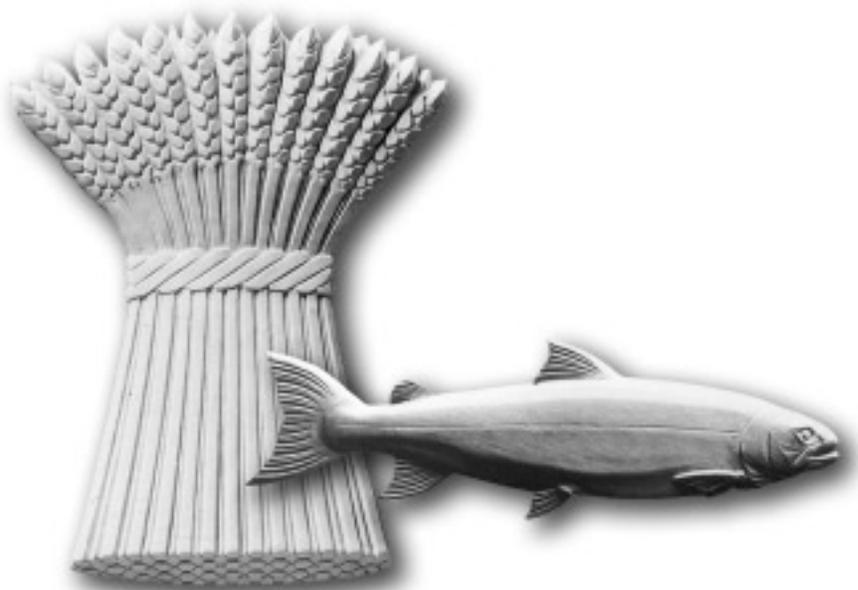
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Economic Issues

Business, Consumer
Affairs And Economic
Development



2001 Summary of Major Legislation

Senate Bill 101

Relating to Higher Education Technology Transfer Fund

SB 101 establishes the Higher Education Technology Transfer Fund and creates the Higher Education Technology Transfer Fund Board to manage the fund and promote higher education institution technology transfers which transfer new knowledge and technology for the benefit of the public and generate royalty income for distribution to investors, departments and institutions. Moneys from the fund are to be disbursed to campuses within the Oregon University System, community colleges, and private institutions to support technology transfer efforts.

Effective date: August 8, 2001

Senate Bill 102

Relating to Higher Education Technology Transfer Account

In order to promote technology transfer efforts by the Oregon University System, (OUS), SB 102 establishes the Higher Education Technology Transfer Account and the Higher Education Technology Transfer Account Board. The measure allows OUS to hold stock received in exchange for a company's right to use an OUS-developed technology, similar to typical financing arrangements for start-up companies that commercialize new technologies. The OUS schools are currently prohibited constitutionally from owning stock, and have therefore been unable to participate in such arrangements, thereby restricting the ability of OUS campuses to capitalize on the technologies they develop. The restriction has effectively limited OUS schools to working only with larger, established companies, leaving Oregon start-up companies without access to new locally developed technologies.

The Oregon Constitution authorizes the Education Endowment Fund to hold stock. Under provisions of SB 102, the Higher Education Technology Transfer Account Fund will be located within the Education Endowment Fund, which will allow OUS institutions the ability to deposit into the Account any stock received from a start-up company in exchange for the company's right to use an OUS developed technology.

The legislature also referred SJR 17 to the voters for consideration at the May 2002 Primary Election. If enacted, SJR 17 would allow OUS to own stock directly

and void the need to deposit stock into the Education Endowment Fund.

Effective date: July 27, 2001

Senate Bill 194

Relating to landlord-tenant law

SB 194 modifies various provisions of Oregon's landlord-tenant law. The measure provides that a notice of rental termination for a tenant's second offense may be as short as ten days. The measure excludes homeowners and buyers from landlord-tenant laws when occupancy is related to transitions associated with a home sale. The measure also revises the forms and procedures for forcible entry and detainer (eviction) processes in residences and creates new provisions for non-residential premises.

SB 194 adds provisions relating to rental spaces for manufactured dwellings and floating homes, including guidelines for fixed term tenancies, landlord waiver of the right to terminate a tenancy, and a prohibition on charges for pet fees or deposits on existing tenants.

SB 194 was the product of collaboration between landlords and tenants in their continuing effort to make the laws and processes clear, fair, and equitable to both parties. Two separate coalitions met over twenty times each to produce the Senate and House amendments to this measure.

Effective date: January 1, 2002

Senate Bill 304

Relating to semi-independent status of Appraiser Certification and Licensure Board

SB 304 converts the Appraiser Certification and Licensure Board to semi-independent state agency status. The measure reduces the number of board members from ten to seven. Composition of the board is modified by reducing the number of certified appraisers from five to four, deleting the member who is a licensed appraiser, reducing the number of individuals employed by a financial institution or a mortgage banker from two to one, and reducing the number of public members from two to one. Board members will continue to be appointed by the Governor, subject to Senate confirmation.

Semi-independent agency boards adopt biennial budgets that do not require review or approval by the legislature. Proposed fee increases require a public hearing prior to board action. The boards must adopt personnel

policies, contracting, and purchasing procedures and follow generally accepted accounting principles in their financial management. The Secretary of State or a certified public accountant audits the financial management of the board. Semi-independent boards are required to submit reports to the Governor and the legislature at the beginning of each regular legislative session. The reports must include: audit reports, adopted budgets, processes for public hearings, fee changes and justifications, licensee information, reports on complaints, investigations, and sanctions, rule changes, public meetings records, consumer publications, and outreach programs.

Effective date: June 22, 2001

Senate Bill 383

Relating to alcoholic beverages

SB 383 makes technical revisions to Oregon's laws regulating the consumption of alcoholic beverages. The measure changes the fee for annual Oregon Liquor Control Commission (OLCC) licenses, for full on-premises sales by a private club, from a variable fee of \$100 to \$300 (depending on the number of members), to a flat \$200. The measure allows OLCC to advertise in new locations for a limited time and requires the agency to consider seasonal population changes when determining if adequate premises exist in a given locale. SB 383 also requires OLCC to determine whether the licensed premises has a history of serious and persistent noise problems or maintains a noisy establishment when determining whether to issue, suspend, or cancel an OLCC license.

Effective date: July 18, 2001

Senate Bill 446

Relating to licensing by the Real Estate Commissioner

SB 446 revises Oregon's licensing system for real estate personnel. The measure requires real estate salespersons to upgrade to a broker license within three years through the completion of additional educational requirements. The measure also requires real estate property managers to upgrade their licenses through the completion of additional educational requirements. It directs the Real Estate Commissioner, with advice from the industry and the public, to prescribe rules for certified continuing education courses.

SB 466 establishes a process for real estate brokers to

enter into an agreement designating a "principal real estate broker" to provide authority over other brokers. SB 466 also allows real estate record keeping in a format determined by the Real Estate Commissioner. The measure defines fiduciary duties required of sellers' agents and buyers' agents, and clarifies the liability of sellers, buyers, principal real estate brokers, and other real estate licensees.

Before the advent of buyer agencies, a real estate agent's primary duties included procuring a buyer for a property, the listing of which belonged to (and still belongs to) the broker, regardless of which agent procured the listing on behalf of the broker or principal. A sales associate worked as a sub-agent of the broker with no fiduciary responsibilities to the buyer. Oregon now recognizes the buyer-agency relationship, wherein the sales associate works directly as the agent for the buyer and owes the buyer fiduciary duties just as an agent owes fiduciary duties to a seller. SB 446 requires current entry level real estate sales persons to upgrade their licenses to broker, which would give buyers clearer representation and eliminate the often confusing sub-agency relationship.

SB 446 further updates Oregon's real estate licensing laws to reflect current business practices and to address the advent of electronic record-keeping technologies.

Effective date: January 1, 2002

Senate Bill 485

Relating to employment

Senate Bill 485 makes necessary technical changes to correct problems with the way Oregon's workers' compensation system works and begins to address the issues arising out of the Oregon Supreme Court's *Smotherers* decision (*Smotherers v Gresham Transfer Inc.*, SC S44512, May 2001).

SB 485 directs the workers' compensation Management Labor Advisory Committee (MLAC) to address the *Smotherers* decision and to recommend to the 2003 Legislature an exclusive, expeditious, no-fault alternative process to the court system that addresses major contributing-cause denials. SB 485 also clarifies the process injured workers must follow to exhaust their workers' compensation remedies, shielding all parties from the extra cost of having to pursue both workers' compensation claims and court cases at the same time.

SB 485 changes the law of pre-existing conditions in

three ways. First, it narrows the definition of “pre-existing condition” so that it excludes predisposing factors like age, gender, and family history. Second, it prohibits consideration of “pre-existing conditions” that were never diagnosed or treated before the injury. Finally, it partially reverses the burden of proof by requiring an employer to prove whether a pre-existing condition is the primary cause of a worker’s problems before a claim can be denied. The measure also makes a temporary increase in disability rates to move Oregon’s rates to the national median.

The measure also provides a compromise in response to another significant liability exposure to employers from the *Johansen* court decision (*Johansen v. SAIF*, A100445, May 1999), which essentially removed all time limits on an employer’s liability for disability benefits related to a work injury. The measure streamlines and restructures benefits so that any time loss or permanent disability benefits paid beyond five years are reimbursed to the insurer from the Workers’ Benefit Fund.

Under SB 485, workers can receive treatment necessary to stabilize the worker up front so that there is no further disability. Workers’ compensation insurers and health plans would negotiate payment of the bill if the claim is denied. This concept will provide assurance of full payment to providers on the majority of denied claims.

Under existing law, workers may file Employer Liability Act (ELA) claims against third parties other than their own employers who have control over the conditions at a hazardous work site, such as a general contractor on a construction project. SB 485 prohibits a worker who is deemed to be more than 50 percent at fault in his or her own injury from recovering costs through ELA claims.

The original bill was a negotiated product of a committee of three representatives of management and three representatives of organized labor. The Senate version of the measure was completed prior to the Oregon Supreme Court decision in the *Smothers* case in May 2001. The *Smothers* decision challenged the concept of exclusive remedy in Oregon’s no-fault workers’ compensation insurance system, and thereby brought into question the results of the original negotiations on SB 485. The measure as amended by the House went through a similar negotiation process by three representatives each of management and organized labor. Provisions of the final measure were reviewed and endorsed by MLAC.

Effective date: July 30, 2001

Senate Bill 755

Relating to Internet gambling

SB 755 makes it illegal to accept credit cards, electronic transfers, checks, or other financial transactions in connection with operating an illegal Internet gambling operation. Under the provisions of the measure, financial institutions are not acting illegally by processing transactions or collecting debts related to unlawful Internet gambling, and they may collect Internet gambling debts paid in violation of the law. The measure clarifies that legal gambling connected to racing is exempt from provisions of the measure.

It is illegal under federal Racketeer Influenced and Corrupt Organizations (RICO) laws and the Unlawful Trade Practices Act for financial institutions to process credit card and other financial transactions to collect on debts from unlawful Internet gambling. This measure exempts financial institutions from liability for processing these transactions.

Effective date: June 21, 2001

Senate Bill 832

Relating to Oregon Health Sciences University

SB 832, also referred to as the “Oregon Opportunity Act,” authorizes up to \$200 million for investment in research facilities at Oregon Health and Science University (OHSU). The measure allows OHSU to use state-backed bonds to construct new research facilities and recruit additional scientists to help create a biotechnology industry in Oregon.

The legislature also referred HJR 19 to the voters for consideration during the May, 2002 Primary Election. HJR 19 would amend the Oregon Constitution to authorize the sale of state general obligation bonds to finance capital improvements at OHSU, such as laboratory space, equipment, and resources to attract and recruit top scientists. State funds authorized by SB 832 will be augmented by a \$300 million private OHSU fundraising campaign.

Effective date: August 8, 2001

Senate Bill 843

Relating to energy

SB 843 modifies the criteria for the temporary siting of certain energy generation facilities. The measure de-

fines “temporary energy generating facility” and “standby generation facility” and creates exemptions from site certification requirements for such facilities. The measure places limits on the operation of these facilities to no longer than 24 months after the date of first commercial operation or January 2, 2006, whichever is earlier, and prohibits the granting of exemptions after July 1, 2003.

SB 843 changes the level at which a power plant can qualify for expedited review from the Energy Facility Siting Council (EFSC) to those with an average generating capacity of 100 megawatts or less. The measure also changes EFSC jurisdiction over renewable energy resource facilities from facilities producing 35 peak megawatts to those producing 35 average megawatts, and sets the process for determining average megawatts.

The measure allows the Public Utility Commission to use arbitration to resolve valuation disputes relating to electric company investments. It removes requirements that investments by electric companies that fit into the categories of “economic utility investment” and “uneconomic utility investment” be made prior to the date an electric company offers direct access to businesses.

Effective date: May 14, 2001

House Bill 2052

Relating to public contracting

HB 2052 is designed to discourage the practice of “bid-shopping” — when a contractor is awarded a bid and then seeks to change subcontractors to reduce expenses. The measure requires contractors to disclose a list of first-tier subcontractors four hours prior to the closing of a bid on a public works or improvement contract. The measure requires permission from the Construction Contractor’s Board (CCB) to substitute a first-tier subcontractor. The measure directs the CCB to pursue complaints and to impose penalties as necessary. HB 2052 also clarifies the criteria that a contractor may use to substitute a subcontractor on a public works contract.

Effective date: January 1, 2002

House Bill 2105

Relating to telephone service

HB 2105 extends the sunset date for the Residential Service Protection Fund from January 1, 2002 to January 1, 2010. The Residential Service Protection Fund program, established by the 1987 Legislative Assem-

bly, was created to provide adequate and affordable residential telecommunication services to low-income persons and persons with medical conditions and disabilities.

The law also allows for Emergency Medical Certificates, which maintains a customer’s local phone connection if a qualified medical professional states that disconnection would significantly endanger the physical health of the customer or a member of the customer’s family.

The Residential Service Protection Fund programs are currently funded by a 10-cent monthly surcharge levied on each telephone line in Oregon that has access to the relay services, including wireless services.

The purpose of extending, but not removing, the sunset date is to give the Public Utility Commission and legislators a chance to review the programs and ensure that services are maintained appropriately.

Effective date: January 1, 2002

House Bill 2127

Relating to State Landscape Contractors Board

HB 2127 converts the State Landscape Contractors Board to semi-independent state agency status.

Under semi-independent status, a board adopts biennial budgets that do not require review or approval by the legislature. Proposed fee increases require a public hearing prior to board action. The board must adopt personnel policies, contracting and purchasing procedures and follow generally accepted accounting principles in its financial management. The Secretary of State is required to audit the financial management of the board. The board is required to submit a report to the Governor and the legislature at the beginning of each regular legislative session.

The State Landscape Contractors Board (LCB) licenses both individuals and businesses. An individual who is a landscape contractor must qualify by experience and training and pass an examination to become licensed. A business that does landscape construction must submit a bond and employ licensed landscape contractors in order to obtain a business license. The LCB investigates and resolves consumer complaints and enforces landscape contractor licensing statutes. There are over 1,200 individuals and 900 businesses licensed with the LCB. LCB programs were administered previously by the staff of the Construction Contractors Board.

The 1997 Legislative Assembly converted the licensing and registration boards for five Oregon professions

(architects, landscape architects, engineers, geologists, and optometrists) to semi-independent state agency status. In 1999 the legislature added physical therapists and massage technicians to the list of semi-independent agencies.

Effective date: January 1, 2002

House Bill 2153

Relating to regulation of building activities

HB 2153 requires cities and counties which administer building inspection programs to attempt to verify that construction trade workers (e.g., plumbers, electricians) have a valid, state-issued license and that cities and counties with plumbing and electrical inspection programs accept full responsibility for investigating and enforcing state building codes in these two areas.

The measure creates an identical set of fines and procedures for persons who violate state building codes by not having an appropriate license. HB 2153 creates a fine of no more than \$5,000 per violation and \$1 million per year. The measure requires the Department of Consumer and Business Services (DCBS) to administer the process and appropriates all collected fines to DCBS to fund the program.

Prior to HB 2153, a number of state boards (e.g., Plumbing Board, Board of Boiler Rules, Electrical and Elevator Board) developed varying rules and fines for the processing of license violations. HB 2153 attempts to create a consistent process and schedule of fines for the five-state specialty-code boards within DCBS.

Effective date: January 1, 2002

House Bill 2275

Relating to lottery bonds

HB 2275 authorizes issuance of lottery bonds by agencies for specified purposes. The measure also establishes new accounts for some of the programs and projects to be funded, and in some cases places conditions on the bonding authority. Authorizations for projects in the 2001-03 biennium include: Economic Development Infrastructure loans and grants (\$132 million); Housing and Community Services Incentive Fund (\$20 million); DEQ matching funds for sewer projects (\$8 million); State Fair facilities (\$10 million); South Metro Commuter Rail project (\$20.2 million); short line rail assistance (\$2 million); purchase a railroad spur in Wallowa and Union Counties (\$2 million); Public Broadcasting in Oregon (\$8 million); agriculture, life science,

and health building at Eastern Oregon University (\$9 million); library building at Southern Oregon University (\$5 million). HB 2275 also increases the bonding authority for the non-federal share of the Columbia River channel-deepening project to \$ 25.2 million.

Effective date: August 9, 2001

House Bill 2406

Relating to support services to microenterprises

HB 2406 adds development of microenterprise businesses in Oregon, as well as providing training and technical assistance to those businesses, to the list of primary duties of the Oregon Economic and Community Development Department (OECDD). The measure requires the OECDD to convene a workgroup on microenterprise development and defines the membership and goals of that workgroup. It requires the OECDD to include information on its progress in serving microenterprises and to make recommendations for increasing the success of microenterprises in its biennial report to the Governor and Legislative Assembly on the success of the agency's overall economic development efforts.

A microenterprise is a small business with fewer than five employees that is capitalized at less than \$25,000. Public support of "start-up" businesses is often focused on enterprises that will have the greatest positive impact on a community (for example, a greater number of employees, better capitalization, or less risk). A microenterprise is often not considered a "small business" and therefore receives little or no support from other economic development programs. This is particularly true in smaller and rural communities that tend to be underserved or are economically distressed. Federal programs currently fund a portion of the financial requirements for 40,000 microenterprise entrepreneurs in Oregon.

Effective date: June 18, 2001

House Bill 2728

Relating to claims against construction contractor bond

HB 2728 increases, from \$2,000 to \$3,000, the total of payments from a Construction Contractors Board bond that can be made to non-owner claimants.

Construction contractors must maintain surety bonds in order to remain licensed with the Construction Contractors Board (CCB). Required bond amounts are \$15,000

for general contractors, \$10,000 for specialty contractors and \$5,000 for limited contractors. The bond is used to pay final orders issued by the CCB if the contractor fails to pay the final order on a claim. Homeowner claimants have priority on the bond. Non-owner claimants, such as suppliers or sub-contractors, have access to payment from the bond only if all homeowner claims, filed within the same 90-day period or earlier, have been paid. Total payment to non-owners from a bond is currently limited to \$2,000. The \$2,000 limit was established in law when the required bond amounts were \$5,000 or less. Over the years, bond amount requirements have increased, but the amount of the bond that can be paid to non-owners has not. HB 2728 increases the amount available to non-owner claimants to \$3,000.

Effective date: January 1, 2002

House Bill 2744

Relating to minimum wage requirements

HB 2744 prohibits a local government from setting local minimum wages except for public employers and as part of the requirement for public contracts. The measure does not affect statewide minimum wages.

Local governments in many locations around the country are passing “living wage” ordinances. For example, the Alexandria, Virginia City Council adopted a living wage ordinance that requires contractors, excluding construction, working on city-owned or city-controlled property, to pay a minimum wage of \$9.84 per hour to their employees. Similar laws have been passed in Detroit, Baltimore, Tucson, San Francisco, Berkeley, Santa Cruz, and Los Angeles County.

The Corvallis living wage law, implementing an initiative approved by Corvallis voters in November 1999, calls for a minimum wage of \$9 per hour, adjusted annually by the Consumer Price Index (CPI). Ashland and Portland have also considered living-wage laws.

HB 2744 addresses the proliferation of local minimum “living wage” laws and attempts to ensure that those laws, which to this point have only affected public contracts, are not some day extended to private businesses.

Effective date: January 1, 2002

House Bill 2764

Relating to mortgage lending

HB 2764 establishes continuing education requirements for loan originators and a mechanism by which the Department of Consumer and Business Services (DCBS) may oversee complaints about loan originators. The measure represents an effort to enhance industry professionalism and protect consumers from loan originators who, when given access to personal financial information, have the opportunity to take advantage of loan applicants.

HB 2764 specifically defines “loan originator” in Oregon statute and requires DCBS to maintain a record of loan originators. The measure specifies that loan originators must complete entry level training and pass an examination on laws and rules related to mortgage lending in the state, with exceptions for those who have been employed for two or more years as loan originators (who must instead complete continuing education courses.) The measure permits DCBS to adopt rules for continuing education requirements and to establish initial education requirements.

Prior to the passage of the measure, no statutory requirement existed for firms or brokers to ensure that loan originators have entry-level training or proven competency on laws and regulations governing mortgage lending.

Effective date: January 1, 2002

House Bill 2767

Relating to unemployment benefits

HB 2767 allows victims of domestic violence to collect unemployment benefits. Victims of domestic violence may not be safe at work, and the victim’s workplace is oftentimes the only place the perpetrator knows to find the victim. HB 2767 allows victims to stay away from work and collect unemployment benefits if they are not able to work due to the threat of violence by a domestic partner. The measure defines domestic violence and states conditions under which victims are eligible for unemployment benefits. By providing unemployment benefits to victims of domestic violence, the measure attempts to put time and distance between victim and perpetrator, a well-known technique for stopping the violence.

Effective date: May 17, 2001

House Bill 2867

Relating to penalties for violations of wage laws

HB 2867 authorizes the Commissioner of the Bureau of Labor and Industries to assess civil penalties of up to \$1,000 against employers who violate statutes setting minimum wages or payment upon termination. HB 2867 also limits the penalty wages, assessed when the employee's wages are unpaid upon termination, to no more than 100 percent of unpaid wages, if the employer pays the employee within 12 days after written notice or if the employee fails to send written notice. The penalty limitation does not apply when an employer has committed a willful violation during the previous year.

Under previous law, if an employer willfully failed to pay wages to an employee whose employment ceases, those wages continued as a penalty payable to the employee, from the due date until paid, action commenced, or up to 30 days, whichever came first. The extra amount was called "penalty wages". HB 2867 addresses the concern that some employees took advantage of the penalty-wages provision by waiting to notify the employer of wages due. HB 2867 substitutes, under certain conditions, a civil penalty in place of penalty wages.

Previously, an employer who inadvertently underpaid an employee when final wages were due might have had to pay a 30-day wage penalty, far exceeding the wages owed. Previously, the employee did not have to notify the employer of underpayment, whereas HB 2867 requires that the employee send notice of underpayment to the employer.

Effective date: January 1, 2002

House Bill 2891

Relating to unemployment insurance

HB 2891 establishes a 14-member task force, staffed by the Employment Department, to study and report on the issue of extending unemployment benefit eligibility to workers on leave due to the birth or adoption of a child. HB 2891 also directs the task force to study other paid family leave issues.

Unemployment insurance is a benefit available to workers out of work through no fault of their own. The money for unemployment benefits comes from employers; no contributions for unemployment insurance come from employee wages. The benefit amount depends upon the rate of pay for work previously performed. Benefits range from \$88-\$376 per week.

Unemployment benefits are generally reserved for those who are able to work, available for work, actively seeking work, and unable to obtain suitable work. There are exceptions for training and victims of domestic violence. A federal Department of Labor Employment and Training Administration rule (20 CFR Part 604, RIN 1205-AB21, "Birth and Adoption Unemployment Compensation", effective August 14, 2000) allows states to use unemployment compensation to provide partial wage replacement to employees who leave employment following the birth or adoption of a child.

HB 2891 establishes a task force to study the feasibility and potential funding mechanisms for extending unemployment benefits to new parents, as well as to workers on other forms of family leave. The task force is to report to the appropriate interim committee by September 1, 2002.

Effective date: June 27, 2001

House Bill 3007

Relating to business relationships

HB 3007 Attempts to reduce the amount of mercury used in Oregon and, as a result, reduce the amount that is released into the air and water. It bans or phases out the use of mercury in products for which replacements are available, including thermometers, thermostats, novelty products, and automotive light switches.

HB 3007 phases out the sale of mercury fever thermometers beginning July 2002. The measure criminalizes the manufacture, sale, or distribution of mercury fever thermometers under the Unlawful Trade Practices Act (UTPA), except those required under federal law and prescription.

HB 3007 requires the phasing out of installation of new mercury thermostats by January 1, 2006, making Oregon the first state to take such action. It requires the Construction Contractor's Board (CCB) to establish a process for disposal and delivery of devices containing mercury by persons installing heating, ventilation, or air conditioning systems by January 1, 2003. The measure also requires labeling of thermostats containing mercury and directs the CCB to provide an annual notice about the prohibition and proper disposal methods for thermostats containing mercury to each contractor licensed to install them.

HB 3007 bans the sale of novelty products containing mercury, such as children's toys and games. It requires anyone crushing a car to remove and properly dispose

of the light switches under the hood and trunk if those switches contain mercury. It prohibits the sale of new vehicles containing mercury switches after January 1, 2006, per UTPA, and requires the Department of Environmental Quality to assist local agencies in providing technical assistance to businesses involved with crushing and servicing motor vehicles in the removal and proper disposal of mercury light switches.

Mercury is a persistent and toxic pollutant. The public is most directly exposed to mercury through eating contaminated fish from nine lakes and rivers in Oregon, including the Snake River, East Lake, the Dorena Reservoir, and the entire mainstream of the Willamette River. Mercury is also used in a range of products, including thermometers, thermostats, various switches, measuring devices, and as a component of vehicle light switches. There is no known process for removing mercury once it has entered the human body.

Effective date: August 8, 2001

House Bill 3009

Relating to utilities

HB 3009 grants the Public Utility Commission (PUC) authority to approve a natural gas utility rate for residential customers that includes funds for a bill payment assistance program for low-income residential customers.

The process for the PUC and a public utility to request, establish, change, refund, suspend, and set interim rates is provided in statute. HB 3009 authorizes natural gas utilities to provide a low-income bill payment assistance program similar to that already authorized for electrical utilities.

Effective date: January 1, 2002

House Bill 3350

Relating to payment of prevailing wage rate on public works projects

HB 3350 exempts, from the prevailing wage law, projects that are financed without public funds. Oregon passed its prevailing wage rate (PWR) law, called the "Little Davis-Bacon Act," to ensure that construction contractors compete in their ability to perform work competently and efficiently while maintaining community-established compensation standards. Public works projects are generally covered by PWR laws if they cost \$25,000 or more, are for construction, reconstruction, major renovation or painting, and are not regulated un-

der the Federal Davis-Bacon Act.

The measure results from concern that privately-funded projects on public property, such as athletic fields in southern Oregon and a carousel-project in Salem, should not be required to conform to prevailing wage rates because public funding is not involved in their construction.

Effective date: June 26, 2001

House Bill 3376

Relating to women in the workforce

HB 3376 addresses concerns about the pay and benefit disparities affecting women, and the resulting impact on Oregon families. The measure creates the Task Force on Promotional and Career Opportunities for Women in Oregon, to help document issues surrounding working women's level of earnings, pay equity, business ownership, and the level of education as it relates to pay. The task force is also directed to assess the impact of domestic violence against women in the workforce and the availability of child-care options and resources in Oregon work places. HB 3376 directs the task force to make recommendations for necessary corrective action on these issues and report its findings to the Seventy-second Legislative Assembly.

Effective date: June 20, 2001

House Bill 3441

Relating to Oregon JOBS Plus Unemployment Wage Fund

HB 3441 diverts a portion of the unemployment insurance surtax to generate revenue for the JOBS Plus program. The basic purpose of the JOBS Plus program, created by the 1995 legislature, is to provide jobs in place of unemployment insurance benefits, food stamps, and aid to dependent children. All moneys in the Oregon JOBS Plus Unemployment Wage Fund are appropriated continuously to the Employment Department for the payment of wages and wage-related and administrative expenses of participants in the JOBS Plus Program who would otherwise be eligible to receive unemployment insurance benefits. Such payments are made in the form of reimbursement to the Department of Human Services, which is the central disbursement point for all JOBS Plus employer-related financial transactions.

The budgeted amount for JOBS Plus employer reimbursements for 1999-2001 is \$40 million. Of that amount \$27 million is for JOBS Plus/Unemployment

Insurance claimants. The balance is for JOBS Plus/Adult and Family Services (AFS) clients.

The funding source for employer reimbursements are diverted Temporary Assistance to Needy Families (TANF) benefits (while in JOBS Plus, participants do not receive TANF & Food Stamp benefits; these funds are diverted to the JOBS Plus employer reimbursement fund), diverted Food Stamp benefits, AFS JOBS Plus Funds, and Unemployment Insurance JOBS Plus Funds.

Effective date: January 1, 2002

House Bill 3613

Relating to building inspection programs

HB 3613 requires all new municipally-administered building inspection programs to include the administration and enforcement of all aspects of the state building code, specialty codes, and any related requirements that are subject to municipal enforcement. Under previous law, municipalities may administer and enforce all or part of the state building code.

HB 3613 requires municipalities to submit a plan for assumption of a building code inspection program and to hold regular office hours. The measure requires a municipality that ceases to provide an inspection program to wait two years before resuming another inspection program. The measure allows for an objection process to a municipality assuming a building inspection process. HB 3613 also allows the Department of Consumer and Business Services to assume the administration of a building inspection program under certain specific circumstances.

Effective date: January 1, 2002

House Bill 3759

Relating to unemployment compensation for dislocated workers

HB 3759 reinstates the supplemental unemployment compensation program, which provides extended benefits to eligible workers who exhaust their regular unemployment insurance benefits. Under the provisions of the measure, dislocated workers in training programs – and whose unemployment results from high-energy costs, extended drought, foreign trade, or production shifts to other states – are eligible for supplemental benefits through June 30, 2003.

The receipt of supplemental benefits is conditioned upon

an individual's demonstration of satisfactory progress and attendance in professional technical training. The measure reduces the maximum supplemental benefit amount from 39 to 26 times the most recent weekly benefit amount for dislocated workers in professional technical training programs.

Effective date: July 30, 2001

House Bill 3842

Relating to construction liens

HB 3842 modifies the real property lien law with respect to the sale and purchase of property. HB 3842 requires a seller to notify the buyer of all persons with whom the owner has contracted within the previous two years, provide copies of lien documents, and a copy of a cautionary notice from the Construction Contractors Board. The measure requires the Construction Contractors Board to develop the cautionary notice, which states that under certain circumstances property may be encumbered by liens after the sale.

Oregon's construction lien law protects people and businesses that put equipment, materials, or labor into construction projects. It does so by providing them a right to go to court to request payment for the value they added to real property. Subcontractors, workers, and material suppliers can put a claim (lien) against the property in order to ensure payment, even if the owner has paid the original contractor. One result is the possibility that property owners, including property purchasers, may have to "pay twice" to assure that all bills—for the value added to their real property—are paid, even if the contractor (or seller in the case of a property purchaser) has already been paid in full. This scenario can occur if a contractor fails to pay subcontractors and material suppliers, when there is disagreement over how much is owed, or when a seller fails to pay applicable contractor bills and subsequently sells the property. Not all liens appear on title insurance documents because lien rights exist prior to the time they are recorded.

HB 3842 adds statutory requirements that home sellers provide notices to homebuyers to warn them of Oregon's lien law.

Effective date: January 1, 2002

House Bill 3962

Relating to infant crib safety

HB 3962 makes it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, or sublet any infant crib that is unsafe. The measure specifies features of unsafe infant cribs and sources of infant-crib safety standards. The measure sets a maximum penalty of \$1,000 for commercial violators and \$200 for others. The measure provides exemptions for antique and vintage cribs that are clearly not intended for use by infants and that are accompanied by notices stating as such at the time of sale.

Nationally, a number of infants die each year due to injuries suffered from unsafe cribs. There have also been cases of infant death due to unsafe cribs in Oregon. Examples of unsafe crib features include loose mattress support-connections that can leave lethal gaps, knobs that can hang up clothing, and incorrectly spaced slats. Federal regulation by the U.S. Consumer Products Safety Commission is limited to the manufacture and sale of new products.

Effective date: July 6, 2001

Major Legislation Not Enacted

Senate Bill 439

Relating to the membership of the Workers' Compensation Board

SB 439 would have changed the number of members on the Workers' Compensation Board (WCB) from five to four. The measure would also have modified the qualifications for WCB membership to one representing the interests of employers, one representing the interests of labor, and two public members, one of whom would have served as chair.

The board has authority to review and decide individual medical services disputes as well as to adopt administrative rules in conjunction with the Director of the Department of Consumer and Business Services (DCBS). The size of the WCB has varied over the years, from as high as nine members (1989) to as few as three members (1985-1988). The workload of the WCB has been falling steadily since 1990, but is now expected to remain steady.

The current five-member WCB oversees the Hearings Division, whose 31 Administrative Law Judges (ALJ) conduct contested case hearings and provide alternative dispute resolution for workers' compensation matters as well as for Oregon Occupational Safety and Health Division citations and orders. The Board is also the appellate body that reviews ALJ workers' compensation orders on appeal, exercises own-motion jurisdiction, and reviews Claim Disposition Agreements (compromise and release of workers' benefits). In addition, the Board conducts hearings/reviews of appeals from Oregon Department of Justice decisions regarding applications for compensation under the Crime Victim Assistance Program, and resolves disputes between workers and workers' compensation carriers arising from workers' civil actions against third parties. Thirteen staff attorneys perform legal research and draft orders to assist the board. The board also furnishes policy advice on workers' compensation issues to the DCBS Director.

Senate Bill 830

Relating to public employee collective bargaining

SB 830 would have modified the method for selecting an arbitrator for public employee collective bargaining and the criteria used by an arbitrator to decide between parties' last best offer packages. It would have prohibited enforcement of arbitration awards under certain circumstances and prohibited parties from agreeing to alternative arbitration procedures. The measure also would have eliminated the arbitration alternative in cases of teacher dismissal appeals.

House Bill 2214

Relating to unauthorized change in customer telecommunications services

HB 2214 would have imposed a graduated set of fines on telecommunications companies that conduct "slamming," which is the adding of a service to a telephone bill without the expressed consent of the customer. HB 2214 would have also aligned Oregon telecommunications services statutes with federal law.

House Bill 2418

Relating to disqualification from receipt of unemployment benefits

HB 2418 would have disallowed unemployment benefits to individuals who failed an employer's drug or alcohol test, failed to cooperate fully with such testing, were under the influence of intoxicants during work, or were in possession of drugs unlawfully during work. HB 2418 also would have disallowed the use of a defense that the misconduct resulted from use of alcohol or illegal drugs.

Currently, under ORS 657.176, workers are disqualified from receipt of unemployment benefits if they have been discharged for misconduct connected with work or if their absence or tardiness is the result of the unlawful use of controlled substances. Current statute allows absence or tardiness due to the use of alcohol once per year, unless the worker is participating in a recognized alcohol rehabilitation program.

House Bill 2488

Relating to taxation

HB 2488 would have implemented the recommendation of the Oregon Internet Commission (2000) that the state

create income and property tax incentives for businesses to engage in electronic commerce. Specifically, HB 2488 would have provided certified businesses located within electronic commerce zones with preferred income and property tax benefits. Additionally, the measure would have provided property tax exemptions for eligible utilities located within designated energy enterprise zones, to encourage investments by utilities in energy generation and energy resources.

House Bill 2535

Relating to telecommunications utilities

HB 2535 would have prohibited the Public Utilities Commission (PUC) from using directory advertising profits when setting telephone rates charged to consumers by unregulated telecommunications service providers or their affiliated companies. The measure would also have removed the ability of the PUC to consider factors not specifically outlined in law that the commission considered relevant in determining competitive products or services.

Past legislation (HB 2579 and SB 622 in 1999) required telecommunications service providers to choose to be regulated or non-regulated in providing telephone service to consumers. Service providers were to choose their option 120 days after the laws took effect (in 2000.) Opting for regulation required a telecommunications service provider to accept and charge consumers a capped price set by the PUC and to account for revenues and costs of unregulated directory business separately. Opting to be unregulated would have required a provider to establish competitive basic phone charge rates and to include revenues and costs of the telephone directory business as an offset to those charges.

House Bill 2760

Relating to unemployment compensation for certain educational institution employees

HB 2760 would have provided unemployment compensation benefits to classified education employees who are out of work due to school breaks or holiday periods.

Current statute provides for different treatment of non-instruction, non-research, and non-administrative employees of education and higher education. Such employees are not allowed unemployment benefits if there is reasonable assurance that they will be re-hired for a succeeding academic year or term. This makes these employees ineligible for unemployment benefits during

an established and customary holiday period. If they are subsequently not re-hired or become unemployed, through no fault of their own, they are entitled to the payment of benefits otherwise due.

House Bill 2803

Relating to manufactured dwelling park rents

HB 2803 would have limited rent increases for spaces in manufactured dwelling parks. The measure would have created the Manufactured Dwelling Park Rent Review Commission to receive complaints from tenants regarding manufactured dwelling park rent increases and to investigate and penalize unauthorized rent increases.

House Bill 2847

Relating to housing

HB 2847 would have made numerous changes in landlord-tenant law relating to manufactured dwelling park rental agreements. The measure would have required changes in the content and form of purchase agreements for new or used manufactured dwellings to include specification of certain responsibilities of the buyer, such as securing financing and securing a rental agreement for a space in a manufactured dwelling park. The measure would have allowed a purchaser to rescind a purchase agreement under certain circumstances.

HB 2847 would have required an application to rent a space in a manufactured dwelling park be separate from a rental agreement. It would have also allowed a person that rents a space in a manufactured dwelling park to rescind the rental agreement by midnight of the third business day following the date the rental agreement was signed.

House Bill 3042

Relating to adult foster home providers

HB 3042 would have allowed providers of adult foster care homes to participate in state employee health insurance programs at their own expense. Providers of adult foster care homes are not state employees, but contract with the state to provide specialized care for elderly and developmentally disabled persons.

Since 1992, state law has allowed self-pay groups to participate in state benefit plans, if the group meets a minimum participation level equal to 75 percent of the persons in the group. (Persons operating foster homes,

one such self-pay group, are exempt from the 75 percent participation requirement because of their participation prior to January 1, 1992.) HB 3042 would have exempted providers of adult foster care homes from the 75 percent minimum participation requirement.

House Bill 3043

Relating to building designers

HB 3043 would have required persons who design buildings, such as single family residences, to register as building designers. The measure would have authorized the Department of Consumer and Business Services to establish a registration system, and to exempt registered architects and registered engineers from the registration requirement. The measure would have required a minimum of six hours per year of continuing education for renewal of registration.

While most large buildings are required by law to be designed by architects or engineers, less complex buildings, such as houses, are designed by building designers. As determined by statute and the building code building designers design buildings with a ground area of 4,000 square feet or less and not more than 20 feet in height from the lowest flooring to the highest interior overhead finish. Building designers have been particularly active in designing custom homes.

Registration is viewed as a way to establish minimum standards for professions, while assuring knowledge and experience for consumer protection.

House Bill 3740

Relating to off-premises sales licensees

HB 3740 would have required the Oregon Liquor Control Commission (OLCC) to develop an approved training program for store employees who sell alcoholic beverages to the public. The measure would have allowed stores to require that employees complete the training program, and would have prohibited a store from taking disciplinary action against an employee who has not completed an approved training program, with some exceptions.

House Bill 3965

Relating to excessive prices

HB 3965 would have prohibited merchants from selling essential goods or services at unconscionably-excessive

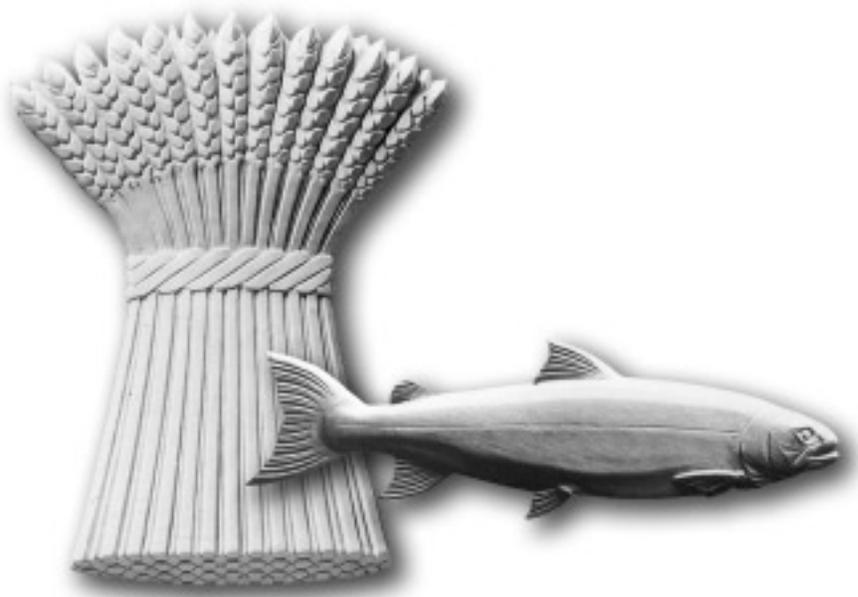
prices during states of emergency or “abnormal disruption of the market” as declared by the Governor. Possible reasons for the Governor’s declaration could include fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous materials, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage, and war. The measure defined “unconscionably-excessive” as prices more than 20 percent higher than normal, unless the increased price could be attributed to costs paid to suppliers.

HB 3965 also would have prohibited pharmacies from exceeding Medicaid fee-for-service prices whenever selling prescription medications to persons who displayed a valid Medicare card. This requirement would have applied only to pharmacies that use electronic claims processing. The measure would have required the Department of Human Services to calculate, and transmit to pharmacies, Medicaid fee-for-service price rates.

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Senate Bill 47

Relating to disabled parking

SB 47 increases penalties for violations of certain disabled parking laws and creates a new offense for persons using invalid disabled parking permits. The measure converts unlawful parking in a space reserved for the disabled, from a Class B to a Class A violation, maintaining first-time infractions at a \$190 minimum fine, increasing fines for subsequent violations to \$450-\$600. Unlawful use of a permit by a non-disabled person also becomes a Class A violation, but with the minimum fine of \$450 applying to the first as well as subsequent violations. The measure maintains a court's ability, under compelling circumstances, to impose less than the minimum fine, but only for first-time unlawful parking violations. A court's ability to impose less than the minimum fine for first-time violators does not apply to misuse of a permit or use of an invalid permit violations, and can no longer be based on the factor of indigency alone. The measure allows waiver of all but \$20 of the fine for unlawful parking if a violator had a valid permit but was not displaying it at the time of the citation.

SB 47 is intended to limit the abuse of disabled parking permits by non-disabled persons who take advantage of parking fee exemptions applied to metered parking.

Effective date: January 1, 2002

Senate Bill 173

Relating to motorized scooters

SB 173 regulates the use of motorized scooters. The measure exempts "motor-assisted" scooter operators from driver license, vehicle registration, and liability insurance requirements. It prohibits operation of motor-assisted scooters at speeds greater than 15 miles per hour, or on highways where the speed limit is greater than 25 miles per hour. It also prohibits operation by persons under the age of sixteen. The measure subjects operators to the same rights and duties as other vehicle operators, but requires the scooters to be in bike lanes or paths, where available, and where use is not prohibited by either local ordinance or by the State Parks and Recreation Department in state parks. The measure specifies equipment and helmet requirements and traffic rules for the scooter operators. This measure is modeled after a California law legalizing motor-assisted scooters.

Effective date: January 1, 2002

Senate Bill 445

Relating to all-terrain vehicles used for agricultural purposes

SB 445 allows an individual to operate a Class I all-terrain vehicle (ATV) on state highways when the vehicle is used for agricultural purposes. The ATV operator must comply with other statutory requirements such as holding a valid drivers license, displaying slow-moving vehicle emblem on the ATV, equipping the ATV with lighted headlight and taillight, and obeying posted speed limits, not to exceed a speed of 20 miles per hour. The violation of operating an ATV unlawfully, is punishable by a maximum fine of \$75.

Effective date: January 1, 2002

Senate Bill 821

Relating to Crater Lake National Park commemorative registration plates

SB 821 directs the Oregon Department of Transportation to design and issue Crater Lake National Park commemorative license plates. The measure specifies a one-time \$20 surcharge for each pair of plates to cover the cost of the plates and to raise money for National Park Foundation projects at Crater Lake. The new plates will be optional to vehicle owners.

The year 2002 marks the centennial of the establishment of Crater Lake National Park, with a rededication of the park scheduled for August that year. Oregon issued Oregon Trail license plates from 1993 through 1997 and an Oregon Salmon license plate was first issued in 1997. The standard Oregon license plate is the "tree" plate.

Effective date: July 20, 2001

Senate Bill 844

Relating to roundabouts

SB 844 modifies traffic laws to cover roundabouts, which are intersections characterized by a circulatory roadway, counter-clockwise traffic, and channeled approaches with yield control of entering traffic. The measure also creates the offense of failure to yield right of way within a roundabout, punishable by a maximum fine of \$150.

Roundabouts are used to move traffic through intersections without stoplights. The City of Astoria is consid-

ering constructing a two-lane roundabout at an intersection with Highway 101. Prior to passage of SB 844, no Oregon traffic laws clearly governed vehicle operation within a roundabout. SB 844 clarifies requirements and is based on Federal Highway Administration guidance.

Effective date: January 1, 2002

Senate Bill 889

Relating to highway beautification

SB 889 authorizes the Department of Transportation to establish fees for sign permits and sign-related outdoor advertising licenses and repeals law authorizing the use of State Highway Fund moneys for administering laws related to signs and junkyards. SB 889 was introduced in response to the Attorney General's opinion that state highway funds can not be used to administer Oregon's Highway Beautification program (related to signs and junkyards along highways in scenic areas) or Oregon's Motorist Information Sign program.

The Oregon Motorist Information Act, approved during the 1970's, regulates outdoor advertising signs visible from state highways through the issuance of annual permits. Oregon also enforces federal highway beautification laws, as a condition of receiving federal highway funds. Prior to passage of SB 889, permit fees that were set in statute several decades ago, covered about 17 percent of the sign program costs. SB 889 deletes the statutory fees and allows ODOT to develop, by administrative rule, fees to cover costs.

Effective date: July 6, 2001

Senate Bill 933

Relating to intergovernmental entities

SB 933 authorizes intergovernmental entities, formed by agreement, to operate, maintain, repair, and improve transportation facilities. The measure includes the authority for such entities, upon voter approval, to issue general obligation bonds and to assess, levy, and collect taxes. Voters may also establish permanent property tax rates. Counties entering into agreements are required to consult with the governing bodies of cities within the county.

Cities, counties, and the State of Oregon have numerous cooperative agreements concerning the use of equipment and the maintaining of highways and other transportation facilities. In some cases, taking the additional step of forming a separate intergovernmental entity could

improve efficiency and streamline management.

Effective date: January 1, 2002

Senate Bill 966

Relating to transportation

SB 966 directs the Oregon Department of Transportation (ODOT) to study the feasibility of joint private-public projects that use innovative financing methods. The measure directs the Transportation Commission to appoint an Advisory Committee on Innovative Finance to assist in the study and to advise on ways to solicit and encourage private participation. ODOT is required to report the results of the study to the Seventy-second Legislative Assembly. SB 966 also authorizes local governments, intergovernmental entities, and nonprofit corporations to issue revenue bonds for the purpose of financing tollway projects.

The 1995 and 1997 Legislative Assemblies authorized ODOT to enter into public-private partnerships to build and operate several specific tollway projects. The authorizing legislation contained a number of specific restrictions regarding the type of projects, project design features, and allowable financing methods. Some feasibility studies have been completed, but none of the projects have yet been funded.

SB 966 replaces the previously approved specific authorizations with a general authority to form public-private partnerships as well as new authority for municipalities and nonprofit corporations to issue revenue bonds for tollway financing.

Effective date: October 6, 2001

House Bill 2132

Relating to registration of vehicles

HB 2132 changes the initial registration period for new vehicles from two years to four years. The measure affects new passenger vehicles, as well as new light trailers, motorcycles and mopeds. After the initial four-year registration period, the vehicles will revert to a two-year renewal cycle with the Driver and Motor Vehicle Division (DMV). New vehicles in most of the state will be changed to the four-year initial registration period beginning January 1, 2002. However, vehicles registered in Clackamas, Columbia, Multnomah, Washington, or Yamhill Counties will not be changed to the four-year registration until January 1, 2004. This phased approach allows the Department of Environmental Quality to

maintain air quality standards even with reduced testing of new vehicles.

The change in HB 2132 is anticipated to improve customer service at the DMV by eliminating approximately 360,000 business transactions per biennium. Vehicle owners will continue to pay the equivalent annual amount they paid previously, but the fee will be paid for four years at the time of new vehicle registration.

Effective date: January 1, 2002

House Bill 2137

Relating to vehicles

HB 2137 repeals the fee charged for disabled person parking permits based on the U.S. 9th Circuit Court of Appeals ruling in *Dare v. California*, “that collecting a fee for disabled parking permits violates the Americans with Disabilities Act (ADA).”

Effective date: July 23, 2001

House Bill 2139

Relating to fees for the Department of Transportation

HB 2139 establishes fees and increases some existing fees for various programs in the Driver and Motor Vehicle Division (DMV). The Oregon Department of Justice (DOJ) released a “Letter of Guidance” on January 31, 2001 that identified several programs for which fees collected by DMV did not cover the costs of providing the corresponding service. DOJ further advised that the use of State Highway Trust Fund dollars to subsidize DMV programs that did not “directly or primarily facilitate motor vehicle travel on highways,” (Oregon Constitution—Article IX, sec. 3a), was not a permissible use of Highway Funds. Two programs identified were the regulation of vehicle dealer certificates and issuance of identification cards. Fees for these programs were increased to comply with DOJ’s advice.

Effective date: July 1, 2001

House Bill 2142

Relating to motor vehicles

HB 2142 authorizes the Oregon Department of Transportation (ODOT) to issue \$400 million in Highway User Tax Bonds for modernization and preservation of highways and bridges in Oregon. The measure increases title issuance and title transfer fees for passenger ve-

hicles from \$10 to \$30. For heavy trucks with a gross vehicle weight of 26,000 pounds or more, and for trailers over 8,000 pounds, the title fee is increased from \$10 to \$90.

The new revenue generated by this measure and by HB 2139 and HB 3068 (totaling \$71.2 million per biennium) will be used to pay any principal and interest due on the issued bonds. Any revenue raised above the \$71.2 million will be allocated 50 percent to ODOT, 30 percent to the counties, and 20 percent to cities.

HB 2142 requires the Oregon Transportation Commission, through consultation with local governments, metropolitan planning organizations, and regional transportation advisory groups, to determine the projects to be funded by the bonds. The projects are to be equitably selected throughout the state based on the criteria used for the Statewide Transportation Improvement Program. The deadline for project selection is February 1, 2002.

Effective date: October 6, 2001

House Bill 2380

Relating to traffic control devices

HB 2380 expands the authorized use of camera technology to photograph drivers disobeying traffic control devices. Six cities have been previously authorized by state legislation to operate such “photo-red light” devices. The measure authorizes the use of the devices in any city with a population of 30,000 or more, and the city of Newberg. Photo-red light devices may be used at a maximum of four intersections at any one time in cities with populations over 30,000, or at eight intersections at a time in cities with populations over 300,000.

HB 2380 limits use of the photo-red light photographs to evidentiary purposes for either proving or disproving a driver’s failure to obey a traffic control device. HB 2380 also requires the Oregon Department of Transportation (ODOT) to provide evaluations of photo-red light systems use including effects on traffic safety, public acceptance, and the administrative process.

Effective date: December 30, 2001

House Bill 2562

Relating to provisional driver licenses

HB 2562 creates a farm employee exception to the passenger restrictions under Oregon’s provisional driver license program for sixteen and seventeen year-old driv-

ers. The exception applies to drivers who are farm, ranch, or orchard employees operating an employer-owned vehicle for employment purposes. For the exception to be valid, the employer must meet liability insurance requirements for the vehicle. The passengers must be employed by the same employer as the driver and transported for employment purposes only. The driver may transport no more passengers than the number of available seat belts and must maintain a written statement in the vehicle, signed by employer, certifying employment and declaring that there are no other options for employee transportation.

Legislation enacted in 1999 prohibited sixteen and seventeen year-old drivers from transporting non-family passengers under the age of 20 during the first six months of having a license. During the second six months the driver is restricted to three non-family passengers. HB 2562 allows an exception for sixteen and seventeen year-old farm employees under limited circumstances.

Effective date: January 1, 2002

House Bill 2565

Relating to recreational vehicles

HB 2565 requires organizers of recreational vehicle (RV) shows to obtain a license from the Oregon Department of Transportation (ODOT). It requires dealers selling new RVs to maintain a service facility for the vehicles at a location certified by ODOT. The measure requires RV dealers to disclose the street address of the dealership and the service facility maintained by the dealer.

HB 2565 also allows RVs with a factory or dealer added feature to exceed by a specified amount the maximum width established in statute.

HB 2565 addresses concerns regarding out-of-state RV dealers that may sell new RVs for short periods, sometimes at an RV show, without providing a facility for the performance of warranty service for vehicles remaining in Oregon.

Effective date: January 1, 2002

House Bill 2569

Relating to highway safety corridors

HB 2569 extends to December 30, 2003, the law under which fines for traffic violations are doubled within two designated highway safety corridors. The two safety corridors chosen by the Oregon Department of Trans-

portation (ODOT) are Highway 18 (from Grand Ronde to Bellevue) and U.S. Highway 26 (from Sandy to Mt. Hood). The measure also specifies that a court may not waive, reduce, or suspend the base fine amount or the minimum fine required for violations in the two corridors.

Legislation approved by the 1999 Legislative Assembly, authorized ODOT to select two safety corridors as pilot programs for doubling of traffic fines. The law required signs to be posted indicating that fines would be doubled in the corridor. The two pilot programs were scheduled to sunset on December 30, 2001.

Effective date: December 30, 2001

House Bill 3068

Relating to fees for utility work along highways

HB 3068 authorizes the Oregon Department of Transportation to charge a new fee to utilities that construct, maintain or operate facilities in a highway right of way. The measure is in direct response to the Department of Justice's (DOJ) "Letter of Guidance" (Jan. 31, 2001). DOJ stated that the current practice of issuing permits to utilities for work in the right of way and reviewing engineering plans and other permit compliance activities without collecting a fee to cover the cost of such work, results in these functions being funded by the State Highway Trust Fund. DOJ concluded that these activities are not a constitutionally permissible use of Highway Funds.

HB 3068 is anticipated to generate \$4.6 million per biennium in Right of Way Use Permit fees. These funds are specified as part of the \$71.2 million revenue in HB 2142 that will be used to repay the \$400 million in bonds for highway improvements.

Effective date: July 1, 2001

House Bill 3155

Relating to child safety systems

HB 3155 requires that children between the ages of four and six, or weighing between 40 and 60 pounds, must be properly secured with a child safety system that elevates the person so as to ensure proper fitting of safety belts.

HB 3155 requires the Oregon Department of Transportation to establish minimum standards and specifications for child safety seats including specific strength and performance standards or dynamic test standards. Vio-

lation of the new requirement is a Class D traffic infraction, with a maximum fine of \$75.

Effective date: January 1, 2002

House Bill 3364

Relating to Freight Advisory Committee

HB 3364 creates a Freight Advisory Committee, which will serve in an advisory capacity to the Transportation Commission. The purpose of the committee is to provide information and advisement on policies and activities affecting freight mobility and input into the development of the transportation improvement program. The Oregon Department of Transportation has previously had an ad hoc freight advisory committee, to which HB 3364 provides statutory direction. The measure sunsets the committee on December 31, 2005.

Effective date: May 30, 2001

House Bill 3411

Relating to motor carriers

HB 3411 changes the state's truck weight-mile tax system. The measure authorizes the Oregon Department of Transportation (ODOT) to allow quarterly reporting for tax purposes based on a truck company's payment performance. Also, the measure allows ODOT, through administrative rule, the option of requiring a truck company to post a tax bond based on the company's payment performance.

HB 3411 eliminates the weight-mile tax plates that were unique to Oregon. These plates required annual renewal at a cost of \$7.50 per truck, and distribution to all trucks in a company's fleet nationwide. The fee under HB 3411 will be \$5 per truck for a cab card that replaces the tax plates. To ensure that trucks are paying the weight-mile tax, ODOT will now rely on the registration plate issued by the trucking company's home state, to identify individual trucks.

HB 3411 also requires trucking companies domiciled in Oregon to participate in the "new carrier" education program within 90 days of receiving a certificate or permit from ODOT to operate in the state. Prior to the passage of HB 3411, carriers were given 180 days to meet the course requirement.

Effective date: July 1, 2002

House Bill 3413

Relating to highway modernization

HB 3413 changes how the annual minimum expenditure requirement for state highway modernization may be met. Prior to the measure's passage, the Oregon Department of Transportation (ODOT) was required to expend an estimated \$54 million annually for modernization from the State Highway Trust Fund, derived mainly from the state gas tax, registration fees, and truck weight-mile taxes. HB 3413 allows the annual minimum to be met by either federal or state funds, or some combination of the two. The measure specifies, however, that federal funds appropriated by Congress and allocated by the U.S. Department of Transportation for specific projects, do not apply toward the minimum. The provisions of the measure sunset on January 2, 2006.

Effective date: January 1, 2002

House Bill 3593

Relating to railroad crossings

HB 3593 allows the Oregon Department of Transportation (ODOT) to set time limits for particular railroad crossing blockages by railroad equipment upon the petition of any person and to assess civil penalties of up to \$3,000 for violations. The agency is given the discretion to determine the credibility of the petition. This change expedites enforcement of crossing blockage violations by ODOT. To enforce using a criminal penalty, the department is required to process alleged violations through a district attorney's office. The person filing the complaint must also agree to testify in court.

HB 3593 also creates the Grade Crossing Safety Improvement Fund, with revenues from crossing blockage penalties going to the Fund. The fund will be used to mitigate safety problems at crossings.

Effective date: January 1, 2002

House Bill 3882

Relating to revenues of the Department of Transportation

HB 3882 establishes a Transportation Operating Fund. This fund is necessary to account for funds that must be separate from the State Highway Trust Fund based on the advice of the Oregon Department of Justice.

Certain revenues collected by the Oregon Department

of Transportation are taxes paid on the fuel used by small machines such as power lawn mowers, leaf blowers, chain saws and similar implements. HB 3882 provides that taxes collected on sales of fuel for such non-road uses may be refunded to taxpayers. However, if claims are not filed, the funds will be retained and placed in the Transportation Operating Fund. Other revenues collected as fees for permits or certificates will also be placed in the fund, and the measure specifies that they may only be spent on the programs for which they are collected.

Effective date: July 20, 2001

House Bill 3946

Relating to alternatives to motor vehicle fuel taxes

HB 3946 creates the Road User Fee Task Force to develop a transportation revenue collection system to replace the current system, which relies on motor vehicle fuel taxes. The measure specifies membership of the task force and appointing authorities. It also authorizes the Department of Transportation (ODOT) to develop pilot programs to test alternative revenue collection systems.

One of the primary functions of the task force is to gather public comment on alternative approaches and make recommendations to ODOT and the Oregon Transportation Commission on the design of pilot programs to be used to test alternative approaches. The task force may make recommendations on criteria to evaluate pilot programs and may evaluate any pilot program implemented by the department.

HB 3946 requires the task force to propose to the Seventy-second Legislative Assembly, options for replacing the current system for revenue collection. The measure also requires the task force to submit a report to each regular session of the Legislative Assembly, on the status of their work and progress of the agency. A preliminary task force report on alternatives is due at the end of September 2002 and ODOT is to begin implementing a pilot program by July 1, 2003. The measure sunsets the task force in 2010.

Effective date: October 6, 2001

Major Legislation Not Enacted

Senate Bill 6

Relating to studded tires

A number of measures were introduced relating to studded tires. The measures included provisions prohibiting use of studded tires (SB 6), prohibiting sale of studded tire sales (HB 3060), providing incentives to exchange studded tires (HB 3841), adding a surcharge on sales (HB 3841), requiring permits and fees to use studded tires (SB 7, SB 638, HB 2819, HB 2838, HB 3471), and limiting speed and lane use when driving with studded tires (SB 148).

House Bill 2411

Relating to passengers in motor vehicles

HB 2411 would have added to statute a prohibition against carrying anyone under the age of 18 in the open bed of a motor vehicle while driving on a highway. Exemptions to the law would have been made for minors properly secured in an approved safety belt or harness, being transported in an organized parade, or family members of an employer or manager who were being transported in the course and scope of farming or ranching activities. Violators of the law would have been subject to a possible fine of up to \$300.

House Bill 2705

Relating to services provided by the Department of Transportation

HB 2705 would have required the Department of Transportation to provide Driver and Motor Vehicle Division (DMV) services to certain communities on a specified schedule. The requirement would have been based on community population and distance from full-service DMV offices.

House Bill 3408

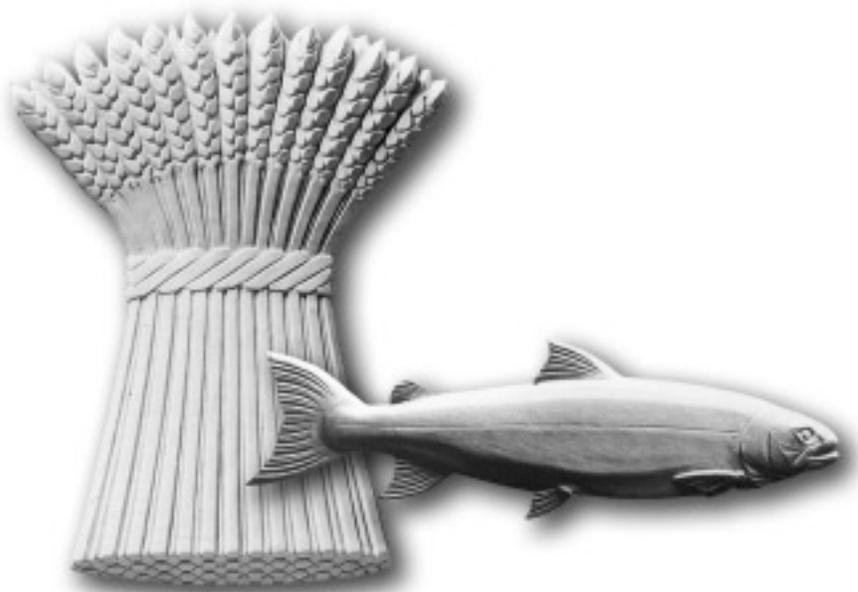
Relating to transportation

HB 3408 would have allowed creation of Regional Transportation Authorities (RTAs) and RTA districts through intergovernmental agreement. Included in the powers and duties of an RTA were identification of projects, issuance of bonds, and levying of taxes upon voter approval. RTA agreements would have allowed local governments to form regions, districts, and sub-districts for the purpose of funding local projects. Signatories to such agreements would have been metropolitan planning organizations, metropolitan service districts, counties, port authorities, mass transit districts, cities with population over 400,000, and a majority of all other cities located in whole or in part within the boundaries of the proposed region.

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Governmental Issues

Elections



2001 Summary of Major Legislation

Senate Bill 215

Relating to election campaign finance statements

SB 215 requires legislators and statewide elected officials, as well as candidates for legislative and statewide office, to file a statement showing contributions received during a regular or special legislative session. The statement must be filed with the Secretary of State within two business days of their receipt of a contribution. The measure applies to persons or political committees affiliated with political parties, legislative officials, statewide officials or candidate therefor, or the officials' or candidates' principal campaign committees.

SB 215 also requires the Secretary of State to provide a copy of statements filed by current state representatives or candidates for the office of state representative to the Chief Clerk of the House no later than one business day after the statement is filed.

Prior to the passage of the measure, Oregon law prohibited campaign contributions during legislative sessions to legislators, legislative candidates, statewide public office-holders, or candidates for those offices. However, on January 2, 2001, Attorney General Hardy Myers issued an opinion that the statutory prohibition against making or receiving campaign contributions during a legislative session was unconstitutional under Article I, Section 8 of the Oregon Constitution. Based on the advice of the Attorney General, the Secretary of State indicated that he would no longer enforce the prohibition.

Effective date: April 18, 2001

Senate Bill 216

Relating to election petitions

SB 216 prohibits a person gathering signatures on an initiative, referendum, or recall petition from attempting to obtain the signature of a person the signature gatherer knows is not qualified to sign the petition. Under the provisions of the measure, violations of the law are considered a Class C felony (maximum \$100,000 fine, up to five years in prison, or both).

The measure also makes a chief petitioner personally liable for violations, committed by a signature gatherer, of any provision of statute or administrative rule relating to the conduct of an election, if the chief petitioner had knowledge of the violation and the violation was committed while obtaining signatures on the chief

petitioner's petition. It exempts chief petitioners from liability for violations already subject to criminal penalties.

SB 216 also adds two election law violations formerly subject to civil penalties to the list of offenses punishable as Class C felonies: making payments to individuals for signing or not signing an initiative, referendum or recall petition; and selling or purchasing signature sheets.

Several provisions of SB 216 were modified by the later passage of HB 2581.

Effective date: January 1, 2002

Senate Bill 457

Relating to elections

SB 457 directs the Secretary of State, in consultation with county clerks, to study the need for and feasibility of supplying ballots, voter registration forms, voters' pamphlets, and written instructions for voters in languages other than English. The measure requires the Secretary of State to report the findings of the study to the next Legislative Assembly with specific recommendations for possible statutory modifications to ensure Oregon complies with the federal Voting Rights Act.

United States Code, Title 42, Section 1973aa-1a (Section 203 of the Voting Rights Act) sets out bilingual voting material requirements that apply to states and political subdivisions that are determined by the Director of the Census to be "covered" by the provisions of the law. Coverage occurs due to factors such as a state or political subdivision having more than 5 percent of its citizens of voting age belonging to a single language minority that is limited-English proficient. According to the 2000 Census, Oregon showed a high growth rate in Hispanic and other minority populations.

Effective date: August 9, 2001

Senate Bill 825

Relating to ballot measure numbers

SB 825 requires that numbers assigned to state and local ballot measures by the Secretary of State and local county clerks not repeat in any subsequent election. The measure deletes the previous system of repeated numbering of measures beginning with number 1 whenever the number of measures reached 99.

In an attempt to avoid confusion with similar ballot measure numbers that were used in past elections, SB 825 applies a unique number to every new statewide and local ballot measure.

Effective date: January 1, 2002

House Bill 2002

Relating to elections

HB 2002 directs the Secretary of State, with county clerks, to develop a centralized voter registration system.

Each county in Oregon maintains a separate database of voter registration information. This system makes it difficult to assure that voters are not registered to vote in more than one county. A recent report by the Oregon Elections Task Force, a group jointly convened by the Secretary of State and the Association of County Clerks, recommended development and implementation of a cost-effective and practicable centralized voter registration system in Oregon.

HB 2002 requires the Secretary of State to: develop a project definition for the system and present it to the Joint Legislative Committee on Information Management and Technology (JLCIMT); develop a detailed project plan based on JLCIMT comments; and fully implement the system no later than January 31, 2004. The Legislative Emergency Board is authorized to allocate up to \$2 million to the Secretary of State for development and implementation of the system.

Effective date: July 20, 2001

House Bill 2213

Relating to ballot titles for state measures

HB 2213 modifies the procedures for certification of initiative ballot titles by the Supreme Court. The measure requires the court to modify or refer to the Attorney General (AG) a challenged ballot title that does not substantially comply with statutory ballot title requirements. If the court refers the title to the AG, the measure requires the AG to file a modified ballot title with the Supreme Court within five business days. HB 2213 requires the Supreme Court to certify this modified ballot title (if not challenged), or further modify or refer ballot title to the AG (if challenged) if it determines the ballot title still does not substantially comply with statutory requirements.

In the pending Oregon Supreme Court case *Flannagan*

vs. Myers, the court is addressing whether they have the authority to modify an AG drafted ballot title if the court determines the title does not satisfy statutory requirements. The changes proposed by HB 2213 anticipate a possible Supreme Court decision in the *Flannagan* case ruling that the court's current ballot title modification privileges violate the separation of powers principle.

HB 2213 also clarifies the deadlines for the Secretary of State to forward comments on draft ballot titles to the Attorney General and extends the time period for the Attorney General to revise draft ballot titles from five to ten business days. The measure also clarifies that an elector seeking review of a ballot title in the Supreme Court must provide notice to the Secretary of State.

Effective date: July 19, 2001

House Bill 2575

Relating to election campaign finance statements

HB 2575 modifies the contribution and expenditure statement filing requirements for candidates, political committees, and chief petitioners for initiative petitions.

The measure moves the filing deadlines forward seven days for candidates and political committees filing first and second pre-election contribution and expenditure statements for the primary and general elections. Prior to enactment of HB 2575, vote-by-mail ballots were sent to voters before a candidate made his or her first supplemental contribution and expenditure report. HB 2575 moves the filing deadlines for these statements one week earlier in an attempt to allow voters more timely access to campaign and expenditure reports.

The measure also requires candidates and political committees at primary and general elections to submit supplemental reports if the aggregate amount of contributions from a single political committee or person exceeds \$500 or the aggregate amount of expenditures to a single payee exceeds \$1000.

Previous law required chief petitioners for initiative petitions to file one contribution and expenditure report 15 days after the July filing deadline for signature verification of petitions. HB 2575 adds a filing requirement prior to the May primary election, and two additional filings (in September and February) if the aggregate amount of contributions or expenditures exceeds \$2000 prior to either of the filing deadlines.

Effective date: July 3, 2001

House Bill 2580

Relating to date of regular district election

HB 2580 moves the date of district elections from March to May of odd-numbered years.

Prior to the passage of HB 2580, special district elections were held on the second Tuesday of March in odd numbered years. Moving district elections to May will assist the counties in managing workload remaining from the November general election.

HB 2580 applies to water, irrigation, park and recreation, port, rural fire protection, soil and water conservation, peoples' utility, library, transit, and many other special district elections.

Effective date: January 1, 2002

House Bill 2581

Relating to elections

HB 2581 makes numerous changes to bring uniformity and clarity to Oregon election laws. The measure makes modifications or adds provisions to current laws regarding voter education, election recounts, election challenges, hours of operation for ballot drop sites, candidate contribution and expenditure reporting, voting machine maintenance, disclosure on campaign advertisements, inactive voters, provisional ballots, election security plans, and liability of chief petitioners of initiative or referendum measures for violations committed by signature gatherers on a petition (modifying provisions enacted in SB 216 (2001)).

Many of the changes made by HB 2581 stem from the *Report of the Oregon Elections Task Force* (available at <http://www.sos.state.or.us/elections/other.info/task.pdf>) and from the Secretary of State's periodic review of the state's election laws. Other changes are based in part on Oregon Supreme Court and U.S. Supreme Court cases that have rendered portions of Oregon statutes invalid.

Effective date: August 15, 2001

House Bill 2584

Relating to elections

HB 2584 authorizes observers to watch the receiving and counting of votes at elections conducted at polling places and by mail, and specifies that observers shall

not interfere with an orderly procedure at the polling place or office of the county clerk. ORS 254.305, which allowed observers to monitor the county clerks' process of receiving and counting ballots, was inadvertently repealed by legislation passed in 1999. HB 2584 reinstates and re-defines statutory authority for observers at polling places or vote-by-mail ballot-collection and counting sites.

HB 2584 also applies prohibitions relating to traditional polling places to elections conducted by mail, including prohibitions on electioneering within 100 feet from the entrance to the building where ballots are issued, obstructing the entrance to the building where ballots are deposited, and leaving evidence on how a ballot was marked.

HB 2584 requires a person, other than an election official, that establishes a location to collect vote-by-mail ballots to have a sign marked "NOT AN OFFICIAL BALLOT DROP SITE" prominently displayed at that location. Ballot drop sites maintained by county clerks are required to display a sign indicating that they are official ballot drop sites.

Effective date: January 1, 2002

House Bill 2674

Relating to elections

The Oregon Constitution (Article II, Sections 19, 20, and 21) sets term limits on a legislator's service of no more than six years in the House of Representatives, eight years in the Senate, and no more than twelve total years in the Legislative Assembly. These constitutional limits were adopted by voters in 1992.

HB 2674 sets procedures for judicial review of the constitutionality of the term limit provisions in the Oregon Constitution. The process established by HB 2674 requires any court challenge to term limits be filed in Marion County Circuit Court and confers to the Marion County Circuit Court (and appellate courts) jurisdiction to adjudicate challenges to the constitutionality or validity of term limits. HB 2674 also requires the courts to move expeditiously to adjudicate challenges and provides for expedited review by the Oregon Supreme Court if the circuit court finds any part of the term limits amendment to be unconstitutional.

HB 2674 also changes the earliest date to file a nominating petition or declaration of candidacy from

the 250th day before the biennial primary election to the 415th day before the biennial primary election, allowing a candidate to file for the May 2002 primary as early as April 2, 2001. By moving the date a candidate can file for office, HB 2674 attempts to provide time for adjudication of a challenge to term limits prior to the next primary election.

Effective date: May 17, 2001

Major Legislation Not Enacted

Senate Bill 629

Relating to initiative petitions

House Bill 3169

Relating to initiative petitions

SB 629 and HB 3169 would have increased the minimum number of sponsorship signatures required on a prospective petition for a state initiative measure from 25 to a number that is equal to at least 10 percent of the total number of signatures required for an initiative petition to qualify for the ballot. Both measures would have allowed sponsorship signatures, not to exceed 10 percent of the total number of signatures required, to count towards the total number of signatures required for a petition to qualify for the ballot. The measures would have applied to prospective petitions for state initiative measures to be voted on after the November 2002 general election.

Article IV, section 1 of the Oregon Constitution requires an initiative petition for a statutory change to be signed by a number of qualified voters equal to six percent of the total number of votes cast for all candidates for Governor at the preceding election. Proposed constitutional changes require signatures of eight percent of qualified voters who voted for all candidates for Governor at the preceding election. If either of these measures had been in effect, to begin the ballot title process in the 2000 election cycle a chief petitioner would have been required to gather 6,679 signatures for a statutory change, and 8,905 signatures for a constitutional change.

Senate Bill 752

Relating to elections

SB 752 would have changed the date of the biennial primary election from the third Tuesday in May to the third Tuesday in September, while retaining the presidential primary in May. The measure would have required the Secretary of State to print a single voters' pamphlet in September and changed the deadlines for filing for nomination or election to office and filing

information relating to candidates and measures with elections officials. The measure also would have modified the periods for filing and conducting election contests, recounts and actions for false campaign statements to conform to the new election date. SB 752 would have taken effect with the biennial primary election in 2002.

Senate Bill 955

Relating to elections

SB 955 would have revised the ballot title preparation process for proposed state initiative measures. The measure would have directed the chief petitioner of a state measure to supply a proposed ballot title with a prospective petition when submitting a proposed measure to the Secretary of State. SB 955 would also have revised the process for judicial review and certification of ballot titles prepared by the Attorney General or a chief petitioner to conform with the new ballot title process.

Senate Joint Resolution 12

*Proposing amendment to Oregon Constitution
requiring annual sessions of Legislative Assembly*

SJR 12 would have created a ballot measure amending the Oregon Constitution to require annual sessions of the Legislative Assembly commencing on the second Monday of January, or as otherwise set by law. The measure would have set limits on the duration of legislative sessions to no more than 120 calendar days per regular session and no more than 150 calendar days per two year period. The resolution would have referred the measure to voters at the May 2002 Primary Election ballot and, if approved, would have first applied to the 2003 Legislative Session.

Currently, Article IV, section 10 of the Oregon Constitution requires legislative sessions to be held biennially, commencing on the second Monday of September, unless a different day is selected by law. ORS 171.010 requires legislative sessions to start on the second Monday of January of each odd-numbered year. The Constitution does not set a time limit on the biennial sessions. Six other states currently have biennial legislative sessions: Arkansas, Kentucky, Montana, Nevada, North Dakota, and Texas.

Senate Joint Resolution 15

Proposing amendment to Oregon Constitution relating to measures rejected by people at election

SJR 15 would have proposed an amendment to the Oregon Constitution to prohibit the resubmission of substantially similar measures rejected by the people at an election during the prior four-year period. The measure defined “substantially similar” as pertaining to the same subject, having a similar scope, reflecting a similar legal intent and having a similar legal effect. SJR 15 directed the Secretary of State to make the appropriate determination, based on those criteria, as to whether the measure was substantially similar to another measure that had been rejected by voters within the last four years. Any person who disagreed with the Secretary of State’s determination could petition the Supreme Court for a different determination.

SJR 15 would have applied to initiative measures and measures referred by the Legislative Assembly that were voted upon on or after November 7, 2000. The measure would have referred the proposed amendment to the people for their approval or rejection at the May 2002 Primary Election.

Senate Joint Resolution 24

Proposing amendment to Oregon Constitution relating to time limits in office for legislators

In its original form, SJR 24 would have proposed an amendment to the Oregon Constitution to repeal legislative term limits.

In 1992, Oregon voters enacted Article II, section 19 of the Oregon Constitution, which set term limits that members may serve in the legislature – no more than six years in the House of Representatives, eight years in the Senate, and no more than twelve years in the Legislative Assembly. Oregon is one of 18 states that have enacted term limits on state legislators, and is one of seven states that has a lifetime ban on legislative service once a legislator has served the maximum number of years allowed by a state’s term limits law.

Senate Joint Resolution 40

Proposing amendment to Oregon Constitution relating to time limits in office for legislators

SJR 40 would have referred to voters a ballot measure to remove the limitation on legislator service in specific

chambers of the Legislative Assembly, but retaining the overall twelve-year lifetime limit on service. The measure would have applied to terms of office beginning on or after December 3, 1992. Several other measures considered by the 2001 Legislative Assembly would also have modified term limits, including HJR 19 in its original form, HJR 41, and SJR 1.

House Bill 2587

Relating to ballots

HB 2587 would have prohibited county clerks from conducting elections using punch-card ballots beginning January 1, 2004. Due to difficulties inherent in using punch-card ballots in vote-by-mail elections and overall concerns about the accuracy of punch-card ballots and punch-card ballot readers, most counties in Oregon use optical scan ballots and readers. However, seven counties (Clackamas, Lane, Linn, Polk, Umatilla, Union, and Washington), accounting for nearly 40% of voters statewide, still use punch cards.

House Bill 2654

Relating to election campaign finance

HB 2654 would have established limits on the amount of political contributions made to candidates for statewide office and legislative offices. The measure limited aggregate contributions by an individual to a candidate for statewide office to \$1,000 per election and to a candidate for the office of State Senator or State Representative to \$500 per election. Similar limits applied to political committee contributions per election (\$5000 for statewide offices, \$1000 for Senator or Representative). The measure imposed civil penalties for violations of contribution limits. The measure would have also prohibited members of the Legislative Assembly from receiving or soliciting contributions during regular or special legislative sessions.

HB 2654 would have been enacted only if a corresponding constitutional amendment proposed in HJR 20 was enacted by voters at a November 2001 Special Election.

House Bill 3742

Relating to ballots

HB 3742 would have allowed county clerks to accept and count a voter’s mailed ballot if the ballot was postmarked by the day before election day and received

by the county clerk not later than seven days after the election. The measure would have required county clerks to announce the status of the tally of ballots received after election day on the third and eighth calendar days after the date of the election.

HB 3742 would have applied to vote-by-mail elections in 2002 conducted after March 13, 2002, and all elections in 2003 and 2004.

House Joint Resolution 20

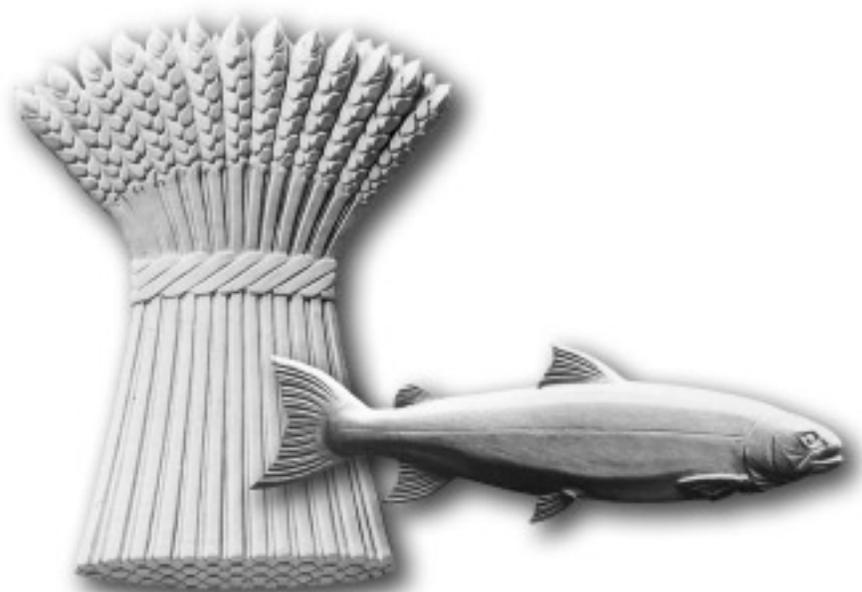
Proposing amendment to Oregon Constitution relating to political contributions

HJR 20 would have proposed an amendment to the Oregon Constitution to specify that the legislature, or the people through the initiative process, could enact laws that would limit or prohibit certain contributions made to candidates for public office. The amendment would have also allowed for laws to be enacted prohibiting the solicitation or receipt of contributions, or the making of contributions to individuals holding office as members of the legislature, during any session of the Legislative Assembly.

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Governmental Issues

General Government



2001 Summary of Major Legislation

Senate Bill 13

Relating to seismic event preparation

SB 13 requires state and local agencies to hold annual drills instructing employees on earthquake emergency procedures. The measure requires private companies that employ 250 or more full-time positions to drill employees on emergency procedures and specifies the types of training to be included within the drills. It also requires the Office of Emergency Management, in consultation with the State Department of Geology and Mineral Industries (DOGAMI), to adopt rules governing required earthquake emergency drills and to post those rules electronically.

Research indicates that the Cascadia subduction zone, a fault that runs along the Oregon coast, has produced at least 12 significant (magnitude 8 or 9) earthquakes in the last 5,000 years. DOGAMI estimates Oregon damages from an earthquake of magnitude 8 or 9 could exceed \$12 billion, with the potential for 30,000 destroyed buildings and 8,000 lost lives. The Oregon Legislature created the Oregon Seismic Safety Policy Advisory Commission (OSSPAC) to advise the Legislature regarding seismic hazards and to provide recommendations for action. The OSSPAC helped develop Senate Bill 13 and several other measures enacted by the 2001 Legislative Assembly in response to that directive.

Effective date: June 14, 2001

Senate Bill 14

Relating to seismic event preparation

SB 14 requires the State Board of Education and the State Board of Higher Education to conduct seismic surveys of certain school buildings and buildings routinely used by 250 or more people for student activities. The surveys are contingent upon funding from the Department of Geology and Mineral Industries (DOGAMI) and must be completed by January 1, 2007. The measure provides exemptions from the survey for buildings not routinely used for student activities, and it directs DOGAMI to determine which buildings are most in need of additional analysis. The State Board of Higher Education, local school boards, community college boards, and education service district boards are required to identify high-risk buildings and conduct additional surveys using standards at least as strict as those set forth by the Federal Emergency Management Administration. Each building identified is to be

rehabilitated by January 1, 2032, subject to available funding. SB 14 also specifies that funding for seismic rehabilitation is contingent upon bonding authority being granted to the Legislative Assembly at the first general election held on or after January 1, 2002 (see Senate Joint Resolution 21). All boards are required to present progress reports to the Seventy-second and Seventy-third Legislative Assemblies.

Effective date: July 19, 2001

Senate Bill 15

Relating to seismic event preparation

SB 15 requires the Oregon Health Division (OHD) and the State Department of Geology and Mineral Industries (DOGAMI) to conduct seismic surveys of hospitals that contain acute inpatient care facilities. The surveys are subject to funding being provided by DOGAMI. The measure requires the surveys to be completed by January 1, 2007, and requires DOGAMI to determine which buildings are in most need of additional analysis. SB 15 requires hospitals, fire departments, and fire districts to identify high-risk buildings and to conduct additional surveys using standards at least as strict as those set forth by the Federal Emergency Management Administration, and to rehabilitate each building by January 1, 2022, subject to available funding. The measure specifies that funding for seismic rehabilitation is contingent upon bonding authority being granted to the Legislative Assembly by the people at the first general election held on or after January 1, 2002 (see Senate Joint Resolution 22). The measure requires OHD and DOGAMI to present a progress report to the Seventy-second and Seventy-third Legislative Assemblies.

Effective date: July 19, 2001

Senate Bill 16

Relating to sister state committees

SB 16 establishes, at the request of any legislator, a sister-state committee for sister-state relationships in which Oregon participates. The measure permits each committee to promote the sister state relationship, to host visiting delegations, and to organize delegations to visit the other sister state. The measure requires a sister state committee, if appointed, to visit the committee's sister state at least once biennially. SB 16 also specifies the membership of each sister state committee, the appointing authority, and the committee's staffing.

Fostering government-to-government relationships is essential to expanded international business opportunities. Oregon currently has four sister states and a fifth “legislative relationship”: the Fujian province in China, the Taiwan province in the Republic of China, the Toyama prefecture in Japan, the Chollanam-do province in the Republic of Korea, and the State of Lower Saxony in Germany (legislative relationship).

Effective date: January 1, 2002

Senate Bill 63

Relating to disaster relief

SB 63 adds projects that result from an emergency to the definition of “infrastructure project” eligible for funding through the Special Public Works Fund. “Emergency” is defined in statute as including any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering, or financial loss. The measure authorizes the Economic and Community Development Department to use the Special Public Works Fund to provide up to \$2.5 million per biennium in loans and grants to municipalities to cover matching fund requirements for federal disaster relief. The measure is intended to provide a mechanism for state participation in responding to local disasters.

Effective date: January 1, 2002

Senate Bill 134

Relating to public employee retirement

SB 134 implements significant modifications to the Public Employees Retirement System (PERS). In addition to many technical changes to improve clarity and consistency, the measure makes several major programmatic changes. The measure requires the PERS Board to take into account the needs of employers on matters not related to the board’s obligations to employees. The measure also requires funds be placed in a contingency reserve in any year in which fund earnings exceed guaranteed rates of return. The board has discretion to determine how much money must be in the reserve. The measure requires the board to strive for a zero balance in the reserves kept for “Tier I” employees (those for whom there is a guarantee of earnings) by the time all “Tier I” employees have retired.

To eliminate the perception of bias, the measure increases the PERS Board from 11 members to 12, six of whom

must not be PERS members. Under current law, six of the 11 are PERS members. At least three of the non-PERS members must have experience in investing or in pension management. The new (12th) member must be a non-PERS member who has investing or pension management experience. No present members will lose their membership on the board, but replacements must meet the new conditions of membership.

SB 134 allows local governments the option of joining the employer rate pool of state agencies and community colleges. This has the potential for increasing the employer rate for state agencies, with a corresponding decrease for the aggregate rate of local governments. The change means that only two pools for setting employer rates remain: public schools and state-community college-local government. Local governments may choose to remain outside a pool, but cannot withdraw once opting to join.

Under SB 134, retiring employees are permitted to withdraw not only their account as a lump sum, but to have the employers match the employees’ accounts in a lump sum. Prior to passage of the measure, the employer contributions could be withdrawn only as a pension, not as a lump sum. This new feature is estimated to save employers \$25 million per year because they will no longer be liable for cost-of-living and other adjustments that remain as obligations as long as a member account remains active.

The measure allows local governments to issue bonds to cover the costs of PERS or other pension programs. The measure also allows a change of beneficiary for a retired member following divorce or other court action.

Effective date: August 9, 2001

Senate Bill 488

Relating to the designation of public property

SB 488 prohibits use of the term “squaw” in naming public property. The measure creates an exception when federal law requires the use of the name and sets a deadline of January 2, 2005 for removal of the term “squaw” from public place names. If the name is required by federal law, the removal deadline is two years after the federal government discontinues use of the name.

The term “squaw” is an indigenous word that appears to have been derived from one of the Algonquian languages spoken by Native Americans in eastern

Massachusetts. Merriam-Webster's *Collegiate Dictionary*, Tenth Edition, defines current usage of the word as "often offensive: an American Indian woman" and "usually disparaging: woman, wife."

Oregon has over 100 place names that currently contain the word "squaw," including numerous creeks, lakes, and mountains. Maine, Montana, Minnesota, and Oklahoma have enacted similar legislation banning the use of the word in official place names.

A companion piece of legislation, SJM 3, urges federal officials to remove the term "squaw" from geographic place names in Oregon.

Effective date: June 27, 2001

Senate Bill 770

Relating to government-to-government relations between the State of Oregon and American Indian tribes in Oregon

SB 770 requires state agencies to include tribes in development and implementation of state programs that affect tribes and promote communication and positive government-to-government relations between tribes and the state. The measure directs state agencies to submit reports to the Governor and the Commission on Indian Services on the activities of state agencies to meet the requirements of the legislation. The measure also requires training at least once a year by the Department of Administrative Services, in consultation with the Commission on Indian Services, to state agency managers and employees who have regular communication with tribes.

SB 770 stemmed from Governor Kitzhaber's Executive Order 96-30, designed to formalize the relationship between Oregon's nine federally recognized Indian tribal governments and the state. EO-96-30 applied only to cabinet-level state agencies. SB 770 codifies the objectives of the executive order and extends the requirements of the order to all state agencies.

Effective date: January 1, 2002

Senate Bill 817

Relating to state-owned motor vehicles

SB 817 creates a nine-member Task Force on State-owned Vehicle Efficiency to study the costs associated with state-owned, general-purpose vehicles and the feasibility of replacing the fleet with rental vehicles from

private sector companies. The task force includes agency, public employee union, and private sector representation, as well as three state Senators. All members are appointed by the Senate President. If the task force makes legislative recommendations, the measure requires a report be filed with the appropriate Senate interim committee by January 1, 2003.

Effective date: January 1, 2002

Senate Joint Memorial 3

Urging state and federal officials to remove term squaw from geographic place names in Oregon

SJM 3 urges the United State Secretary of the Interior, the United States Secretary of Agriculture, the United States Board on Geographic Names, and the Oregon Geographic Names Board to remove the term "squaw" from the names of geographic places in the State of Oregon.

The term "squaw" is an indigenous word that appears to have been derived from one of the Algonquian languages spoken by Native Americans in eastern Massachusetts. Merriam-Webster's *Collegiate Dictionary*, Tenth Edition, defines current usage of the word as "often offensive: an American Indian woman" and "usually disparaging: woman, wife." Oregon has over 100 place names that currently contain the word "squaw," including numerous creeks, lakes, and mountains. Maine, Montana, Minnesota, and Oklahoma have enacted similar legislation banning the use of the word in official place names.

SB 488, also passed by the 2001 Legislative Assembly, prohibits use of the term "squaw" in naming public property, effective January 2, 2005.

Filed with the Secretary of State: April 20, 2001

House Bill 2096

Relating to executions

HB 2096 adds representatives of the news media to the list of required witnesses at executions.

Previous law required the following witnesses to be present at an execution: the superintendent of the correctional institution, one or more physicians, the Attorney General, and the appropriate county sheriff. The superintendent is authorized to allow additional witnesses at the request of the inmate, such as clergy or friends and relatives of the inmate. Attendance of the

media was not specifically allowed by statute, but Department of Corrections administrative rules allowed attendance of media representatives.

HB 2096 also authorizes the correctional institution superintendent to allow viewing of the initial execution procedures, prior to the point of lethal injection, by means of closed-circuit television.

The Department of Corrections had previously adopted detailed administrative rules outlining the conduct and types of witnesses allowed at executions and designating what steps in the execution process the witnesses could observe. The Oregon Supreme Court ruled that the department did not have specific statutory authority to use administrative rules to limit what steps witnesses might observe (*Oregon Newspaper Publishers Association v. Oregon Department of Corrections* (329 Or 115, 988 P2d 359)). HB 2096 provides that specific authority.

Effective date: May 29, 2001

House Bill 2103

Relating to taxation

HB 2103 extends by two years, to December 31, 2004, state-designated rural enterprise zones that encourage economic development. The measure streamlines the process for creating and coordinating the zones and encouraging tax exemptions to spur economic development in rural areas. Corporate excise and income taxes and property taxes are included as exemptions. In addition, HB 2103 reduces the initial investment required to qualify for the rural enterprise zone property tax exemption and tax credit from \$50 million to \$25 million.

The rural enterprise zone program was created in 1997. Currently, 39 of the 44 designated enterprise zones exist in rural, economically lagging areas of the state. The value of property investment in a rural enterprise zone is exempt from property taxes for at least 7 years and for up to 15 years after the facility's completion. The investment must be in a county with chronic unemployment or chronic low income.

Effective date: October 6, 2001

House Bill 2332

Relating to taxation

HB 2332 remove tax disincentives that currently inhibit private business and industry from locating and operating

enterprises within the boundaries of rural Indian reservations in Oregon. The measure designates trust lands of an Indian tribe that meet certain requirements as "reservation enterprise zones," and allows eligible business firms within those enterprise zones to receive a property tax credit, equal to the amount of taxes they paid to the tribal government, against their Oregon income taxes. The credit is non-refundable and there is no carry forward option. The measure first applies to tax years beginning on or after January 1, 2002.

HB 2332 also makes changes to Oregon's Pollution Control Tax Credit statutes, specifying that pollution control projects situated in enterprise zones or designated distressed areas be added to the "upper tier" (eligible for a 35 percent tax credit of certified costs) of projects eligible for the maximum pollution control credit amount.

Effective date: October 6, 2001

House Bill 2458

Relating to incorporation of cities

HB 2458 modifies the procedure for incorporation of a new city when the area is located within an urbanized area but outside the urban growth boundary of a city or metropolitan service district. The proposed new incorporated area must be located entirely within a designated rural unincorporated community and certain contiguous lands exempted from statewide land use planning goals.

Previous law allowed an existing city to prevent incorporation of a new city if the proposed city was within its urbanized area (within three miles of the existing city). In order for the proposed new city to become incorporated it must have gained approval from the existing city, unless the existing city did not take action on the petition for incorporation within 120 days.

HB 2458 was requested by several rural unincorporated areas that wish to consider incorporation but believe a nearby city will reject their petition for incorporation. HB 2458 establishes a new process for rural unincorporated areas to investigate the possibility of incorporation without an automatic preemption by a nearby city. HB 2458 requires additional information be gathered through the incorporation process including economic feasibility, plans for urban services, operating taxes, residential development and urban density, public facilities, and transportation systems.

HB 2458 permits a neighboring city to request that the

county court reject the petition to incorporate. The county court decision may be appealed to the Land Use Board of Appeals.

Effective date: January 1, 2002

House Bill 2656

Relating to state agency budgets

HB 2656 requires state agencies to report to the appropriate interim legislative committee when an agency makes any substantive program change to their legislatively approved budget. The measure exempts the Office of the Secretary of State, the Office of the State Treasurer, and agencies that are currently required to report to the Legislative Emergency Board or Joint Committee on Ways and Means. HB 2656 requires the Department of Administrative Services (DAS) to define the reporting criteria and requires the state agencies to report to DAS, which must then report to the Speaker of the House and the President of the Senate. HB 2656 is intended to foster greater accountability between state agencies and the Legislative Assembly.

Effective date: January 1, 2002

House Bill 2906

Relating to agreements between state agencies and American Indian tribes

HB 2906 authorizes state agencies to enter into agreements with American Indian tribes or agencies of tribes if they are not already expressly authorized under state law to do so.

Current law authorizes state agencies to enter into agreements with American Indian tribes, however there has been confusion relating to state agency authority. Examples of these types of contracts include the Department of Revenue contracting with tribes to collect cigarette taxes from non-tribal members, or the Department of Human Services contracting with tribes to provide mental health services or foster care using federal funds.

The measure also increases the amount of surplus salmon required to be provided by the Department of Fish and Wildlife to the Cow Creek Band of the Umpqua Indians.

Effective date: January 1, 2002

House Bill 2934

Relating to transient lodging taxation

HB 2934 allows lodging operators to retain a portion of the lodging taxes they collect as a collection reimbursement charge. The measure applies to jurisdictions that increase or create a new lodging tax after January 1, 2001. HB 2934 requires that the collection reimbursement charge be a minimum of five percent of the total lodging tax. The measure also prohibits local jurisdictions from increasing transient lodging taxes to offset the collection reimbursement charge. There are hotel taxes in at least 15 counties and 70 cities in Oregon.

Local room-tax ordinances were originally imposed to raise funds for tourism promotion. Partially because of the budgeting changes necessitated by Oregon's property tax limitation approved by voters in 1996, many local communities now also use proceeds from lodging taxes for police, fire, and infrastructure needs.

Effective date: January 1, 2002

House Bill 2987

Relating to cellular telephones

HB 2987 prohibits local governments from enacting or enforcing laws or ordinances regulating the use of cellular telephones in motor vehicles. The measure attempts to ensure the statewide uniformity of regulations on the use of cellular telephones by granting sole authority over such regulation to the legislature.

Effective date: January 1, 2002

House Bill 3056

Relating to Governor's Fire Service Policy Council

HB 3056 creates the Governor's Fire Service Policy Council to advise the Governor, the State Fire Marshal, and the Superintendent of State Police on improving fire fighting services. HB 3056 requires the council to provide a biennial report to the Governor and the Superintendent regarding performance of the Office of the State Fire Marshal. The measure prohibits the council from participating in discussions of traditional labor relations issues. Prior to HB 3056, the Fire Services Policy Council operated under an executive order issued by the Governor in May of 1999. HB 3056 codifies the council.

Effective date: January 1, 2002

House Bill 3111

Relating to volunteer firefighters

HB 3111 creates the interim Volunteer Firefighter Task Force to study the problems and challenges faced by rural fire departments and fire districts in recruiting and retaining volunteer firefighters. The measure requires that task force members represent fire districts composed primarily of volunteer firefighters. HB 3111 requires the task force to report to the Seventy-second Legislative Assembly and the Governor on the status of volunteer firefighters and volunteer-based fire jurisdictions in rural areas of Oregon.

Effective date: October 6, 2001

House Bill 3156

Relating to procedure for promulgating administrative rules

HB 3156 requires state agencies to conduct oral hearings within a specific geographical area when a proposed administrative rule affects that area. The measure also requires that a public notice of the hearing be published in a newspaper of general circulation in the specific geographical area.

ORS 183.335 requires state agencies to provide public notice and opportunity for public input prior to adoption, amendment, or repeal of any administrative rule. Oral hearings must be held if at least 10 persons request a hearing, and the state agency must give at least 21 days notice of the hearing. HB 3156 assures that at least one such hearing will be held in the area affected by the proposed rule change.

Effective date: January 1, 2002

House Bill 3171

Relating to farmworker housing

HB 3171 eliminates provisions requiring special conditions be met for approval of farmworker housing and prohibits zoning requirements that are more restrictive on farmworker housing than on other housing. The measure deletes reference to, and the definition of, “seasonal” farmworker housing and directs the Land Conservation and Development Commission to revise its administrative rules to allow the establishment of accessory dwellings for farmworker housing on farms.

The 1999 Legislature created the Farmworker Housing

Task Force to evaluate the housing situation for Oregon farmworkers; to develop a comprehensive approach to solving housing problems; and to recommend actions the state can take to address farmworker housing problems. The task force was comprised of 11 members with five legislators and six other members with experience in a variety of issues affecting migrant farmworkers. HB 3171 implements a recommendation of the task force: “Establish an optimum siting process for farmworker housing.”

Effective date: January 1, 2002

House Bill 3172

Relating to farmworker housing

HB 3172 transfers coordination responsibility for farmworker housing from the Department of Consumer and Business Services (DCBS) to the Housing and Community Services Department (HCSD).

Since farmworker housing is designed to house farm labor and is often located at or near the work site, three agencies have shared oversight responsibility: the Bureau of Labor and Industries for worker compensation and civil rights issues, the Oregon Occupational Safety and Health Office of DCBS for workplace safety issues, and HCSD for housing issues. HB 3172 changes the lead concern from one of workplace safety to that of housing for farmworkers and their families.

The Farmworker Housing Task Force was created by the 1999 Legislature to evaluate the current housing situation for Oregon farmworkers, to develop a comprehensive approach to solving housing problems, and to recommend actions the state could take to address farmworker housing problems. The task force reported its recommendations for legislation to the Legislative Assembly and Governor. HB 3172 implements several recommendations made by the Farmworker Housing Task Force.

Effective date: January 1, 2002

House Bill 3173

Relating to tax credits for farmworker housing

HB 3173 continues and expands tax credits for seasonal and year-round farmworker housing. Tax credits are used to subsidize development and maintenance of farmworker housing. Taxpaying individuals and organizations receive a credit on the Oregon income taxes they would otherwise pay for a portion of the

expenditures they have made on farmworker housing.

HB 3173 implements several recommendations of the 1999 Interim Farmworker Housing Task Force. The measure extends the carryover period for the farmworker tax credit from five years to ten years; provides for transfer of 80 percent of the tax credit to parties who construct, manufacture, install, or finance the construction or rehabilitation of farmworker housing; and increases the cap on tax credit eligible costs to \$7.5 million per year, restoring tax credit to 50 percent of eligible costs. HB 3173 defines a compliance period of 10 years and allows non-profit lenders and banks to use tax credits. In addition, HB 3173 allows the tax credits to be taken in any of ten years, with a maximum of 20 percent in any one year.

Effective date: January 1, 2002

House Bill 3224

Relating to state agency positions

HB 3224 requires state agencies to report positions that are vacant for six months to the Department of Administrative Services (DAS). DAS may subsequently reduce the agency's quarterly budget allotment by the number of vacancies reported. Currently, agency managers may hold positions vacant to save money or for program or administrative reasons. Agencies may hire temporary workers to fill positions rather than permanent staff. Agency managers may also hold positions vacant during a biennium as one method to manage a budget shortfall. Both the DAS Budget and Management Office and the Legislative Fiscal Office review long-term vacant positions as part of the agency budgets analysis process.

Effective date: January 1, 2002

House Bill 3372

Relating to information technology

HB 3372 requires the Department of Administrative Services (DAS), the State Treasurer, the Secretary of State, and state agencies to implement portfolio-based management of information technology (IT) resources.

The measure is designed to make management of state technology resources more efficient and cost-effective. To effectively and accurately manage information technology resources of state agencies and to ensure quality planned IT investments, HB 3372 requires that

a portfolio-based IT asset management system be developed. The system will collectively evaluate past and current technology assets; streamline and facilitate the biennial planning and budgeting process; identify technology investments compliant with state agency technical architectures; and provide cost-benefit analyses and risk assessments of IT investments.

Effective date: January 1, 2002

House Bill 3433

Relating to taxation

HB 3433 extends the expiration date for the temporary 10-cent cigarette tax to January 1, 2004, from its scheduled expiration date of January 1, 2002. The tax is to be used exclusively to fund programs under the Oregon Health Plan.

HB 3433 also defines "cigar" for purposes of the Tobacco Products Tax Act and limits the amount of tax that can be levied on cigars under the Other Tobacco Products tax to 50¢ per cigar.

Effective date: January 1, 2002

House Bill 3633

Relating to restructuring by electric power industry

HB 3633 postpones restructuring of the electric power industry until March 1, 2002, but does not change the implementation date of the low-income bill payment assistance program, scheduled to take effect October 1, 2001. The new effective date for the following restructuring provisions will be March 1, 2002: non-residential retail electricity consumers will be allowed direct access to competitive electricity markets; electric companies will provide retail consumers with a cost-of-service rate option; residential consumers will be allowed to purchase from a portfolio of rate options; electric companies will be allowed to collect a public purpose charge; and electric companies will "unbundle" the costs of services into generation, transmission, distribution, and retail services.

HB 3633 expands the requirement that electric companies provide a cost-of-service rate option to all retail consumers connected to the companies' distribution systems, but allows the Public Utility Commission (PUC) to waive the requirement after July 1, 2003, for any consumer that is not a residential or small commercial consumer. The measure also deletes a requirement that

the PUC set rates for electric companies to recover costs related to restructuring investments made necessary by the 1999 restructuring legislation.

The 1999 Legislature passed a major electric power industry restructuring bill (SB 1149), which directed investor-owned electric utilities to offer direct access for non-residential customers and a portfolio of rate options that include cost-based, market-based, and “green” power rates for residential customers by October 1, 2001. The legislation also required a low-income energy assistance program and charges from retail customers to fund energy efficiency and conservation programs. HB 3633 delays the effective date of the provisions by five months, except for the low-income energy assistance program.

Effective date: July 20, 2001

House Bill 3660

Relating to municipalities

HB 3660 allows special districts to qualify for Special Public Works Fund moneys by adding them to the definition of municipalities that are eligible for infrastructure and technical assistance grants and loans under the fund.

Currently, Oregon’s special districts provide a variety of basic infrastructure services. Services include, but are not limited to, parks and recreation, water improvement, highway lighting, library, irrigation, ports, mass transit, and cemetery maintenance. The primary special district funding sources for infrastructure projects are local option levies, general obligation bonds, and bank loans.

The Oregon Economic and Community Development Department administers the Special Public Works Fund which maintains the Community Facilities Account (CFA). The CFA provides loans to qualified municipalities. Funds for the CFA are appropriated from General Fund moneys, federal, state, and local governments, repayments, earnings, gifts, donations, and revenue bonds. HB 3660 adds special districts to the list of municipalities that qualify for loans from the CFA.

Effective date: January 1, 2002

House Bill 3696

Relating to utility regulation

HB 3696 limits the Public Utility Commission’s

regulation of rates of public utilities that enter into alternative rate plan agreements to provide power through a generation plant or from a wholesale power purchase. As generation of energy and provision of energy resources are in high demand in Oregon and throughout the Western United States, the measure’s removal of regulatory barriers to power generation provides electric utilities with the opportunity to enter into longer term power purchase agreements and construct new generation facilities.

Effective date: August 3, 2001

House Bill 3769

Relating to raffles

HB 3769 exempts charity raffles that handle less than \$10,000 from the licensing and reporting requirements of the Department of Justice.

Raffles are lotteries operated by charitable, fraternal, or religious organizations. In raffles, players pay something of value for chances to win something of value. The “handle” on a raffle is determined by multiplying the number of tickets (“chances”) by the price per ticket.

The Department of Justice has the duty to authorize and regulate the operation of raffle games, to issue and renew licenses and permits for their operation, and to adopt license and permit fees. The resulting paperwork is a burden on non-profit organizations, especially smaller ones, dependent upon raffles for a significant portion of their funding.

Prior to passage of HB 3769, raffles with handles of \$2,000 or less were exempted from regulation by administrative rule of the Department of Justice. HB 3769 increases the exemption for raffles to those with a handle up to \$10,000.

Effective date: January 1, 2002

House Bill 3788

Relating to energy

HB 3788 expedites the power generation facility siting process to encourage additional energy production and requires certain conservation activities by state agencies. The measure deletes the Public Utility Commission’s authority to offer incentives for a utility divestiture of generating plants. The measure also disallows the installation of solar heating and cooling systems without journeyman plumber certification or a specialty

registration from the State Plumbing Board.

The expedited licensing provisions of HB 3788 exempt temporary (up to two-year operation) generating facilities and standby facilities meeting certain criteria from the requirement to obtain a site certificate until July 1, 2003. The measure provides land-use planning requirements and expedites the siting review process for demonstrably low-impact gas-fired power plants, effective March 31, 2001.

The conservation provisions of HB 3788 permit the Oregon Office of Energy to waive fees and reviews for a state agency that demonstrates conservation greater than 20 percent of building code requirements. The provisions also require all state facilities constructed or renovated to exceed conservation provisions in building code requirements by 20 percent and require state agencies to reduce nonrenewable energy consumption by 10 percent.

Effective date: June 28, 2001

House Bill 3980

Relating to the Industrial Accident Fund

HB 3980 directs the Secretary of State to conduct an independent actuarial review of the Industrial Accident Fund (IAF) within the State Accident Insurance Fund (SAIF) Corporation. The measure requires SAIF Corporation to cooperate with the actuarial firm and pay for the audit.

HB 3980 directs the Secretary of State to determine the scope and direction of the audit and to provide the audit results to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Additionally, the measure requires the audit and report be made available for public inspection. HB 3980 directs the SAIF Corporation's board of directors to annually report to the Secretary of State regarding the total assets in the IAF, the reserves and surpluses needed to pay claims, additional funds, and the investment gain generated by the IAF.

Effective date: January 1, 2002

House Joint Resolution 21

Urging arcade owners to label violent video games and restrict children's access to violent video games

HJR 21 encourages Oregonians, as a community, to take steps to empower parents to protect young people from

extremely violent and sexually explicit video games.

In July 2000, the American Medical Association, the American Psychological Association, the American Academy of Pediatrics, and the American Academy of Child and Adolescent Psychiatry issued a joint statement warning that many studies have shown a causal connection between media violence and aggressive behavior in some children.

HJR 21 recognizes the efforts of Danielle Shimotakahara, a fourteen year-old from the Coos Bay area, who has been actively working in her local community and statewide to highlight her concerns about the effects of violent video games on young people. The measure commends Sega Game Works Arcades for restricting access to the most violent video games and requests and encourages the coin-operated video game industry to label violent video games and place them in age-restricted areas. The measure encourages parents and Oregonians to be proactive in monitoring children's exposure to video games.

Filed with the Secretary of State: July 2, 2001

Major Legislation Not Enacted

Senate Bill 978

Relating to sports

SB 978 was an outgrowth of HB 2941, a measure approved by the House early in the session, that sought to use \$150 million in lottery backed bonds to help pay for a new baseball stadium in the Portland area for a Major League Baseball team. The proposal in SB 978 allowed for the issuance of \$150 million in general obligation bonds and sought no lottery money, relying instead on a bonding method that used new income taxes generated by the professional baseball team and players who would be playing in the new stadium to repay the interest and principal on the bonds.

SB 978 would have allowed use of proceeds from the bonds only for the following purposes: costs incurred in development and construction of a stadium; funding bond reserves and obtaining credit enhancement for the bonds; and costs of issuing bonds and paying expenses of the State Treasurer. Under SB 978, the bonds would have been issued and the proposed stadium built only if a professional baseball team agreed to relocate to Portland and pay a share of the stadium's cost, estimated at \$336 million. The measure required the term of the bonds to be no greater than 35 years and would have required a Major League Baseball team owner to pay the difference if the income tax revenues from members of the team were less than the debt service on the stadium bonds.

Senate Joint Resolution 41

Proposing amendment to Oregon Constitution relating to senior citizen property tax relief

SJR 41 would have created a ballot measure amending the Oregon Constitution to exempt the primary residence of a senior citizen (age 65 and older) from property taxes. The measure would have limited the amount of the exemption to no more than 150 percent of the assessed value of the average single-family residence in the county in which the primary residence was located. The measure also would have required the Legislative Assembly to enact laws to ensure that senior citizen renters achieved economic relief comparable to that granted to owners.

SJR 41 provided for a phase-in for the exemption over a four-year period.

House Bill 2057

Relating to state finance

HB 2057 would have established an Economic Security Fund (ESF). The measure set the minimum funding level at five percent of the total General Fund and required that any interest that accrued above that limit be transferred back to the General Fund. Several areas of funding for HB 2057 were considered by the legislature, including a portion of the Master Tobacco Settlement funds, a portion of the Medicaid Upper Payment Limit (MUPL) funds, and excess revenues received by the state that fell under the threshold for the two-percent "kicker" requirement to take effect.

The measure would have allowed appropriations from the ESF only when certain economic or budgetary triggers had been met and the appropriation was approved by a three-fifths vote of the members in each chamber of the Legislative Assembly. HB 2057 would also have allowed an appropriation from the ESF if the Governor had declared an emergency and the appropriation was approved by a two-thirds vote of the members in each chamber of the Legislative Assembly.

HB 2057 addressed a concern that the state does not have a "rainy day fund." Oregon's income tax-based revenue stream is particularly sensitive to economic activity and no revenue reserve exists in the event Oregon experiences an economic slowdown.

House Bill 2131

Relating to enterprise zones

HB 2131 would have made a number of changes to the rural Oregon Enterprise Zone Act of 1989 including allowing a hotel or motel within a zone to be granted a property tax exemption. The measure would also have modified the current requirement that a qualified business increase employment by 10% annually. These and other changes were designed to increase economic stimulation within enterprise zones.

House Bill 2172

Relating to affordable housing

HB 2172 would have required that construction of new affordable housing incorporate design features to provide

accessibility to handicapped individuals. The measure would have applied to all housing projects that had three or fewer units and received funding from housing authorities, cooperative housing projects, or the Oregon Housing and Community Services Department (OHCSO). The measure outlined specific criteria for housing units and required the construction of the units adhere to the guidelines established in the Federal Fair Housing Amendments of 1988.

HB 2172 would have allowed exceptions from the rules in cases where the features increased costs, reduced the number of units that could have been provided, impacted environmental requirements, or violated community design standards. In addition, the measure would have required the housing authorities, cooperative housing projects, and OHCSO to provide biennial reports on the number of new housing units that incorporate the new standards.

House Bill 2436

Relating to exemption from disclosure of audio recording of caller to 9-1-1 emergency center

HB 2436 would have made audio recordings of 9-1-1 calls confidential, unless the public interest required disclosure. The measure would have allowed a caller, or a family member or legal representative, to consent to the disclosure of the audio recording. HB 2436 provided direct access to audio recordings under specified circumstances to district attorneys, law enforcement officers, attorneys for defendants in criminal proceedings, emergency service agencies, and labor organizations. The measure would have allowed any person to obtain a written transcript of the audio recording.

House Bill 2856

Relating to state collection of debt

HB 2856 would have required state agencies to turn over delinquent and liquidated accounts to a private collection agency or the Department of Revenue within 90 days. Under the measure, the Department of Administrative Services would have been allowed to adopt administrative rules exempting certain state agencies. HB 2856 would have also allowed state agencies to add a collection fee to the amount owed but prohibited the amount from being larger than the commission charged by the private collection agency or the collection fee charged by the Department of Revenue.

Currently, state agencies have one year to turn over delinquent and liquidated accounts to a private collection agency or the Department of Revenue.

House Bill 2941

Relating to lottery bonds for sports facilities

HB 2941 would have authorized the use of \$150 million in lottery bonds to help develop and construct a major league baseball stadium in Oregon. The measure would have required a major league team to commit to locating in Oregon and the entire stadium construction expenses be secured before the bonds were issued. HB 2941 created a property tax exemption for the stadium.

House Bill 3790

Relating to energy

In response to energy demands, HB 3790 would have created energy enterprise zones where companies could build combustion turbine power plants. HB 3790 would have authorized the Oregon Economic and Community Development Department to approve applications from cities or counties for an energy generation enterprise zone. The measure would have exempted energy generation enterprise zones from certain state laws and local property taxes not to exceed five years.

HB 3790 also would have prohibited local governments from levying taxes or fees on the volume of energy produced or the volume of fuel consumed by an energy facility.

House Bill 3877

Relating to government efficiency

HB 3877 would have created the Legislative Ombudsman position within the Legislative Administration Department. The measure outlined the duties, responsibilities, and authority of the ombudsman. The measure would have required the Governor to review a decision of an agency director or commission when requested by the Legislative Ombudsman. It would have also allowed appeal of some state agency ombudsman decisions to the Legislative Ombudsman. Several state agency ombudsman positions would have either been abolished or redefined by HB 3877, including the Children's Ombudsman, the Public Safety Ombudsman, the Manufactured Dwelling Ombudsman, and the Ombudsman for Injured Workers.

House Bill 3890

Relating to a study of budgeting

HB 3890 would have created a zero-based budgeting pilot program and a performance-based budgeting pilot program within the Department of Administrative Services (DAS). The measure would have required DAS to select three state agencies to participate in each pilot program and would have provided preference to agencies that volunteered for either pilot program. The measure would have required the Governor's budget for the 2003-2005 biennium to include the pilot programs and stipulated that DAS would provide progress reports to the Seventy-second and Seventy-third Legislative Assemblies.

House Bill 4000

Relating to legislative measures

HB 4000 would have placed limits on the number of legislative measures that could be requested by legislators, legislative committees, elected officials, and state agencies. Legislators would have been limited to 20 requests each, legislative committees to 10, the Governor (including state agencies) to 400, Oregon's other five statewide elected officials to 25 each, and the judicial branch to 100. HB 4000 also provided exceptions to the limit when authorized by the President of the Senate or the Speaker of the House of Representatives. The measure would have allowed one additional request per member or committee when one of the member's or committee's measures was approved in the originating chamber.

House Joint Resolution 33

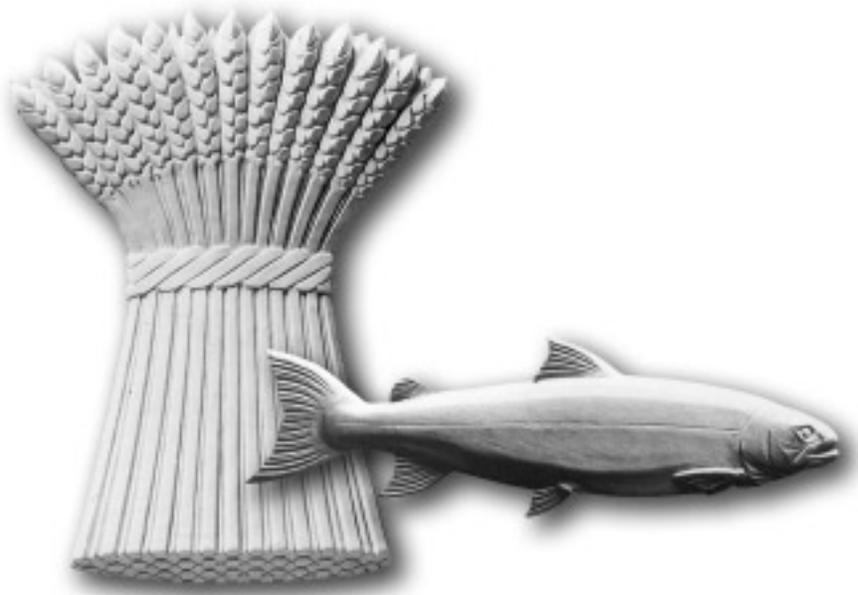
Proposes amendment to Oregon Constitution to establish Economic Security Fund

HJR 33 would have created a ballot measure amending the Oregon Constitution to establish the Economic Security Fund (ESF). The amendment, if approved by voters, would have established a funding minimum of 5 percent of the General Fund for the ESF. The amendment would have allowed appropriations from the ESF when either certain economic or budgetary triggers had been met and the appropriation was approved by three-fifths vote of the members in each chamber of the Legislative Assembly, or the Governor had declared an emergency and the appropriation was approved by two-thirds of the members in each chamber of the Legislative Assembly.

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Human Service Issues

Education



2001 Summary of Major Legislation

Senate Bill 65

Relating to students

SB 65 eliminates the requirement that students take a minimum of two years of second language instruction prior to completion of grade 12. The measure retains the requirement that students be proficient in a second language to qualify for a Certificate of Initial Mastery. SB 65 also specifies that Oregon students should have the opportunity to participate in a music curriculum, and clarifies that “the arts” includes music.

The two-year second language requirement prior to graduation was created by the 1995 Legislative Assembly and was to take effect by the end of the 2004-05 school year. School districts indicated that the requirement would have been problematic due to a shortage of qualified language teachers and the high cost of providing two years of instruction to all students.

Effective date: January 1, 2002

Senate Bill 160

Relating to student participation in sports

SB 160 directs school districts to require students in extracurricular sports in grades 7 – 12 to have a physical examination prior to participating, and then every two years if the student continues to participate. The measure requires a student who has had a significant illness or major surgery to have a physical exam prior to further participation. Exams must be conducted by a physician, physician’s assistant, chiropractor, or nurse practitioner, and to follow forms and protocols developed by the State Board of Education in consultation with voluntary sports organizations that are authorized by the state to administer interscholastic sports. The measure’s provisions first apply to students who participate in extracurricular sports during the 2002-2003 school year.

Previously, school districts have been free to choose whether to require physical examinations prior to participation in sports activities. While most school districts do require some sort of physical examination, the scope and frequency of such exams vary widely between districts. Three Oregon high school students died while involved in sports activities during the 1999-2000 school year, and in all three cases the physicals performed were documented using older, more limited examination forms than those required by SB 160.

Effective date: January 1, 2002

Senate Bill 255

Relating to public charter schools

SB 255 expands the criteria the State Board of Education may use when reviewing a public charter school proposal upon appeal by charter school proponents. Oregon’s public charter school statutes allow charter school proponents to appeal to the State Board of Education if their charter proposal has been denied by the local school board. The State Board may reject the proposal if it fails to meet a specific list of criteria. SB 255 expands the criteria and allows the State Board to reject the proposal if it fails to meet any of the provisions found in the public charter school chapter (ORS 338).

There are currently twelve public charter schools operating within Oregon, with an additional four scheduled to open during the 2001-02 school year. The process for establishing a public charter school was created during the 1999 Legislative Session.

Effective date: June 15, 2001

Senate Bill 257

Relating to Fair Dismissal Appeals Board

SB 257 modifies the appeals procedure for teachers and administrators to the Fair Dismissal Appeals Board by eliminating the hearings officer stage of the process. Instead, the contested case hearing will be conducted by a three-person panel of Fair Dismissal Appeals Board members. The measure directs the Oregon Department of Education to assist the board panel in the appeal hearing. The panel is empowered to subpoena and swear witnesses, but the person subpoenaed may quash or modify the subpoena if it is oppressive or unreasonable. The panel is required to hold a contested case hearing within 100 days of receipt by the teacher, of the notice of dismissal or notice of contract non-extension, and to send a written decision to the teacher, district superintendent, district school board, and the Superintendent of Public Instruction no later than 140 days after filing of the appeal.

Effective date: June 19, 2001

Senate Bill 258

Relating to alternative education programs

SB 258 directs the State Board of Education to establish standards for private alternative education programs to ensure a safe educational environment and to provide

students with the opportunity to make progress toward achieving state academic content and performance standards. The measure also requires that local school district boards annually approve any private alternative education programs with which they contract and determine that the program is registered with the Oregon Department of Education (ODE).

Officials within ODE have indicated that although school districts are required to contract only with alternative education programs registered with the department, there are no criteria by which registration requests may be turned down. SB 258 is designed to provide a level of quality assurance with regard to the alternative education programs that register with ODE.

Effective date: July 1, 2001

Senate Bill 259

Relating to education service districts

SB 259 makes a number of changes to Education Service District (ESD) statutes, including modifying the mission of ESDs. Board membership is changed by: deleting a requirement that ESD boards appoint two non-voting advisory board members; specifying that, when possible, the board establish zones so that each county with a major land area within the ESD will have at least one member on the board; and requiring each county with a majority of its land area within the ESD boundaries to have at least one member on the board or budget committee of the ESD.

SB 259 deletes a requirement that ESDs provide curriculum improvement services and special education programs, but allows for the provision of such services and programs through the resolution process.

For voluntary mergers of two or more ESDs, SB 259 eliminates a requirement that the State Board of Education be petitioned by electors of the district. The measure instead allows mergers to be proposed to the State Board of Education by petition from each of the affected ESD boards or by resolution to each of the ESD boards affected from two-thirds of the ESD's component school districts with a majority of students in the ESD. The measure also eliminates special merger election requirements for districts with a population of 550,000 or more.

SB 259 is the product of a task force created by the 1999 Legislative Assembly to examine the structure and funding of ESDs. The task force review was the first

effort to thoroughly examine ESDs since the early 1990s, during which time the state's education landscape has undergone significant changes.

Effective date: July 1, 2001

Senate Bill 260

Relating to school finance

SB 260 creates the Education Service District (ESD) distribution formula. The measure phases in ESD funding equalization on a per-weighted-student (ADMw) basis over the next five years. It also limits revenue reductions for high-resource ESDs over the next two years and sets a minimum state and local revenue target of \$1 million for all ESDs. The measure allocates five percent of total K-12 general operating revenue to ESDs and requires that 90 percent of ESD's general operating revenue be distributed to each ESD's component school district through the resolutions process.

The Department of Education is directed to study ESD services and identify deficiencies. Wallowa and Grant ESDs' revenue sharing with component districts (local ESD equalization) is repealed beginning in 2003-04. The measure also distributes any local revenue above allocation to component districts.

SB 260 takes effect July 1, 2001 with permanent equalization provisions becoming operative July 1, 2005.

Effective date: July 1, 2001

Senate Bill 273

Relating to Oregon Council for Knowledge and Economic Development

SB 273 creates the Oregon Council for Knowledge and Economic Development to promote knowledge-based economic development. The measure specifies that the council will advise and collaborate with interested parties to provide the following: high quality research and development; private-public models for sharing profit and intellectual property; private-public commercialization of knowledge and technology; a technology- skilled workforce; and technology capital resources.

The measure establishes a 15-member council, plus six ex-officio members with experience in a science- or technology-based industry or experience in private sector venture capital. The State Board of Higher Education, Economic and Community Development Department,

and Department of Community Colleges and Workforce Development will staff the council. The measure directs the council to report and make recommendations to the Governor and interim legislative committees before December 31, 2002.

Effective date: June 22, 2001

Senate Bill 324

Relating to Professional Organizations Certification Fund

SB 324 creates the Professional Organizations Certification Fund, to be used to help defray costs for teachers and administrators seeking advanced certifications. One form of advanced certification is that issued by the National Board for Professional Teaching Standards (NBPTS). The assessment fee currently charged for NBPTS certification is \$2,300.

The NBPTS is an independent, nonprofit, nonpartisan organization of teachers, school administrators, school board officials, elected officials, union leaders, and business and community leaders. Its mission is to establish rigorous standards for teachers, provide a national, voluntary teacher assessment system based upon those standards, and advance reforms designed to enhance learning in American schools. In the two years that NBPTS certification has been offered, more than 9,500 primary and secondary school teachers have been certified.

Effective date: July 1, 2001.

Senate Bill 326

Relating to name of Oregon University System

SB 326 changes the name of the Oregon State System of Higher Education (OSSHE) to the Oregon University System (OUS). In January 1998, the State Board of Higher Education changed the name of the State System of Higher Education to the Oregon University System, but the statutory references were not changed during the 1999 Legislative Session.

The Oregon University System is overseen by a chancellor and consists of seven universities: Eastern Oregon University, Oregon Institute of Technology, Oregon State University, Portland State University, Southern Oregon University, University of Oregon, and Western Oregon University.

Effective date: June 15, 2001

Senate Bill 332

Relating to academic degrees

SB 332 allows the Office of Degree Authorization (ODA) to file a civil suit or to file an injunction against those who make invalid academic degree claims or representations. The measure allows the Oregon Student Assistance Commission to recover attorney fees and court costs in such actions and directs the commission to adopt a schedule of civil penalties for violations, not to exceed \$1,000 per violation. The measure allows ODA to evaluate the acceptability of degrees from unaccredited schools and clarifies that ODA has oversight of non-degree programs offered by degree-granting schools.

ODA is the state agency charged with validating claims of degree possession, authorizing approved schools to offer degree programs, terminating substandard or fraudulent degree activities, and reviewing new post-secondary programs that are to receive public funding. Previously, ODA's sanctions were limited to filing criminal charges. The new civil penalty power in SB 332 provides ODA with flexibility in applying appropriate penalties.

Effective date: June 19, 2001

Senate Bill 486

Relating to distribution of federal forest reserve revenues to school districts

SB 486 distributes funds contained in the federal Secure Rural Schools and Community Self-Determination Act of 2000, which supplements federal forest revenue paid to counties for roads and schools. The measure distributes these funds among counties based on their proportional share of federal forest receipts during the eligible years. SB 486 requires the 25 percent schools share of these funds to be deposited in the County School Fund and includes these funds in local revenue for State School Fund purposes. This in effect means the revenue is shared statewide by all districts. Provisions are repealed July 1, 2007.

Effective date: August 10, 2001

Senate Bill 511

Relating to Oregon Health Sciences University

SB 511 changes the name of the Oregon Health Sciences University (OHSU) to the Oregon Health and Science

University. The measure expands the mission of the school from health profession education to include science and engineering education and expands research areas to include engineering, biomedical sciences, and general sciences. The measure also expands the school's board of directors from seven to ten members, which may include persons with engineering and technology backgrounds.

In December 2000, OHSU's board of directors approved a merger with the Oregon Graduate Institute of Science and Technology (OGI), which brought OGI into OHSU as the OGI School of Science and Technology. The school will join OHSU's existing schools of medicine, nursing and dentistry.

Effective date: April 30, 2001

Senate Bill 519

Relating to school finance

SB 519 addresses funding problems experienced by small school districts, and those with declining enrollments, by creating a Small School District Supplement Fund and transferring \$4.6 million per year from the State School Fund to the new fund in 2001-03. A small school district is defined as a district with fewer than 8,500 students (weighted) and whose high schools have fewer than 350 students for four grades or 267 for three grades. SB 519 grants each small school district \$200 per high school student per year of the biennium, with the balance used to fund need grants. The measure specifies need grant criteria are to include district size, declining enrollment, staffing ratios, ending balance and ESD resources. Any money left following the funding of need grants will be used to increase the \$200 per student (weighted).

The measure directs the Department of Education to study the relationship of small school size to cost and program needs. SB 519 allocates \$150,000 of the Small School District Supplement Fund to the Department of Education for a study of special education funding and services. The measure requires reports to the appropriate interim committee for both studies. These provisions sunset June 30, 2003.

Effective date: June 28, 2001

Senate Bill 594

Relating to instructional materials

SB 594 requires the State Board of Education to adopt

rules that will eliminate the use and purchase of elemental mercury, mercury compounds, and mercury-added instructional materials by public elementary and secondary schools. Mercury is a persistent and toxic pollutant used in a range of products, including thermometers, thermostats, switches of many types, and other measuring devices. The human body accumulates mercury through persistent or repeated exposure, and there is no known process to remove it from the human body.

Effective date: January 1, 2002

Senate Bill 595

Relating to reading

SB 595 establishes a pilot program for elementary school reading instruction, with the focus on explicit phonics instructional methods. If the Oregon Department of Education (ODE) obtains the necessary funds, the measure requires participation by school districts with a weighted average daily membership (ADMw) of greater than 50,000 students. SB 595 allows ODE to seek and accept gifts, grants and donations from any source, including federal funds, to support the program.

SB 595 focuses on elementary schools serving students from low-income families. The pilots are to run during the 2001-02, 2002-03, and 2003-04 school years. The measure directs participating school districts to report to the interim legislative committees on education regarding the program's costs and impact on students.

"Explicit" phonics instruction involves the direct teaching of the relationships between the 44 English speech sounds and their letter equivalents. Students first learn the letters and their sounds, then learn to build and combine them into syllables and words.

Effective date: July 31, 2001

Senate Bill 690

Relating to teacher licensure

SB 690 directs the Teacher Standards and Practices Commission (TSPC) to establish an American Indian languages teaching license. Each American Indian tribe may develop a written and oral test that applicants must successfully complete in order to determine their qualifications to teach the tribe's native language. The measure allows a holder of such a license to teach in a school district, public charter school, education service district, community college, or state university. SB 690 prohibits the TSPC from requiring an applicant to hold

a specific academic degree, complete a specific amount of education, or complete a teacher education program to receive an American Indian languages teaching license. However, the measure requires that a holder of the new license, employed by a school district, public charter school, or education service district participate in a technical assistance program with an experienced teacher.

An estimated 25-35 native languages have been spoken in Oregon, though only nine are spoken today. Native Americans consider the loss of languages to be an urgent problem and have taken steps to record, catalog, and develop teaching curricula and training for native languages. Tribal elders and other native language speakers have been previously unable to teach because they lack both the certification and the formal requirements for achieving such certification.

Effective date: January 1, 2002

Senate Bill 811

Relating to education

SB 811 adds the factor of student participation levels in statewide testing as a factor when determining a school's overall grade on school report cards and directs the Oregon Department of Education to include specific information on school and school district report cards, if that information is available. SB 811 specifies that the purpose of the school report cards is to inform parents and encourage parent participation.

The 1999 Legislature required the Department of Education to produce yearly performance reports (report cards) on schools and school districts in the state. The legislation required information on student performance, student behavior, and school characteristics. SB 811 requires additional information as it becomes available and clarifies the purpose of the report cards.

SB 811 also encourages school districts to implement programs, such as the Initiative for Quality in Education developed by Portland General Electric, with the goal of improving student performance and school personnel satisfaction.

Effective date: August 10, 2001

Senate Bill 5513

Relating to the financial administration of the Department of Education

SB 5513 appropriates to the Department of Education \$220 million for the School Improvement Fund. The fund will provide grants to school districts and the Youth Corrections Education Program to fund activities related to student achievement (also see HB 2298).

Effective date: July 31, 2001

Senate Bill 5514

Relating to state financial administration

SB 5514 appropriates a total of \$4.97 billion for distribution to K-12 school districts and ESDs as follows: \$4.754 billion to the School Fund; \$14.6 million for Special Education costs (SB 253); \$9.2 million to the Small School District Supplement Fund (SB 519); \$192.2 million to Education Service Districts; and \$800,000 to the Out-of-State Disabilities Placement Education Fund.

Effective date: July 31, 2001

House Bill 2015

Relating to higher education

HB 2015 creates a two-year, 15-member Post-Secondary Education Opportunity Commission to assist the Governor in developing a post-secondary budget framework and to make recommendations regarding institutional autonomy and governance among institutions of higher education and effective support for locally governed community colleges. The measure directs the commission to examine alternative governance structures for state-level post-secondary education and to present findings and recommendations to the 2003 Legislature. The Governor's office will staff the commission.

HB 2015 directs the Governor to include a budget framework in the budget report for the state's investment in colleges and universities. The framework shall include state investment in student access to post-secondary programs and the measure specifies other categories that may be included. HB 2015 directs the Governor, with the assistance of the Post-Secondary Education Opportunity Commission, to establish goals and performance measures for the budget and to include in the budget report how the proposed budget meets the goals and performance measures.

Effective date: August 15, 2001

House Bill 2082

Relating to community learning centers

HB 2082 allows school districts to enter into partnerships with groups that support children and families for the purpose of creating community learning centers. The measure directs the Oregon Department of Education, the Oregon Department of Human Services, the Oregon Commission on Children and Families, and the Oregon Criminal Justice Commission to support the development of community learning centers across the state. It also directs school districts to create advisory committees for the learning centers they create.

There are many different types of community learning centers, but all centers encourage parent involvement, rely on collaboration and partnerships between community organizations and local schools, provide a location for community members to access classes, information, and some human services, and consistently work to achieve successful outcomes for children and their families.

The Coalition of Community Learning Centers (CCLC) met initially in June 2000, and once each month thereafter. The coalition appointed a subcommittee to draft legislation that would set policies supporting the development of community learning centers. HB 2082 is the legislation proposed by the subcommittee.

Effective date: July 6, 2001

House Bill 2124

Relating to the Oregon Qualified Tuition Savings Program

HB 2124 makes technical corrections to the Oregon Qualified Tuition Savings Program to more closely follow federal treatment under the Internal Revenue Code and allows non-Oregon residents to participate in the program. The measure allows an account owner in the Oregon Qualified Tuition Savings Program to also be the designated beneficiary. Corporations or other legal entities are allowed to establish accounts for individual beneficiaries. HB 2124 specifies that contributions and earnings are held in trust solely for the purposes of the program and the participants. Moneys in the plan are protected from garnishment, attachment, bankruptcy, or insolvency actions. HB 2124 allows payment from the account directly to the beneficiary under certain circumstances and specifies that personal information regarding the account is confidential. HB 2124 applies

to accounts established on or after January 1, 2001.

The Oregon Qualified Tuition Savings Program was created in 1999 and allows up to \$2,000 annually to be contributed tax-free. Realization on earnings for funds contained within an account are generally deferred until withdrawn by the beneficiary.

Effective date: October 6, 2001

House Bill 2286

Relating to school finance

HB 2286 seeks to address the shortage of English as a Second Language (ESL) teachers by establishing a grant program through the Oregon Department of Education (ODE) for the costs of training ESL teachers. No funds were appropriated to the program, but the department may seek donations, grants, and federal funds. Available funds would be granted to school districts to reimburse teachers for the tuition costs associated with completing an ESL or bilingual teaching program. ODE shall determine the grant amounts and which school districts receive them. The measure specifies that grants be available to districts that meet one of four criteria: three percent or more of enrolled students are ESL students; the district serves ESL students or bilingual students within a large geographic area of the district; the district has a high growth of ESL or bilingual students in any school year; or the district can demonstrate extraordinary needs for ESL teachers or training for ESL teachers.

Currently, less than half of the students in ESL classes are taught by an instructor with a bilingual teaching endorsement. Higher education representatives indicate that colleges of education are graduating only a small number of bilingual teachers.

Effective date: August 10, 2001

House Bill 2291

Relating to school districts

HB 2291 allows school districts to lease, purchase, or build schools located within other school districts if the district has the written permission of the school district within which the school is to be located. If permission is not obtained prior to the opening of school, the school district board of the district in which the school is to be located may file a complaint with the Superintendent of Public Instruction. The measure requires the Superintendent to hold a contested case hearing upon receipt of the complaint. If it is determined that

permission was not obtained, HB 2291 requires the withholding of State School Fund grants for the district that opened the school illegally.

This issue arose when the Riverdale School District sought to locate its high school within the boundaries of the Oregon City School District without Oregon City's permission. The Riverdale School District currently operates a K-8 school within its boundaries, but due to lack of sufficient space has attempted to site its high school elsewhere. Riverdale used classrooms at the Marylhurst College campus for their high school during the 2000-01 school year, and plans to establish their high school at an unused school building in Southeast Portland during the 2001-02 school year in accordance with a contract with the Portland School District.

Effective date: May 22, 2001

House Bill 2295

Relating to quality education

HB 2295 establishes the Oregon Quality Education Commission and requires the Governor and the Legislature to issue reports on education funding sufficiency in accordance with Ballot Measure 1, approved by the voters at the November 2000 General Election. It requires the Governor to appoint, subject to Senate confirmation, an 11-person Quality Education Commission. The measure directs the Department of Education to staff the commission. It directs the commission to determine quality goals for state kindergarten through twelfth grade public education (to include goals already specified in statute); determine each biennium the level of funding sufficient to ensure the system meets the quality goals; identify best practices based on research, data, professional judgment, and public values; and issue a report to the Governor and the Legislative Assembly prior to August 1 in even-numbered years identifying current practices, costs, and expected performance, as well as best practices and the costs and expected performance under those practices.

Both reports are to indicate whether the budget is, in fact, the amount of money determined by the Quality Education Commission and the reasons for, and impact of, any insufficiencies. The reports are also to contain whether the state's system of post-secondary public education has quality goals established by law and, if so, to determine the sufficiency of the proposed budget in meeting the goals or the reasons for, and extent of, insufficiency. The legislative report is not required to use the

Quality Education Commission's report as its basis.

Effective date: August 1, 2001

House Bill 2298

Relating to the School Improvement Fund

HB 2298 creates a School Improvement Fund. The Oregon Department of Education (ODE) is required to award grants from the fund to school districts, Youth Corrections Education programs, and Juvenile Detention Education programs for activities to increase student achievement.

The measure indicates types of activities that will be considered for grants and specifies that for the next two biennia the grants will relate to improved student performance on 3rd and 5th grade reading and math assessments. Grants are to be distributed to districts in direct proportion to their share of the state's total students (weighted). The department may award grants for activities other than those related to reading and math in 3rd and 5th grade assessments if a district meets, or is already making significant progress toward meeting, those benchmarks.

The department will ensure accountability of school districts for the grant funds by providing assistance, appropriate interventions, and consequences to support progress toward the performance targets. The measure requires the State Board of Education to consider recommendations of the Quality Education Commission in adopting grant criteria. ODE shall annually evaluate each recipient district on progress toward their performance targets. ODE is to report to the legislature on the results of the grant program beginning with the 2003-05 biennium. Funding for HB 2298 is found in SB 5513.

Effective date: July 18, 2001

House Bill 2300

Relating to school district local option equalization

HB 2300 declares that it is the policy of this state to provide substantial equity in opportunity among school districts in which electors support local option taxes for primary and secondary education. The measure specifies that this policy will be accomplished by providing grant supplements to districts that enact local option taxes and have lower property wealth per student.

Grants will be calculated based upon the number of

students, the local option tax rate, and the difference between the target value per student and the district assessed value per student. Grants will be distributed by March 31 each fiscal year.

Effective date: October 6, 2001

House Bill 2431

Relating to scholarships for former foster children

HB 2431 establishes a full-tuition scholarship program for former foster children. Eligibility is based on having been in foster care for at least one year while between the ages of 16 and 21, as a ward of the court and in the legal custody of the State Office for Services to Children and Families (SCF). HB 2431 requires the former foster child to enroll as an undergraduate within three years of high school graduation (or equivalency), or within three years of removal from SCF care, whichever is earlier. Scholarships may be granted to eligible students enrolled in an Oregon public or private university or college, or an Oregon community college. The measure creates the Former Foster Youth Scholarship Fund and sets award amount equal to tuition and fees, not to exceed the award amount cannot exceed the tuition level of the University of Oregon. The fund will be administered by the Oregon Student Assistance Commission. The scholarships shall first be available for use in the 2001-02 school year. \$100,000 was appropriated for the program through the Student Assistance Commission in HB 5014.

Effective date: July 1, 2001

House Bill 2459

Relating to public employee retirement

Among its other provisions, HB 2459 allows retired teachers and administrators to return to work in school districts located in counties with a population of 35,000 or less and still collect retirement benefits, lifting the 1,039 hour cap on the number of hours a retiree can work and receive Public Employee Retirement System (PERS) benefits.

Many rural school districts report difficulty in filling vacant teaching and administrative positions. These districts would like the option of hiring retired persons to full such vacancies, but the current cap of 1,039 hours prevents many retirees from serving in such a capacity while maintaining their PERS benefits.

The Oregon counties that qualify based upon the 35,000 population limit, are: Baker, Crook, Curry, Gilliam,

Grant, Harney, Hood River, Jefferson, Lake, Malheur, Morrow, Sherman, Tillamook, Union, Wallowa, Wasco, and Wheeler.

Effective date: July 31, 2001

House Bill 2598

Relating to education

HB 2598 creates a two-year Task Force on Special Education and School Finance. Membership of the task force shall be 23 persons who are familiar with federal and state funding programs for special education students as specified in the measure.

The measure directs the task force to review many aspects of special education funding: student-teacher ratios; the mediation and complaint resolution process; the Oregon Department of Education's (ODE) ability to monitor special education funding, performance, and outcomes; the most appropriate instructional methods and services; the most appropriate professional development and staff support; and means of early identification and intervention for students. The task force is to make legislative recommendations on funding to the interim committees on education by October 1, 2002. ODE is to provide staff for the task force.

There are currently 73,000 children in Oregon with disabilities who receive special education and other public services.

Effective date: July 19, 2001

House Bill 2682

Relating to administration of medication to students

HB 2682 expands immunity from personal liability in criminal or civil action for school employees who dispense medication. The measure maintains the requirement that personnel be trained prior to dispensing medication, but deletes training as a factor of immunity. Other factors regarding immunity require the medication to be dispensed as follows: in good faith; at the direction of a supervisor; in compliance with physician instructions; and pursuant to the written permission and instruction of the parent or guardian. HB 2682 applies to actions commenced on or after July 1, 1998.

Effective date: May 16, 2001

House Bill 2822

Relating to statewide assessment system

HB 2822 requires statewide math problem-solving and English writing assessments to be given on or after March 1 in grades 3, 5, or 8. The measure requires the Board of Education to establish criteria and a process for granting waivers to school districts for the testing dates.

Statewide mathematics and English assessment examinations have typically been administered between January 19th and February 9th. However, some educators expressed a desire to move the testing date back to not earlier than March 1st, so as to allow students more time to master material and prepare for examinations.

Effective date: July 1, 2001

House Bill 3352

Relating to books for eligible children

HB 3352 creates within the Department of Education, a program to provide books to students in kindergarten through fifth grade who have few books at home. Participating schools, individuals, and groups may collect books to be donated to recipient schools. The department must develop criteria for identifying eligible students and develop and distribute a brochure to schools. The measure directs participating schools to hold book drives, review the condition and appropriateness of donated books, and to sort and pack the books. School districts must collect donated books from participating schools and arrange for their transport to recipient schools who will distribute the books to eligible children. The voluntary program created by HB 3352 emulates the "Spread the Word" program created in Massachusetts in 1995.

Effective date: January 1, 2002

House Bill 3395

Relating to public charter schools

HB 3395 modifies the charter school statutes in a number of ways. The measure prohibits a person who is employed by a public charter school from serving on the school board of the district in which the school is located, a prohibition similar to employees of non-charter schools. It adds a prohibition on corporal punishment and prohibits public charter schools from discriminating based on race and religion. The measure allows a charter school to receive services from an education service

district and assumes, for the purpose of calculating a charter school's minimum per-student payment, that the percentage of children in impoverished families is the same as the school district's percentage of children in impoverished families.

Effective date: July 19, 2001

House Bill 3398

Relating to special education hearings

HB 3398 sets a two-year time limit for requesting a special education due process hearing.

The U.S. Department of Education has indicated that the federal Individuals with Disabilities Education Act (IDEA) does not include a specific statute of limitations. Oregon hearings officers have consistently applied a two-year statute of limitations, concluding that special education actions were most analogous to civil rights claims which have a two-year statute of limitations. However, in December 1999, an Oregon Federal District Court judge concluded that, in the absence of a specific statute of limitations under state or federal special education law, a claim for tuition reimbursement under the IDEA had a six-year statute of limitation. That case is currently on appeal to the Ninth Circuit Court of Appeals. Other states have established a variety of limitation periods for IDEA claims, ranging from 60 days to two years.

Effective date: June 20, 2001

House Bill 3403

Relating to students

HB 3403 requires school districts to adopt policies prohibiting harassment, intimidation, or bullying by January 1, 2004. The measure encourages districts to include incident reporting, investigation procedures, and consequences for a person who harasses, intimidates, or bullies. HB 3403 prohibits retaliation against a victim of, witness to, or person with reliable information about, an act of harassment, intimidation, or bullying. Immunity is granted to school employees who promptly report incidents in compliance with the policies adopted under the measure.

The Oregon Attorney General recently convened the School/Community Safety Coalition to study school safety and submit recommendations and legislative proposals. The report concluded that bullying and harassment are serious concerns for school

administrators and, while there are examples of successful programs to counter such activities, their use is not widespread.

Effective date: January 1, 2001

House Bill 3429

Relating to school safety

HB 3429 creates the Center for School Safety within the Department of Higher Education to serve as a point of data analysis, research, information dissemination, and technical assistance for improving school safety. The measure creates an account in the State Treasury, and allows the center to apply for and accept contributions and federal assistance. HB 3429 requires the center to establish a clearinghouse for prevention and intervention service materials and to provide program expertise to communities, schools, and law enforcement agencies. It requires school safety reports by July 1 each year. The University of Oregon Institute on Violence and Destructive Behavior will staff the center.

HB 3429 specifies that a 15-person board shall govern the center. The measure requires the Department of Education to make recommendations on a system for collection of school safety and incident data by November 1, 2002. The board of the center is directed to develop a plan for assessment of safety and student discipline by November 1, 2003. The measure requires each school district to adopt by May 15, 2004 a plan of immediate and long-term strategies to address school safety and school discipline.

Effective date: July 1, 2001

House Bill 3647

Relating to the School Safety Hotline

HB 3647 directs the Department of Justice to establish a hotline to allow students and others to report criminal or suspicious activities on school grounds or at school-sponsored activities. The measure includes improper use of the hotline within the crime of improper use of an emergency reporting system, a Class A misdemeanor.

According to the Attorney General's School/Community Safety Coalition, students have conveyed concerns about student safety at schools, with bullying, intimidation, and harassment listed as situations that could lead to escalated violence. The students were supportive of the concept of an anonymous tip line. Similar tip lines have been established in Mississippi, Ohio, Oklahoma and

West Virginia.

Effective date: July 1, 2001.

House Bill 3941

Relating to reading

HB 3941 creates the Early Success Reading Initiative and school pilot program. The measure specifies that if grants are awarded, they shall be awarded to 30 school districts that have the lowest reading scores on the third grade reading assessment in the 2000-01 school year. The measure specifies inclusion of early screening for children entering school, reading instruction using scientifically-based reading materials and programs, continuous monitoring of reading progress, and professional development for teachers and administrators. HB 3941 allows the University of Oregon to develop, implement, and monitor the reading initiative and to consult with pilot districts. It requires the University of Oregon to report annually on progress. HB 3941 allows the Department of Education to seek gifts, grants, and donations from any source, including federal funds.

Effective date: July 27, 2001

Major Legislation Not Enacted

Senate Bill 1

Relating to Superintendent of Public Instruction

SB 1 would have designated the Governor as the Superintendent of Public Instruction upon the expiration of the term, or upon vacancy of the office, of the present Superintendent. The measure would have allowed the Governor to appoint, subject to Senate confirmation, a Deputy Superintendent of Public Instruction, following consultation with the State Board of Education.

The Oregon Constitution designated the Governor as the State Superintendent of Public Instruction, but stipulated that five years following ratification of the constitution the Legislative Assembly was to provide for popular election of a Superintendent. Oregon is one of 13 states that currently provides for direct election of the Superintendent.

Senate Bill 38

Relating to school size

As introduced, SB 38 would have limited the size of schools by specifying a maximum enrollment for elementary, middle, and high schools. Districts unable to meet size limitations could have requested a waiver of the requirement from the State Board of Education. Maximum school sizes specified in the measure are as follows: For grades K-5: 400 students; for grades 6-8: 500 students; for grades 9-12: 800 students. The measure would have allowed “schools within schools.” As amended, SB 38 would have *encouraged* those school sizes, rather than mandated them.

Senate Bill 508

Relating to firearms

SB 508 would have authorized school boards to prohibit persons with concealed handgun licenses from possessing firearms on public school property. The measure also would have made possession of a firearm on the site or premises of any student program or activity sponsored or sanctioned by a public or private school a Class C felony.

Senate Bill 648

Relating to autism spectrum disorder

SB 648 would have directed the State Board of Higher Education to establish a graduate level program for the purpose of training individuals in the design and implementation of intensive behavior intervention programs for children with autism spectrum disorder. SB 648 also would have directed the Mental Health and Developmental Disability Services Division to establish a voluntary registration system for those who provide intensive behavior intervention based on principles of applied behavior analysis or who supervise the design and implementation of intensive behavior analysis for persons with the disorder. The measure set forth registration requirements and a fee schedule.

Autism results from a neurological disorder affecting the brain and affects approximately one in 500 individuals.

Senate Bill 746

Relating to public school displays

SB 746 would have allowed a public school to display an object or document containing the Ten Commandments, in a public school or at a public school event, if the object or document was displayed with other objects and documents of historical significance as part of a “Foundations of American Law and Government” display. The measure clarified that the Ten Commandments were to be displayed for the primary secular purpose of promoting a better overall understanding of the historical foundation of the United States.

The proposed “Foundations of American Law and Government” display was to include documents and objects that have formed or influenced the legal and governmental systems of the United States and the State of Oregon. In addition to the Biblical Ten Commandments, SB 746 listed the following historical documents as possible additions to such a display: the Preamble to the United States Constitution, the Declaration of Independence, the Magna Carta, and the Justinian Code.

Senate Bill 749

Relating to student assessments

SB 749 would have required the Oregon Department of

Education to include national comparisons in statewide assessments it develops. Comparisons were to include information pertaining to individual students, schools, and school districts in Oregon and be based on empirical national norms that were not older than seven years at the time of the assessment. The comparison information was to be given to teachers in a timely manner so as to be used to better focus instruction. The measure was to encourage schools to annually assess students using tests that meet the same criteria as statewide assessments.

There is currently one nationally representative and continuing assessment of student knowledge in various subject areas, produced by the National Assessment of Education Progress (NAEP).

Senate Bill 782

Relating to school personnel

SB 782 would have required teachers applying for initial teaching licenses, and teachers renewing their licenses, to demonstrate appropriate multicultural competence. The measure also would have required that a portion of the continuing professional development of teachers focus on multicultural education. It would have directed the Superintendent of Public Instruction to recommend to the Teacher Standards and Practices Commission (TSPC) the knowledge, content, skills, competencies and disposition needed by Oregon teachers, counselors, school psychologists, administrators, and school nurses to demonstrate multicultural competence and to implement multicultural programs. The measure directed the Superintendent to appoint an advisory committee to develop recommendations, and directed school districts to regularly provide in-service training to school personnel on multicultural education.

Senate Bill 783

Relating to students

SB 783 would have created the “Expanded Options Program,” allowing 11th and 12th grade students to take coursework at post-secondary institutions and receive college and high school credit concurrently. Post-secondary institutions would not have been obligated to enroll the student. The student’s resident school district would have been directed to pay a portion of the college course costs using the student’s proportion of the State School Fund grant. School districts would have been directed to inform students and their parents about this option, giving priority to those students who had dropped

out of school. Students were prohibited from participating in the program more than two academic years or after the student had received a diploma. SB 783 capped the total number of college credit hours for all students in a given district at 330 for a high school with an enrollment of 1,000; high schools of different sizes were to have a proportional cap. The Expanded Options program would have been made available to students for the 2002-03 school year.

Senate Bill 919

Relating to education

SB 919 would have directed school districts to implement sheltered English immersion programs for children learning the English language. In such a program nearly all the classroom instruction is in English. Placement in a sheltered English immersion program was not expected to exceed one year. Upon being informed of the educational materials to be used in the different educational program choices, the measure would have allowed a parent to opt their child out of the required sheltered English immersion program.

School districts would have annually administered a nationally recognized norm-referenced academic achievement test in English to all students in order to assess educational progress in academic subjects and in learning English. A parent or legal guardian of a child enrolled in a public school would have been able to bring a civil action against a school district, a school board member, or school employee in a circuit court to enforce the requirements of SB 919.

House Bill 2960

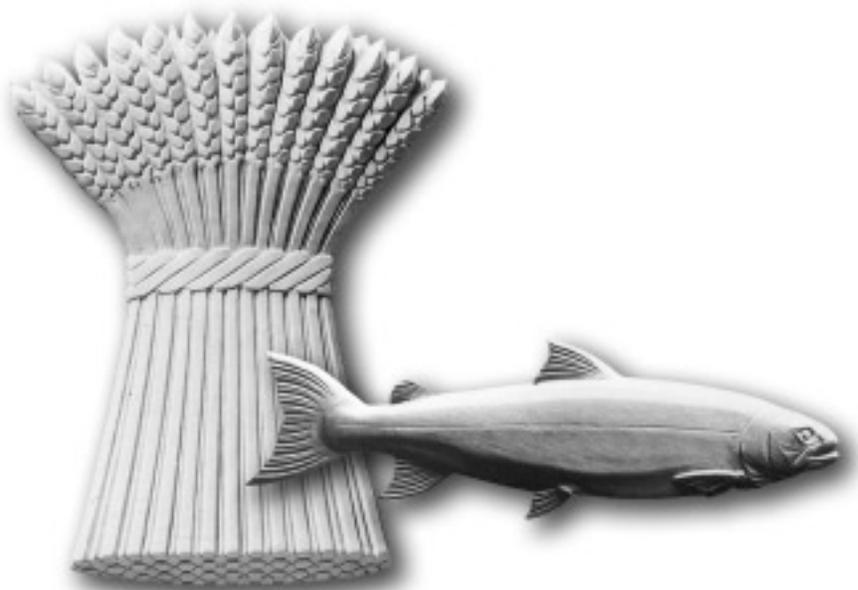
Relating to school nurses

HB 2960 would have established a goal of one public school nurse for every 1,000 enrolled students. The measure would have allocated an unspecified amount of tobacco settlement funds to the Department of Education for grants to assist school districts in meeting the state goal and required school districts that received the grants to match the grant amount dollar for dollar. HB 2960 also would have required the department to establish a school nurse consultant position to oversee the grant program.

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Human Service Issues

Health and
Human Services



2001 Summary of Major Legislation

Senate Bill 9

Relating to prescription drug assistance

SB 9 establishes a Patient Prescription Drug Assistance Program through the Oregon State University College of Pharmacy geared toward assisting low-income Oregonians who do not have prescription drug coverage. Many pharmaceutical manufacturers provide one or several of their medications for free or low cost to individuals who do not have the resources to purchase prescription drugs. Under SB 9, the program assists individuals by providing information on the process to apply for free or discounted medications. SB 9 requires the program to operate a toll-free hotline, host a web site with information on its services and provide information on publicly funded prescription drug programs such as Medicaid.

SB 9 also establishes a Senior Drug Assistance Program for low-income people age 65 and above. The program is established to assist low-income seniors in obtaining prescription medications at reduced cost. Approximately 13 percent of Oregon's 3.4 million people are age 65 or older and receive medical insurance from Medicare, which does not cover the cost of prescription medications. On average, poor beneficiaries (those with incomes below the poverty level) spend nine percent of their income for prescription drugs.

The Senior Drug Assistance Program requires a simple mail-in application and up to a \$50 per year enrollment program fee. Eligible individuals cannot have a gross annual income of over 185 percent of the federal poverty level, cannot have over \$2,000 in liquid assets and must not have been covered under any private or public prescription drug benefit in the previous six months. Eligible enrollees receive prescription medications at the Medicaid price. The Department of Human Services may subsidize up to 50 percent of the Medicaid price for the enrollee's prescription drug.

The measure also establishes a Senior Prescription Drug Assistance Fund to reimburse retail pharmacies for subsidized prices to enrollees and DHS for costs of administering the program.

Effective date: July 30, 2001

Senate Bill 45

Relating to practice of optometry

SB 45 allows optometrists to prescribe certain oral medications as established by a Council on Optometric

Nontopical Formulary. Prior to prescribing oral medications, optometrists are required to demonstrate clinical competence in prescribing drugs and must consult with a physician prior to instituting antiglaucoma medication treatment. Optometrists are prohibited from prescribing Schedule I and II drugs not on the formulary. SB 45 requires that the initial formulary be developed by July 1, 2002.

Prior to enactment of SB 45, optometrists were restricted to using only topical medications for treatment and diagnostic purposes. The Oregon Board of Optometry was responsible for designating these topical pharmaceutical agents in conjunction with advice from the Board of Medical Examiners.

Effective date: January 1, 2002

Senate Bill 104

Relating to medical privacy

SB 104 establishes an Advisory Committee on Privacy of Medical Information and Records, which will study the relationship between the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and state information privacy laws. The measure designates which agencies and other representatives will serve on the committee. Members are appointed by the Senate President, the Speaker of the House, and the Governor.

Medical records are increasingly kept electronically, which has raised concern over who has access to this information and how it is used. HIPAA establishes federal rule making authority to develop regulations on standards and penalties for misuse or disclosure of such information. The rules impact consumer control over health information, boundaries on medical record use and release, security of information, penalties for misuse, and parameters for public use.

Effective date: June 5, 2001

Senate Bill 144

Relating to mental health services

SB 144 directs the Mental Health and Developmental Disability Services Division (MHDDSD) to develop a comprehensive, long-term plan for providing children and adults with mental health treatment and services. The plan is to be based on the needs identified in biennial plans submitted by the community mental health and developmental disabilities programs and be consistent with the findings of the January 2001 report to the

Governor from the Mental Health Alignment Work Group. The measure directs that standards and requirements adopted by MHDDSD for community mental health and developmental disabilities programs include an assessment of clinically appropriate services delivered in a continuum of care, ensure planning for the transition between levels of care, and establish performance criteria and standards for levels of care. MHDDSD is directed to present the comprehensive plan to the Seventy-second Legislative Assembly, including an analysis of the budgetary and programmatic effects of implementation and any new or expanded services or facilities.

Effective date: January 1, 2002

Senate Bill 243

Relating to emergency medical services for children

SB 243 establishes the Emergency Medical Services for Children Program (EMSCP) in the Oregon Health Division to set guidelines for health care facilities that offer pediatric emergency services and critical care. Guidelines include when hospitals should transfer critically ill or injured children from a regular hospital to a Level One pediatric trauma center. There are currently only two Level One pediatric trauma centers in Oregon. These centers maintain specialists and resources on-site 24-hours a day, seven days a week.

In a study of pediatric trauma centers in Oregon and Southern Washington State, the mortality rate of children with similar critical illnesses and injuries was evaluated in Level One trauma centers versus regular hospitals. Critically ill children in regular hospitals were eight times more likely to die than those who received care in a Level One trauma center. Experts also assert that many critically ill or injured children are much less likely to experience long-term disabling conditions when they receive treatment in a Level One center.

Effective date: January 1, 2002

Senate Bill 286

Relating to health insurance coverage

SB 286 requires that health benefits plans provide payment or reimbursement for diabetes related supplies, equipment and diabetes self-management programs. It defines "diabetes self-management program" to mean a program of assessment and training after diagnosis, and

limits the program to no more than three hours after a change in the condition or treatment. The measure also defines the types of programs and professionals that may provide the training.

Diabetes is a chronic and debilitating disease. It is the leading cause of kidney failure, adult blindness, and non-traumatic amputations, and is among the leading causes of nerve damage, stroke, and heart attacks. The Oregon Health Division estimates that as many as 200,000 adult Oregonians have diabetes, 115,000 of whom have already been diagnosed with the disease and another 64,000 who may have undiagnosed diabetes. Prior to enactment of SB 286, health insurance companies were not mandated to cover the costs of diabetes-related supplies, equipment or training on self-management of diabetes.

Effective date: January 1, 2002

Senate Bill 512

Relating to nursing homes

SB 512 directs the Senior and Disabled Services Division (SDSD) to establish a demonstration project to evaluate alternate approaches to licensing and regulating nursing homes. To be licensed for operation, nursing facilities must pass SDSD inspections or surveys approximately every 12 months.

The demonstration project is to seek federal permission to exempt well-operated (low deficiency) nursing facilities from the current 12-month cycle. Instead, facilities that operate with few or minor deficiencies may be surveyed at longer intervals, perhaps up to two years. Conversely, facilities that have higher or more serious deficiencies may be surveyed more frequently than every 12 months.

Additional components of SB 512 direct SDSD to provide training and technical assistance to administrators and nursing staff; offer forums for nursing home administrators and staff to share information, and develop a Senior Consumer Advisory Committee to monitor and assess the project's implementation. The measure imposes a fee upon nursing facilities to pay the state's cost of the project.

Effective date: August 16, 2001

Senate Bill 730

Relating to direct entry midwifery

SB 730 allows licensed direct entry midwives to purchase and use certain legend drugs and devices commonly used in pregnancy, childbirth, postpartum care, newborn care or resuscitation. Allowed drugs are limited to prophylactic ophthalmic medications, vitamin K and oxygen for neonatal use, and postpartum antihemorrhagics, Rh(D) immune globulin, epinephrine, intravenous fluids, local anesthetic and oxygen for maternal use. Direct entry midwives are limited to devices for injection of medications, for administering intravenous fluids, for adult and infant resuscitation and for rupturing the amniotic membranes.

Prior to enactment of SB 730, direct entry midwives were not allowed to purchase or administer legend drugs and devices listed in the measure. Instead, they needed a health care practitioner with prescriptive authority to write the order to administer drugs and medical devices.

Effective date: July 1, 2001

Senate Bill 819

Relating to Oregon Health Plan

SB 819 requires that the Department of Human Services (DHS) establish a Practitioner-managed Prescription Drug Plan for enrollees in the Oregon Health Plan (OHP). The purpose of the drug plan is to provide enrollees with the most effective drugs at the best possible price. DHS is allowed to limit the type of drugs that practitioners may prescribe to OHP clients, and to pay for only generic forms of drugs that are federally approved. However, the department cannot limit drugs used to treat mental illness, HIV/AIDS and cancer. Additionally, any drug prescribed by a practitioner and deemed to be medically necessary will be covered by OHP. Prior approval to prescribe medically necessary drugs is not required, and an OHP client may appeal a practitioner's decision about a prescribed drug. The law sunsets in 2007.

The Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration) reports that drug expenditures in 1998 were \$11.70 billion of the \$177 billion total spent on Medicaid. OHP pharmaceuticals costs were \$275 million in the 1997-99 biennium, and are projected to increase to \$522 million in the 1999-2001 biennium.

Effective date: August 2, 2001

Senate Bill 885

Relating to pain management

SB 885 establishes a Pain Management Commission to develop a pain management practice program for health care providers. The 19-member commission is responsible for developing a pain education curriculum for health care providers, providing the curriculum to health regulatory boards, and working with these boards on developing pain management education programs. Physicians, physician assistants, nurses, psychologists, chiropractors and naturopaths are required to complete pain management education within 24 months of the effective date of this Act or within 24 months of renewing a practitioner's license. The Board of Medical Examiners is allowed to determine under what circumstances the pain management training can be waived.

In 1997, the Legislative Assembly created the Task Force on Pain and Symptom Management to assess practices in pain and symptom management, and problems faced by Oregonians with chronic illnesses and other conditions related to pain. Among the recommendations of the task force was the creation of the Office of Chronic Pain Management within the Department of Human Services.

Effective date: January 1, 2002

Senate Bill 894

Relating to claims for payment of health care services

SB 894 addresses the issue of health care providers receiving prompt reimbursement from insurance carriers for services rendered, and insurance carriers receiving adequate information to process claims in a timely manner. The Medicare definition of "clean claim" is used as the standard for a claim that has sufficient information for prompt processing. Insurance carriers must then pay, deny or request additional information within the first 30 days of receipt of the claim. The measure requires that carriers pay a 12-percent simple interest assessment on amounts due beyond the timelines. Carriers will provide an annual report to the Department of Consumer and Business Services (DCBS) on compliance with prompt payment standards, and DCBS will report to the Seventy-third Legislative Assembly on the carrier's performance with the measure.

SB 894 grew, in part, out of concern from health care providers that health insurance carriers delayed

reimbursement payments to providers for services rendered to health plan enrollees. A 2000 survey of Oregon Medical Association members noted that the average payment delay by commercial health plans to providers ranged from 33.3 days to 53.7 days. Conversely, a Health Insurance Association of America national survey reported that almost 30 percent of claims received via print media (versus electronic submission) are received from providers or billing companies more than 30 days after services are rendered, and that processing claims can only begin once they are received.

Effective date: July 5, 2001

House Bill 2294

Relating to Department of Human Services

HB 2294 abolishes current divisions, offices, programs, and organizational units within the Oregon Department of Human Services (DHS). The measure also transfers the duties and responsibilities of divisions, offices, programs, and organizational units to the department.

DHS serves more than 720,000 clients annually. The department comprises six divisions and three program offices. DHS is reorganizing its structure in an attempt to improve efficiency and effectiveness of the department's operations and programs, with the goal to achieve better outcomes for clients and local communities. The new structure will combine current divisions into three policy and program groups. The new structure will also replace the existing multiple field office networks with a single Field Operations Group. This is the first fundamental reorganization of DHS in its 30-year history.

Effective date: August 2, 2001

House Bill 2515

Relating to funding for access to rural health care

HB 2515 directs that \$15 million of Medicaid Upper Payment Limit funds be transferred to the Oregon Rural Health Association to award Rural Health Viability Grants to rural health care providers. Only rural health care providers can apply for grants, which must be used to replace or renovate aging rural hospitals, modernize equipment, expand community health education and for similar activities.

Many rural hospitals and clinics throughout Oregon are threatened with closure or reduction of services. Rural health care providers report that Medicare and Medic-

aid reimbursement rates do not provide sufficient revenue to sustain facilities. The federal Hill-Burton Act, passed in 1946, assisted with health facility construction. However, currently there is scarce federal, state or other funding available for the infrastructure needs of health care facilities.

Effective date: August 16, 2001

House Bill 2519

Relating to the Oregon Health Plan

HB 2519 is a major restructuring of the Oregon Health Plan (OHP). The measure specifies state policy regarding affordable access to low-income uninsured individuals up to 185 percent of federal poverty level. The state's Insurance Pool Governing Board (IPGB), in consultation with Health Insurance Reform Advisory Committee, is charged with identifying and recommending a basic benchmark health benefit plan(s) for low-income working Oregonians. The measure establishes an OHP Standard package of benefits that is actuarially equivalent to mandatory Medicaid coverage, includes prioritized additional packages if funding is available, and may require premiums and co-pays. HB 2519 also establishes an OHP Plus benefit package of the prioritized list of health care services for individuals who are categorically eligible for medical and general assistance. The Health Services Commission (HSC) determines the costs of the health care benefit packages and recommends subsidies for OHP Standard and policies for co-pays and premiums. HSC will also develop and report on the prioritized list of health care services. The Department of Human Services (DHS) is directed to submit a waiver to the federal government to carry out provisions of the measure.

HB 2519 requires DHS to make recommendations to the Seventy-third Legislative Assembly regarding alternative methods of determining capitation rates paid to fully capitated health plans, mental health organizations and other health care providers. It requires that rates paid to plans be maintained and enhanced as needed to provide appropriate access to OHP enrollees.

The measure establishes two new entities. The Waiver Application Steering Committee will assist and advise in the waiver application process, and the Leadership Commission on Health Care Cost and Trends, consisting of eight legislators, will develop an index of health care

costs in the state and review the OHP waiver application.

Effective date: August 3, 2001

House Bill 2627

Relating to electronically transmitted prescriptions

HB 2627 permits health care practitioners who prescribe drugs to electronically transmit prescription drug orders to pharmacists. The measure is permissive in that it does not mandate the use of electronic prescriptions. It also directs the Department of Human Services to seek a waiver from the federal government so that practitioners and pharmacists under the Oregon Health Plan can use electronic prescriptions.

Medical doctors from Harvard University report that prescription drug errors are thought to account for at least 20 percent of total patient deaths in the United States. The U.S. government reports that two-thirds of medication errors could be eliminated if doctors were to enter prescriptions into a computer rather than hand writing them.

Effective date: January 1, 2002

House Bill 2800

Relating to nursing staff at acute inpatient care facilities

HB 2800 requires hospitals to develop nurse staffing plans and to provide nursing staff based on the plan. The measure prohibits hospitals from requiring members of their nursing staffs to work overtime, except in emergencies, and requires Oregon Health Division (OHD) audits to verify compliance. Administrative rules recently adopted by OHD address the issue of nurse staffing in hospitals. HB 2800 strengthens the division's authority to issue civil penalties or suspend or revoke the operating licenses of hospitals that violate nurse staffing plans or other provisions of the measure.

HB 2800 recognizes the patient-care interests of nurses and hospital administrators, the relationship between patient care and nurse staffing, and the dangers of understaffing, including fatigue and lack of skilled personnel. The measure addresses the shortage of nurses and concern that many nurses leave the profession due to hospital staffing problems. HB 2800 helps guarantee that nurses can do the work they were trained to do, and helps Oregon hospitals attract and keep nurses to enhance patient care.

Effective date: October 1, 2002

House Bill 2828

Relating to tobacco

HB 2828 establishes a statewide smoking ban in places of employment and defines which structures are subject to the ban. The measure provides exceptions from the statewide ban for the following places of employment: retail shops selling tobacco and tobacco products; restaurants or areas of restaurants that are off-limits to minors; bars or taverns that are off-limits to minors under rules adopted by the Oregon Liquor Control Commission; rooms or halls being used by a charitable, fraternal or religious organization licensed to conduct bingo games; bowling centers; hotel or motel rooms designated as rooms in which smoking is permitted; and employee lounges that meet certain specifications.

HB 2828 does not allow exemptions to the statewide ban in localities, except in cases where a local government ordinance regulating smoking in places of employment was passed prior to July 1, 2001. The measure increases penalties for violations of the statewide ban or exemptions from not more than \$100 to not more than \$1,000 in a 30-day period.

Effective date: January 1, 2002

House Bill 3015

Relating to mental health services

HB 3015 establishes a joint interim task force on achieving parity between mental and physical health insurance plan benefits. The measure outlines the duties of the task force including reviewing statutes of other states that have adopted mental health parity laws; comparing different statutory approaches to the concept of parity; studying the effects of legislation concerning parity of mental health benefits on the costs of health insurance for public employees, small businesses and individuals; and similar areas related to insurance coverage for mental health problems. The measure also requires the assistance of a consulting actuary to develop a model benefit package that is cost-neutral and achieves parity between mental health benefits and physical health benefits for small businesses. Solicitation of public opinion regarding this model benefit package is required.

Effective date: January 1, 2002

House Bill 3024

Relating to mental health services

HB 3024 directs local mental health authorities to conduct needs assessment planning necessary to provide the legislature and the Governor with concrete data regarding what each community must do in order to achieve a full range of mental health services. The measure does not require the delivery of those services.

During the 1999-2000 interim, Governor Kitzhaber convened the Mental Health Alignment Workgroup with a variety of stakeholders. The workgroup was charged with analyzing gaps and redundancies in existing mental health treatment and services in Oregon. One recommendation of the workgroup states that: “*Existing planning requirements should be amended to ensure each county local mental health authority, or locally determined region, creates a comprehensive biennial blueprint plan for the local delivery of mental health services for children, families, and adults consistent with the recommendations of the task force.*”

Effective date: August 2, 2001

House Bill 3040

Relating to protections for enrollees of health benefit plans

HB 3040 creates protections for enrollees of health benefit plans and modifies the statutory definitions of managed health insurance and preferred provider organization insurance.

The measure is the product of the Governor’s Work Group on Patient Protection, which convened during the 1999-2001 interim seeking consensus on a series of issues raised by consumer advocates that were originally slated for a 2000 election ballot measure. The workgroup reached agreement on five points: the need for an external review process for disputes involving medical necessity and experimental procedures; the consumer’s right to continuity of care during treatment; the requirement that health care plans have procedures for referral to specialist and consumer right to second opinions; the creation of an advisory group responsible for development of administrative rules that determine uniform indicators of network adequacy; and a limited consumer right to sue provisions relating to the external review decision.

Effective date: January 1, 2002

House Bill 3126

Relating to insurance

HB 3126 affects several different aspects of health, life and disability insurance coverage in Oregon. HB 3126 was amended to include provisions of several other insurance-related measures and their amendments: HB 3145A, HB 2766A, and HB 3574A.

The measure permits the Oregon Department of Consumer and Business Services (DCBS) to approve group life and health insurance policies other than provided for in Oregon statute if the group policy is substantially similar to policies governed by Oregon statute. The Insurance Division is given the authority to approve insurance policy contracts for these non-traditional group policies, provided that the contracts also meet standards of fairness and consumer protection applicable to group policies governed under Oregon law.

Second, HB 3126 requires health insurance companies to mail a separate notice to a group health insurance policyholder at least ten days prior to the end of a grace period before terminating the policy for non-payment of premium. The measure establishes a minimum grace period of ten days after the premium due date for individual and group health policies, and shortens the minimum required notice prior to discontinuation of group health policy or plan. The measure permits modification to health plans at the time of policy renewal, and shortens the minimum required notice from an insurer prior to discontinuance of a portability health plan. The measure also eliminates provisions that DCBS and the Bureau of Labor and Industries receive a copy of the policy termination notice.

Third, the measure addresses an issue on health coverage of employees from staff leasing companies. The measure clarifies that an employer who uses employees from a licensed leasing company is entitled to count these employees as the company’s employees for health insurance purposes

Fourth, HB 3126 restores the Insurance Pool Governing Board (IPGB) authority to offer health insurance plans for small businesses. In 1989, the IPGB began certifying low-cost health insurance plans for small businesses and the self-employed. In 1999, the Oregon Legislature removed the certified plan function of the IPGB. However, over the past several years, small businesses have had increasing problems in securing affordable group health insurance coverage for employees.

Effective date: August 9, 2001

House Bill 3212

Relating to the Senior and Disabled Services Division

HB 3212 establishes a two-year moratorium on the licensing of assisted living facilities and residential care facilities by the Department of Human Services. The moratorium will run from July 1, 2001 to June 30, 2003.

The Governor's Recommended Budget had proposed a new rate structure for community based long-term care facilities, including rate reductions to assisted living facilities. After the Governor's budget was released, there were concerns that the proposed rates would jeopardize the ability of many assisted living facilities to make loan payments. In response, the Governor proposed another rate structure that still reduced assisted living rates, but not as significantly as that in his original budget. Along with the rate change, a moratorium was proposed on the licensing of assisted living facilities.

Effective date: August 16, 2001

House Bill 3214

Relating to medical assistance

In October 2000, the federal Breast and Cervical Cancer Prevention and Treatment Act was signed into law. The Act allows states the option of extending full Medicaid health benefits to women who are screened through the Centers for Disease Control and Prevention (CDC) National Breast and Cervical Cancer Early Detection Program, and found to need treatment for cancer. HB 3214 allows Oregon to implement this program for women who do not otherwise have coverage for such treatment.

The Oregon Health Division administers this CDC screening to eligible women. To be eligible, women must be over age 40, uninsured or under-insured, ineligible for Medicare Part B and have incomes below 250 percent of the federal poverty level. Prior to passage of the federal act, no funds were specifically designated for this cancer treatment. HB 3214 includes \$343,737 of General Fund appropriation as state match for federal Medicaid funds.

Effective date: August 2, 2001

House Bill 3330

Relating to youth programs

HB 3330 requires outdoor youth programs, commonly

known as wilderness schools, to be licensed by the State Office for Services to Children and Families (SCF). The registration requirement is limited to those outdoor youth programs that include services to children with behavioral problems, mental health problems or problems with abuse of alcohol or drugs. The measure requires outdoor youth programs to post a bond of \$50,000 or fifty percent of the program's annual budget, whichever is less, and establishes a five-member Outdoor Youth Program Advisory Board to advise SCF on implementation of the new licensing requirement.

Currently, private schools or other organizations offering residential programs for children are required to be licensed by SCF under ORS 418.327. SCF does an inspection and review, and issues the two-year license only upon finding that the school or organization meets SCF standards for children's physical health, care, and safety. According to SCF, wilderness schools have been beyond the agency's statutory authority because wilderness schools are not defined in statute.

HB 3330 recognizes the positive impact of wilderness schools on mental health, as well as the current absence of regulation for such schools.

Effective date: July 19, 2001

House Bill 3659

Relating to child care

HB 3659 establishes a voluntary early childhood support system, defines state and local responsibilities in carrying out an early childhood support system, and addresses the need for improved linkages between existing programs. The measure directs the Oregon Commission on Children and Families (OCCF), the Department of Education (ODE), and the Department of Human Services (DHS) to jointly lead the effort to establish policies for the statewide system, and specifies the goals and components of the system including services and support to children age zero through eight and their families.

HB 3659 directs OCCF, ODE and DHS to adopt policies to establish training and technical assistance programs to ensure that personnel have skills in appropriate areas; identify research-based, appropriate screening and assessment tools; develop a plan for the implementation of a common data system; and contract for evaluation of early childhood systems.

HB 3659 requires the creation of a local early childhood

system plan as part of each local coordinated comprehensive plan. It specifies the goals and components of a local early childhood system and directs that community representatives who reflect the diversity of a county or region be involved in the creation of the plan. Local communities are encouraged to use private nonprofit organizations and involve the medical community to meet the goals of the local early childhood system.

The measure makes modifications to statutes regarding various programs. It repeals provisions allowing the establishment of parents-as-teachers programs through ODE, and directs OCCF to support relief nurseries and parents-as-teachers programs through local commissions on children and families, as funding becomes available.

HB 3659 also requires the Commission for Child Care to create a Task Force on Financing Quality Child Care and sets the goals of the task force. It directs the task force to report its findings and recommendations to the Commission for Child Care and the appropriate interim legislative committee by October 1, 2002.

Effective date: July 27, 2001

House Bill 3816

Relating to the Home Care Commission

HB 3816 is the enabling legislation for the Home Care Commission (HCC) that was created by passage of Ballot Measure 99 during the November 2000 General Election. HCC is an independent public commission responsible for ensuring quality home care services for elderly and disabled persons who receive publicly funded personal care in their homes. The commission is comprised of nine members who will serve for three years. The duties of the commission include: providing routine, emergency and respite referrals of qualified home care workers; providing training opportunities for home care workers and their clients; establishing qualifications for home care workers; establishing and maintaining a registry of home care workers; cooperating with area agencies on aging and disability services and other local agencies to provide services; and acting as the employer of record of home care workers for collective bargaining purposes

The State of Oregon funds in-home support services provided by 14,000 home care workers for eligible elderly and disabled persons. These workers provide in-home services including housecleaning, shopping, meal preparation, money management, transportation, per-

sonal care and medication management. Home care workers are hired directly by the client, and wages are paid with Medicaid dollars administered through the Department of Human Services, Area Agencies on Aging and other public agencies.

Effective date: August 2, 2001

House Joint Memorial 1

Urging Congress to equalize Medicare reimbursement rates

HJM 1 urges Congress to equalize Medicare reimbursement rates among geographic areas nationwide.

The Joint Interim Committee on Health and Human Services sponsored a field trip to Eastern and Central Oregon June 5 to June 8, 2000 to examine issues related to the delivery of health care services in rural areas. One common concern among providers was the inequity of Medicare reimbursements provided to Oregon compared to other states. The Centers for Medicare and Medicaid Services administers Medicare, the nation's largest health insurance program, covering 37 million Americans. Medicare provides insurance to people who are at least 65 years old, disabled, or suffer from permanent kidney failure.

Federal payments to Medicare+Choice managed care organizations are based on an historical formula called the "average adjusted per capita cost" or AAPCC which is in turn based on historical county-by-county medical care costs. Using this rationale, those counties that have higher historical costs receive a higher AAPCC. Because Oregon counties have a history of low medical care cost, they are paid a lower AAPCC reimbursement.

Filed with the Secretary of State: April 4, 2001

Major Legislation Not Enacted

Senate Bill 8

Relating to health benefit coverage

SB 8 would have required that the state determine two basic health benefit plans for small employers based on reasonable access to essential health care at affordable rates. Small employer health plans would have been required to provide coverage for inpatient hospitalization, outpatient hospital and non-hospital services and surgery, outpatient laboratory and diagnostic services, and physician services. Plans would have included uniform cost-sharing and deductibles paid by employees. The annual cost of premiums for the plan would have been set at eight percent of the state's average annual wage.

Oregon's Small Employer Health Insurance (SEHI) reform, implemented by SB 1076 (1991), required regulation of the marketing of health benefit plans to small employers with 2-25 employees. The reform, implemented in 1993, created the Basic Health Benefit Plan with benefits "substantially similar" to the state's Medicaid benefits priority list in the Oregon Health Plan. It established marketing and underwriting standards, guaranteed issuance, rate band requirements, renewability provisions, preexisting condition provisions and other requirements.

The current SEHI basic plans require coverage for hospital inpatient and outpatient services, professional services (doctor's visits, therapies), preventive services and other services such as women's wellness, vision services, transplants, laboratory tests, skilled nursing care, home health, mental health/chemical dependency treatment and prescription drugs. The Department of Consumer and Business Services reports that there are approximately 266,000 members enrolled in SEHI plans in Oregon.

Senate Bill 99

Relating to fluoridation of water supplies

SB 99 would have required that all water supplies serving populations greater than 10,000 people be fluoridated. The measure would have allowed certain water suppliers to receive state assistance to pay for the fluoridation,

and would have appropriated moneys from the General Fund to the Health Division for reimbursing water suppliers for initial costs of fluoridation.

Senate Bill 608

Relating to insurers

SB 608 would have required health insurance policies that provide prescription drug benefits to include coverage for prescription contraceptives and related outpatient consultation. The measure would have exempted prescription contraceptives from coverage under an insurance policy if the group or entity seeking coverage holds religious tenets contrary to coverage, is exempt from taxation under specific sections of the Internal Revenue Code, and requests an exemption.

SB 608 also included technical provisions relating to the Oregon Insurance Guaranty Association, which pays the claims of an insurance company that becomes insolvent.

The U.S. Equal Opportunity Commission (EEOC) has determined that an employer-sponsored health insurance plan that fails to offer insurance coverage for the cost of prescription contraceptives violates Title VII of the Civil Rights Act of 1964, and the Pregnancy Discrimination Act of 1978.

Senate Bill 888

Relating to long term care facilities

SB 888 would have created a Long Term Care Strategic Plan Task Force to develop a strategic plan to meet the current and future needs for long term care services for the elderly in Oregon. Included in the plan would have been proposals for the development of quality standards for long term care facilities and proposals for private and public financing of long term care services.

A component of SB 888 would have authorized long term care facilities to enter into voluntary capacity reduction agreements. The Department of Human Services (DHS) would have been required to review, approve or deny agreements, and to supervise approved agreements. Approved agreements would have been exempt from anti-trust laws.

House Bill 2267

Relating to public health policy

HB 2267 would have declared public health policy of

Oregon and clarified the goals and responsibilities of state- and local-level public health agencies. HB 2267 directed the Department of Consumer and Business Services to adopt and implement rules regarding genetic testing as related to the application for insurance. The measure also would have provided greater confidentiality protections for genetic testing as well as prohibit insurance discrimination based on genetic testing.

House Bill 2426

Relating to health insurance coverage for cancer screenings

HB 2426 would have required periodic colorectal and prostate cancer examinations to be provided under health insurance policies.

For both colorectal and prostate cancer, early detection is the key to survival. Prostate cancer is only curable if found in the early stages, before the cancer has spread beyond the prostate. Early detection can save the lives of 90 percent of the people who are diagnosed with colorectal cancer.

House Bill 2498

Relating to embryo adoptions

HB 2498 would have created an interim task force directed to propose guidelines and standards of practice regarding embryo adoption in Oregon. Embryo adoption refers to the legal adoption of one or more non-genetically related embryo(s) by persons seeking to achieve pregnancy. The adopted embryo(s) are implanted in the uterus of the adopting mother who wants and is able to experience childbirth.

In vitro fertilization (IVF) has been available since the late 1970's. During IVF treatments, couples may produce many embryos in their attempt to conceive. Such "surplus" embryos are subsequently discarded, frozen and kept in storage, or donated for research. It is estimated that there are currently over 100,000 frozen embryos in storage across the United States alone. One response to this surplus is "embryo adoption" also known as "embryo donation." In Oregon there are no regulatory laws pertaining to the issue of embryo adoption.

House Bill 2589

Relating to administrative rules adopted by Mental Health and Developmental Disability Services Division

HB 2589 would have prohibited the Mental Health and Developmental Disability Services Division (MHDDSD) from adopting rules that conflict with the authority of a guardian or conservator, so long as the guardian or conservator did not cause any licensed or certified service provider to be out of compliance with applicable licensing or certification laws.

Administrative rules adopted by MHDDSD state that the Individual Support Plan (ISP) team shall include the family member(s) or guardian of the developmentally disabled individual who is in need of services or support. However, there was concern that the role or decisions of the guardian(s) are usually subject to agreement from the ISP team.

House Bill 2628

Relating to family resource centers

HB 2628 would have directed the State Commission on Children and Families to establish Family Resource Centers (FRCs) statewide. FRCs are prevention-oriented, provide integrated neighborhood-based services, and enable all parents in supporting the wellness of their children. FRCs are based on a system of inclusion of all families rather than assuming that certain parents or children require support.

HB 2009(1997) and SB 555 (1999) provided funding to, and required evaluation of, family resource centers in the following counties: Curry, Douglas, Josephine, Lake, Linn, Marion, Union, and Yamhill.

House Bill 3027

Relating to bulk purchasing of prescription drugs

HB 3027 would have directed the Oregon Department of Administrative Services to establish a prescription drug bulk-purchasing program. The program would have obtained discounted prices on prescription drugs by purchasing them in large quantities for state agencies and other government entities. The program would have worked with pharmacies to make these negotiated priced prescription drugs available to any person without prescription drug coverage.

The Office of Medical Assistance Programs reports that Oregonians spent \$275 million during the 1995-97 biennium for pharmaceuticals, which increased to \$522 million by the 1999-01 biennium. Projections indicate that prescription drug costs for individuals in the Oregon Health Plan will increase by 61 percent during the 2001-

03 biennium. Because of rising pharmaceutical costs, many states are researching how bulk purchasing may be used to negotiate discounted prices with pharmaceutical companies.

House Bill 3312

Relating to health insurance

HB 3312 would have required health insurance policies that offer a prescription drug benefit to provide coverage for prescription contraceptives, as well as outpatient consultations, examinations, procedures and medical services that are necessary for the prescription or administration of contraceptives. HB 3312 exempted “religious employers,” as defined by the measure, from the requirement to provide prescription contraceptive coverage if it was contrary to the religious employer’s belief.

House Bill 3324

Relating to medically fragile children

HB 3324 would have appropriated funds to the Department of Human Services for in-home care services for medically fragile children.

Oregon recently approved a Title XIX Medically Fragile Medicaid Waiver of parental income that allows families to access Medicaid funds for in-home care for their medically fragile children. Strict eligibility criteria have allowed only 69 families to take part thus far in the Medically Fragile Children’s Program through the Developmental Disabilities Services Office. HB 3324 would have allowed an additional 50 medically fragile children to be served, at an average cost of \$6,000 per month, per child.

House Bill 3457

Relating to prescription drug management

HB 3457 would have created the Prescription Drug Management Task Force and established the Prescription Drug Management Program in the Department of Human Services (DHS). The task force would have studied prescription drug management issues for recipients of medical assistance in the State of Oregon and developed strategies for “case management” for medical assistance recipients. HB 3457 instructed the task force to advise the DHS regarding the state’s strategy for prescription drug case management.

Pharmaceutical Case Management (PCM) services are intended to help people who are likely to have trouble taking their medicines safely and effectively. PCM services involve physicians and pharmacists working together to help patients use their medications safely and effectively. Physicians prescribe the medications and examine patients during their regular office visits, while pharmacists provide additional follow-up between doctor visits about how the patient’s medications are working and how to prevent side effects.

House Bill 3830

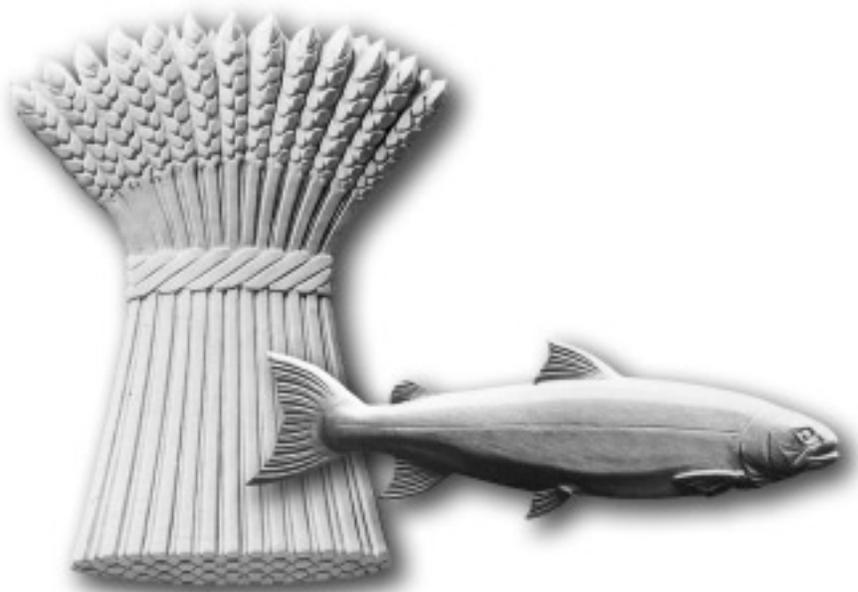
Relating to medical information

HB 3830 would have required informed consent of pregnant women at least 24 hours prior to an abortion and would have prohibited physicians from performing abortions without the informed consent. HB 3830 specified the information that physicians were to provide in order to obtain informed consent and would have required pregnant women to certify that the required information had been provided. The measure would have also required the Department of Human Services to develop and offer specified informational materials, and would have required physicians to report to the Health Division regarding compliance with the measure.

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Natural Resource Issues

Agriculture, Forestry
and Environment



2001 Summary of Major Legislation

Senate Bill 312

Relating to organic foods

SB 312 implements changes to Oregon's adulterated, misbranded, or imitation food statutes. The United States Department of Agriculture's national organic food regulations, which took effect in April 2001, require persons who use the word "organic" on their food products to comply with the national standards by October 2002. The national program establishes standards for the production and handling of organically produced products including a list of substances approved for and prohibited from use. As part of the transition, SB 312 prohibits the Oregon Department of Agriculture from imposing civil penalties for violation of Oregon's organic food regulation or associated administrative rules if the action does not also violate the federal Organic Foods Production Act of 1990. Appropriate civil penalties may be imposed through October 21, 2002. Oregon's organic food regulation is repealed on that date.

Effective date: June 5, 2001

Senate Bill 412

Relating to regulation of forest practices

SB 412 applies the Oregon Forest Practices Act (FPA) to forest operations conducted within an urban growth boundary (UGB) except in areas where the local government has adopted land use regulations for forest practices. The measure also allows counties to prohibit, but not to regulate, forest practices on forestlands located outside a UGB for which an exception to an agriculture or forestland use has been granted. Changes to the FPA in the early 1990's provided local governments the option to regulate forest practices within urban growth boundaries. If local governments exercise this choice, the FPA as administered by the Department of Forestry no longer applies to affected areas. Since this discretion has been available, a number of local governments have adopted ordinances, sometimes for purposes other than forest operations, that have led to confusion as to whether local or state regulations apply. SB 412 reinforces local government authority and the applicability of FPA requirements.

Effective date: January 1, 2002

Senate Bill 463

Relating to environmental cleanup of dry cleaners

SB 463 modifies fees and allocates \$1 million to fund cleanup of dry cleaning chemicals. The Department of Environmental Quality (DEQ) operates a voluntary Dry Cleaner Program, funded by fees assessed on participating dry cleaning facilities plus solvent fees paid on each gallon of solvent purchased. The fees are deposited into the Dry Cleaner Environmental Response Account. SB 463 attempts to resolve issues relating to the terms and conditions under which DEQ and dry cleaners solve past and present problems which have arisen from the use of dry cleaning chemicals. Dry cleaners who participate in the DEQ program are exempt from cleanup costs that exceed certain limits, as well as from liability for accidental spills. Owners or operators of dry cleaners are not protected against cleanup liability if a release was caused by gross negligence or other specified situations.

SB 463 requires dry cleaning operators to manage wastewater from perchloroethylene dry cleaning machines according to waste minimization guidelines developed by the Environmental Quality Commission. Violation penalties are credited to the Dry Cleaner Environmental Response Account. DEQ may not expend moneys from the account on remedial action at dry cleaning facilities where the owner or operator failed to comply with waste minimization requirements and subsequently resulted in a chemical release. Additionally, DEQ will inventory inactive dry cleaning facilities that are eligible to receive funding from the Dry Cleaner Environmental Response Account. The program sunsets January 1, 2006.

Effective date: January 1, 2002

Senate Bill 943

Relating to commodity assessments

SB 943 declares that commodity commission assessments levied prior June 21, 2001 are lawful. Commodity commission assessments fund activities such as researching commercial values, disseminating reliable industry information, and studying legislation pertaining to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the commodity industry. Any court action challenging commodity commission assessments is allowed to continue if the action was filed prior to May 1, 2001.

SB 943 allows a commodity producer to dispute an assessment if the assessment exceeds one and one-half

percent of the total dollar value received by the producer for the raw commodity during that assessment period. Commodity commissions are required to refund verified excess assessments to producers. The Oregon Department of Agriculture is required to adopt uniform rules to conduct dispute resolution proceedings.

Effective date: June 21, 2001

Senate Bill 948

Relating to development incentives

SB 948 directs the Department of Environmental Quality to establish community emission reduction credit banks at the request of local governments. When local businesses close, their air emission reduction credits often go unused. Community credit banks will serve as a repository for emission credits that are unused or underutilized, making them available for new or expanding businesses in the community. Credits may be banked for up to 10 years to assist businesses in meeting air quality standards.

Effective date: January 1, 2002

Senate Bill 957

Relating to state agencies

SB 957 requires natural resources agencies to document the basis for decisions to deny individual permits and to provide a copy of the documentation to the applicant. Specified permits refer to individual and particularized licenses, permits, certificates, approvals, registrations or other form of permission required by law for which determinations are made on a case-by-case basis. Concerns had been raised that state agencies do not always provide information regarding the criteria they use to evaluate permit applications. Discussions identified the need for clear documentation describing the specific reasons for a permit denial in order to allow applicants the opportunity to understand and address those deficiencies. SB 957 requires agencies to provide potential applicants with the criteria and procedures for evaluating permit applications. Agencies are required to report to the Seventy-second Legislative Assembly to describe the actions taken and rules promulgated to improve services to applicants and to increase applicant understanding of the permit process including permit criteria and procedures.

Effective date: June 14, 2001

Senate Memorial 1

Urging Congress to extend current Canada-United States Softwood Lumber Agreement

SM 1 urges Congress to extend the current Canada-United States Softwood Lumber Agreement. Canadian provinces subsidize lumber production by selling timber to Canadian lumber companies at a fraction of the market value. The Canada-United States Softwood Lumber Agreement limits Canadian imports to historic levels and imposes tariffs on shipments above those levels. Historic Canadian import levels represent approximately 37 percent of the U.S. lumber market. Without the agreement, it is estimated that Canada could capture as much as 85 percent of the American lumber market by 2003. The current agreement expired on March 31, 2001. SM 1 urges Congress to extend the agreement to an unspecified future date, encourages the end of Canadian lumber subsidy practices, and urges enforcement of U.S. trade laws to offset Canadian subsidies and eliminate injury to the U.S. timber industry should Canadian subsidies continue.

Filed with the Secretary of State: May 7, 2001

House Bill 2051

Relating to liens arising out of agricultural activities

HB 2051 changes lien availability for specific agricultural producers, expands the applicability of producer lien laws, and changes agricultural and grain producer lien security interest, priority, duration, method of extension, and notice requirements. The measure also prohibits a contractual waiver of right to file a lien and expands the definition of "grain."

HB 2051 requires the Secretary of State to maintain agricultural services lien records. The measure limits the name search and notice requirements for agricultural services liens, while consolidating filing of agricultural liens and notices in the Secretary of State's office. HB 2051 also requires producers to send a notice of lien filing to certain persons no later than the 20th day post-filing. The measure instructs the Secretary of State to furnish the producer with a list of persons who have filed a lien or financial statement against the lien debtor or purchaser and defines information that must be included on the list.

HB 2051 requires agricultural cooperatives to provide annual notice to members, that members may not file a lien against the cooperative. Unexpired liens perfected

prior to June 5, 2001 are equal in priority to liens perfected under ORS 87.710 as amended by these provisions. The measure defines “person” as it relates to agricultural produce liens and determines that the lien created by ORS 87.705 is prior and superior to all other liens on the inventory or accounts receivable of the lien debtor or purchaser.

HB 2051 conforms the definition of security interest to the general provisions of the Uniform Commercial Code. In addition, the measure adds limited liability company, limited liability partnership, cooperative, government entity, and other business entity to the definition of “person” as it relates to liens by agricultural producers and deletes “business” in front of the term “trusts” so that the term “trusts” includes all types of trusts.

Effective date: June 5, 2001

House Bill 2154

Relating to alternatives to field burning

HB 2154 restores the authority of the Department of Agriculture (ODA) to expend field burning fee revenues on research and development of alternatives to open field burning. The Oregon seed industry began voluntary contributions in the 1960’s for the smoke management program. In 1971, the Legislature enacted fees for research on alternatives to field burning, while simultaneously imposing a ban on field burning. This ban was rescinded in 1975 and a fee of \$3.50 per acre was imposed on farmers until 1990. The fee funded operations of the smoke management program and research into alternatives practices. In 1991, the Legislature adopted a phase-down of the smoke management and alternatives programs, while increasing the farmer’s fees to \$10.00 per acre. Research funding was also reduced and \$500,000 of lottery dollars was appropriated annually during the phase-down period. In 1997, the phase-down period and appropriations were eliminated. HB 2154 reinstates ODA’s ability to use farmer fees on research and development for alternatives to open field burning.

Effective date: January 1, 2002

House Bill 2156

Relating to confined animal feeding operations

HB 2156 directs the Department of Agriculture (ODA) and the Department of Environmental Quality (DEQ) to seek approval from the United States Environmental

Protection Agency (EPA) to transfer the confined animal feeding operation (CAFO) permitting program, pursuant to the federal Water Pollution Control Act, from the DEQ to the ODA. The measure limits applicability to those animal feeding operations regulated consistently by state law and the federal Water Pollution Control Act.

HB 2156 removes fee assessments for CAFOs in operation for four months or less and authorizes the DEQ and ODA to conduct inspections for compliance with water quality laws and regulations. The measure deletes ODA’s authority to inspect each confined animal feeding operation under permit. The measure further repeals related statutes that exempt local, state or federal agencies from the definition of “person” and that authorized investigation of violations that present an immediate threat to public health and safety. To the extent practicable, the measure requires the ODA to create and implement an educational program to inform CAFO operators of new administrative rules or related regulatory programs implemented as a result of ODA’s new authority.

HB 2156 requires ODA to develop a detailed written record of each complaint that is not submitted in writing. The measure also authorizes ODA to refuse to consider complaints made by a person who has previously filed a groundless complaint if the department believes that the complaint was made for the purpose of harassing the operator. Finally, the measure deletes the requirement that complaints must be filed with a \$100 security deposit and allows the ODA to impose civil penalties for a first violation.

Effective date: July 1, 2001

House Bill 2157

Relating to number of years of hardwood timber harvest rotation cycle for tax purposes

HB 2157 conforms the Western Oregon Forestland and Privilege Tax to the Oregon Forest Practices Act (FPA). Under previous tax law, land and hardwood timber, including but not limited to hybrid cottonwood harvested on a rotation cycle within 10 years after planting, were exempt from the forestland and privilege tax.

The 1995 Legislative Assembly modified the Oregon Forest Practices Act (FPA) to allow persons to grow poplar trees up to 12 years before being subject to the FPA (poplars are considered an agricultural product prior to the 12-year rotation cycle). The same change was

not made in Oregon's tax laws. HB 2157 applies to privilege tax reporting periods beginning on or after January 1, 2002, and property tax years beginning on or after July 1, 2002.

Effective date: January 1, 2002

House Bill 2163

Relating to wildlife leave trees

HB 2163 authorizes the State Forester to direct certain harvest operations to leave green trees and snags in or adjacent to small, non-fish bearing streams that are subject to rapidly moving landslides. Prior to passage of HB 2163, landowners were required to retain two snags or green trees (greater than 11 inches in diameter) per acre, for wildlife purposes, in clearcuts larger than 25 acres. Landowners are currently given sole discretion on the selection of the trees to be retained, except in cases where the State Forester directs up to 25 percent of the trees to be retained in or adjacent to riparian management areas along fish-bearing or domestic-use streams.

Executive Order 99-01 formed the Forest Practices Advisory Committee (FPAC), which addressed this source of large wood for fish-bearing streams. FPAC membership included representatives from the forest industry, environmental community, county government and the general public. HB 2163 amends the Oregon Forest Practices Act to reflect FPAC's recommendation that trees and snags be left as a source of large wood next to certain stream channels prone to landslides.

Effective date: January 1, 2002

House Bill 2165

Relating to the State Forestry Department Account

HB 2165 creates the State Forest Enhancement Donation Subaccount within State Forestry Department Account. The measure authorizes the State Forestry Department to accept gifts, grants, bequests, endowments and donations of money, labor or materials from public and private sources for the purpose of contributing to the management and enhancement of state forests. HB 2165 dedicates the donations to the Donation Subaccount and limits expenditures from the Subaccount to purposes specified in the donations or, if not specified, for the management and enhancement of state forests.

Effective date: January 1, 2002

House Bill 2264

Relating to underground storage tanks

HB 2264 requires the Department of Environmental Quality (DEQ) to gain final authorization from the U.S. Environmental Protection Agency (EPA) for the federally mandated underground storage tank (UST) program. Gas stations and other businesses operate 2,046 tank facilities with 6,072 permitted tanks in Oregon. DEQ implements the education and inspection program for retail facilities (not farm or residential tanks) to ensure compliance. DEQ also provides assistance to owners for maintenance, operation, and testing of their systems. The measure requires training for operators of underground storage tanks to be adopted by the Environmental Quality Commission (EQC).

HB 2264 establishes a fee schedule for permit holders and requires DEQ to use fees paid to implement the UST program. The measure creates an advisory committee to assist EQC in implementing a voluntary pilot program for the assessment and expedited imposition of noncompliance penalties for specific UST violations. The pilot program sunsets in 2005.

Effective date: July 6, 2001

House Bill 2604

Relating to pesticides

HB 2604 modifies situations in which government employees must obtain a public pesticides applicator license and prohibits the department from issuing licenses to those exempted governmental entities. The measure prohibits a governmental entity from soliciting or advertising for business outside its jurisdiction and requires a public applicator to inform those requesting service, of the possible availability of other sources of pest eradication services.

HB 2604 further exempts public utilities or telecommunications utilities from pesticide operator license requirements or from furnishing evidence of financial responsibility to the department when applying pesticides to properties under the ownership, possession or control of the utility. HB 2604 also exempts those conducting research on pesticides, applying pesticides within any government controlled land, or applying pesticides for controlling noxious weeds or pests from current pesticide operator license requirements.

Effective date: June 5, 2001

House Bill 2606

Relating to weeds

HB 2606 allows Oregon Department of Agriculture (ODA) employees and designated weed control districts to enter land, with the consent of the owner through formal notice, for the purpose of identifying weeds and to apply or provide for the application of pesticides to the weeds.

Previously, ODA was required to notify a landowner when an employee or representative of the department entered the landowner's property for the purpose of weed identification and/or application of pesticides. This requirement applied whether or not the landowner had invited or voluntarily given permission for entrance to the weed inspector. HB 2606 eliminates the notification requirement in cases where the landowner has given permission for entrance.

Effective date: May 29, 2001

House Bill 3744

Relating to solid waste recovery

HB 3744 modifies Oregon's policy on recycling, focusing on conservation of resources and management of solid waste. The measure establishes a new statewide solid waste recovery goal of 45 percent by 2005 and 50 percent by 2009. In addition, the measure allows application of a two percent credit to the recovery goal for reuse and composting programs. HB 3744 extends the choice of actions to include washed waste reduction programs to qualify for the two percent credit on the washed recovery rate. The calculations for energy recovery for washeds operating waste-to-energy plants are modified to reflect actual recovery. The measure also requires individual washeds to prepare plans for required recovery goals. HB 3744 permits individual washeds to apply for greater credit for composting programs and grants the Environmental Quality Commission discretion to require a class of solid waste generators to recycle. Finally, the measure requires washeds not achieving the recovery goal to conduct and submit a technical review.

Effective date: June 21, 2001

House Bill 3811

Relating to agricultural cooperatives

HB 3811 establishes an agricultural cooperative's right

to negotiate with commodity dealers and to establish a system under which the Oregon Department of Agriculture may mediate negotiations. Prior to passage of HB 3811, the law did not allow for agricultural cooperatives to negotiate with commodity dealers in establishing prices for products, nor did it allow for mediation where there was a dispute in the price of a commodity. This measure allows the Perennial Rye Grass Seed Bargaining Association and perennial rye grass seed dealers to settle federal litigation regarding price negotiations for commodities.

Effective date: May 16, 2001

House Bill 3815

Relating to agriculture

HB 3815 regulates the sale, distribution, and labeling of fertilizers, agricultural minerals, agricultural amendments, and lime, and specifies labeling requirements, thereby replacing prior fertilizer statutes. The measure prohibits the sale, or offer for sale for agronomic purposes, of specific mammal by-products unless the products or materials conform to Oregon Department of Agriculture (ODA) standards. The ODA requires registration of each separately identifiable fertilizer, agricultural mineral, agricultural amendment, or lime product. The measure also establishes a non-refundable fee for each item to be registered and allows ODA to charge a product evaluation fee. HB 3815 establishes an expiration time frame for certificates of registration. The measure also provides ODA with inspection, enforcement, and rule making authority, provides ODA with the authority to remit or reduce fines, creates civil penalties for violation of Oregon's fertilizer laws, and sets inspection fees.

HB 3815 creates a Fertilizer Research Committee to advise the ODA Director. The measure also requires sellers and distributors to file a semi-annual statement with ODA and specifies record keeping requirements for persons mixing or selling custom mixes, and prohibits the revealing of trade secrets, in accordance with current law.

Effective date: January 1, 2002

House Bill 3964

Relating to agricultural seed

HB 3964 places contractual conditions into Oregon law, thereby providing farmers a limited guarantee of payment

due. The measure defines terms as they relate to selling and purchasing of grass seed and specifies contractual requirements and settlement provisions, authorizes the Oregon Department of Agriculture (ODA) to enforce non-payment penalties and establishes appeal and lien rights.

During the late 1990's, Agribiotech, Inc. (ABT), a grass seed company, accounted for about one third of global grass seed production and distribution and expanded its business throughout the Western United States. In January 2000 ABT filed for Chapter 11 bankruptcy.

According to ODA, the ABT bankruptcy affects approximately 650 Oregon growers. Oregon seed growers have filed liens totaling approximately \$40 million. The ABT bankruptcy is one of the largest agricultural bankruptcies in United States history. HB 3964 addresses the options available to Oregon's seed growers.

Effective date: May 30, 2001

House Joint Memorial 5

Urging Congress to fund cleanup of Hanford Nuclear Reservation and expedite other Columbia River cleanup efforts

HJM 5 urges Congress to fund and expedite cleanup of the Hanford Nuclear Reservation and other efforts to protect the Columbia River. The Hanford Nuclear Reservation is a 560-square-mile site in Washington State on the Columbia River (35 miles from the Oregon border) that produced plutonium for the nation's nuclear weapons programs over a 40-year period beginning in 1944. Currently, the Hanford site has 177 underground storage tanks that contain millions of gallons of high-level radioactive waste. To date, at least 67 tanks have confirmed leaks of approximately one million gallons of radioactive and chemical waste. Studies indicate that contaminated groundwater from the site began entering the Columbia River in the 1950's.

The Hanford Tri-Party Agreement is a federal consent decree that calls for cleanup of the Hanford Nuclear Reservation including timeframes for specified actions. The three parties that entered the Agreement are the U.S. Environmental Protection Agency, U.S. Department of Energy and the Washington Department of Ecology. HJM 5 urges Congress to provide the State of Oregon with legal rights in matters affecting the Hanford Nuclear Reservation and party status in the Agreement.

Filed with Secretary of State: June 13, 2001

House Joint Memorial 16

Urging President of United States, Senate and House of Representative of United States of America and Secretary of Agriculture to take actions to provide economic support to American family farmer

HJM 16 urges the President, the Senate and House of Representatives, and the Secretary of Agriculture to: take action to prevent the demise of the American Family Farmer; to ensure equality in international trade negotiations; to allow American family farmers to compete in the global marketplace; to encourage the development of programs to educate consumers on the importance of buying domestic fruit, produce and meat; and to encourage the United States Department of Education to develop an agricultural curriculum for elementary students.

Filed with the Secretary of State: April 30, 2001

House Joint Memorial 22

Urging certain federal agencies to address problem of catastrophic wildfires

HJM 22 requests that the United States Forest Service and other federal land management agencies implement cohesive forest management strategies, with the goal of reducing factors leading to catastrophic wildfires. The measure requests the United States Departments of the Interior and Agriculture to draft a nationally prescribed fire strategy for public lands.

Within the past three years, two reports have been published that address potentially disastrous wildfires on federal forest lands within Oregon. One, an April 1999 U.S. General Accounting Office (GAO) report entitled *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats*, states that "over-accumulation of vegetation" in western forests has caused "large, intense, uncontrollable, and catastrophically destructive wildfires." The other, published on December 31, 1999 by the U. S. Forest Service and titled *Protecting People and Sustainable Resources in Fire Adapted Ecosystems: A Cohesive Strategy*, speaks to a "higher risk of damage to the environment and losses to natural resources and private property if fuels continue to accumulate." HJM 22 supports efforts to deal with wildfires by reducing conflagration fuels on federal public lands.

Filed with the Secretary of State: May 24, 2001

Major Legislation Not Enacted

Senate Bill 792

Relating to environmental justice

SB 792 would have created in statute, the Environmental Justice Advisory Board to advise the Governor and state agencies on environmental justice issues. Such issues would have included community concerns and public participation processes, the identification of minority and low-income communities that may be affected by environmental decisions, meeting with communities and making recommendations to the Governor regarding community concerns raised, and the definition of environmental justice issues in the state. Natural resources agencies would have been required to consider the effects of their actions on environmental justice issues, to hold hearings convenient for citizens, and to engage in public outreach activities in affected communities. An Environmental Justice Advisory Board is currently operating under executive order.

House Bill 2010

Relating to environmental cleanup

HB 2010 would have created environmental cleanup districts in areas meeting specified population and federal Superfund listing criteria. The U.S. Environmental Protection Agency (EPA) listed the Portland Harbor as a Superfund site in December 2000. The Superfund list is the product of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and lists the most contaminated hazardous waste sites that are targeted for cleanup. HB 2010 would have authorized districts to raise no more than \$10.1 million annually by imposing a privilege tax on the gross receipts of persons occupying property in the district, to develop procedures for the application and granting of moneys, and to award grants to potentially responsible parties for undertaking remedial actions. HB 2010 would have also exempted persons occupying residential property within the district from paying the privilege tax. The measure limited individual taxpayer's privilege tax to 2002 property tax liability, adjusted 3 percent annually. HB 2010 would have required districts to make distributions to specified taxing

districts such as school districts, education service districts, community college districts, and certain special districts.

House Bill 2048

Relating to indemnification for producers of farming commodities

HB 2048 would have created a task force to study the efficacy of creating a program to indemnify and/or bond farmers against losses arising out of defaults by processors or purchasers of farming commodities. The measure also defined "farming commodities" for the purpose of bonding and indemnification.

House Bill 3091

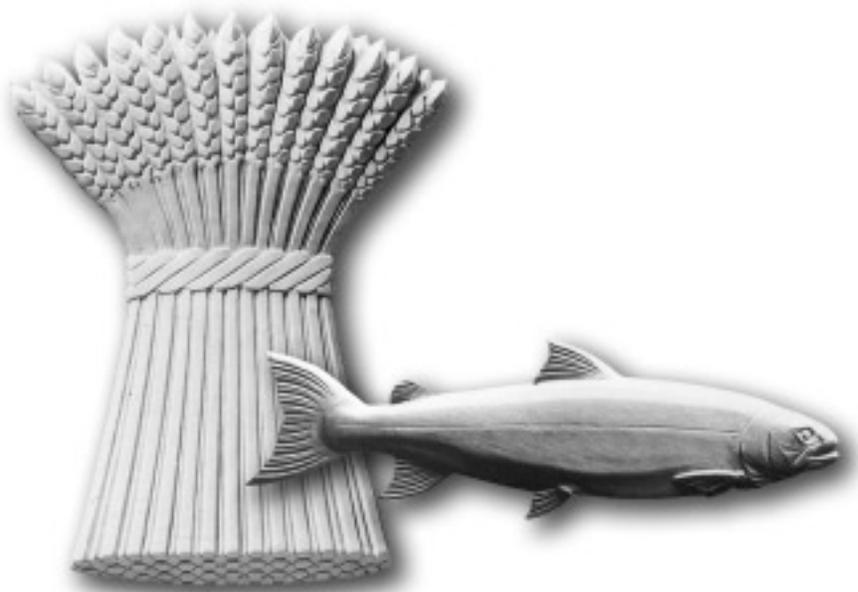
Relating to Willamette River

HB 3091 would have directed the Department of Environmental Quality (DEQ) to analyze sediment or other material samples proposed for disposal at Ross Island. DEQ would have determined if the material met specific requirements before disposal. The measure also directed the Environmental Quality Commission to adopt administrative rules establishing disposal criteria.

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Natural Resource Issues

Land Use



2001 Summary of Major Legislation

Senate Bill 212

Relating to land use

SB 212 allows the application of reclaimed water, agricultural process water, industrial process water, or biosolids for agriculture, horticulture or silvicultural production, or for irrigation in connection with allowable exclusive farm use zone uses. Food processors, industries and municipal wastewater treatment plants are prohibited from discharging wastewater into streams without a National Pollution Discharge Elimination System (NPDES) permit. Options for wastewater sources to meet water quality standards include reducing the amount of wastewater produced, discharge to rivers, or land application. Reclaimed wastewater is applied to land as irrigation water and biosolids as fertilizer.

SB 212 requires wastewater sources to submit a permit application and proposed management plan to the Department of Environmental Quality (DEQ). The DEQ will not accept or process permits until all necessary local land use approvals have been secured and after completion of a consultation with the Health Division. Permit conditions and management plans are aimed at ensuring that the application rates and site management do not reduce the productivity of the land on which wastewater or biosolids are applied.

In the land application process, wastewater and biosolids are authorized to be transported and treated. Necessary facilities and other farm amenities, excluding utility service lines, may be constructed to undertake the land spreading activities. Identified state agencies, in conjunction with local governments and other interested parties, are to report to the Seventy-second Legislative Assembly regarding the implementation outcomes no later than February 1, 2003.

Effective date: June 21, 2001

Senate Bill 417

Relating to deadlines for periodic review

SB 417 extends the time limit for the Land Conservation and Development Commission (LCDC) to take action on the phase one evaluation during periodic review, in order to allow additional time for mediation or consideration of complex issues. Local governments perform periodic reviews and update local comprehensive plans and land use regulations in order to respond to changes in local, regional, and state conditions. Such

updates ensure that the plans and regulations remain in compliance with the statewide planning goals and that the plans and regulations provide adequate provision for needed housing, employment, transportation, and public facilities and services. Phase one of the process is the evaluation of the existing comprehensive plan, land use regulations, or citizen involvement program, and the development of a work program to make any necessary changes. The Department of Land Conservation and Development approves or disapproves the local government's work program. Decisions can be appealed to LDCD.

Effective date: January 1, 2002

Senate Bill 470

Relating to regulation of use of real property

SB 470 requires cities or counties to allow the reasonable use of real property to include a church, synagogue, temple, mosque, chapel, meeting house or other non-residential place of worship for activities customarily associated with religious activities if the facility is otherwise allowed under state and local regulations. Religious activities include worship services, religion classes, weddings, funerals, child care, and meal programs. Cities and counties may further authorize a private or parochial school to be conducted at religious facilities as allowed under applicable state law and local zoning ordinances and regulations. Cities and counties may continue to subject real property to reasonable regulations, including site or design review, concerning the physical characteristics of the authorized uses. In addition, the measure allows cities and counties to prohibit or restrict the use by a place of worship if the local jurisdiction finds that the level of service of public facilities, transportation, water supply, sewer and storm drain systems are not adequate to serve the proposed facility.

Effective date: January 1, 2002

House Bill 2976

Relating to urban growth boundary

HB 2976 clarifies the determination of the 20-year period for a buildable land supply. In 1995, the legislature established the requirement that cities meet specific criteria in maintaining a 20-year supply of buildable lands within an urban growth boundary (UGB), and required an analysis of housing types and needs. The measure establishes a process for evaluating the urban growth boundary based on definite guidelines for the

type of data and time periods that must be used. The measure requires that a map or some form of documentation accompany the buildable lands inventory. Finally, the measure requires that cities look at economic or demographic trends and cycles, shorter or longer time periods, or data from areas outside the city's UGB if the data provides more accurate and reliable information to identify the 20-year supply of buildable land.

Effective date: January 1, 2002

House Bill 3045

Relating to local comprehensive land use plans

HB 3045 requires an analysis of land that is suitable for school facilities inside an urban growth boundary (UGB). High population growth areas, such as Beaverton and Hillsboro, have experienced substantial growth in the number of students served by the local school districts. This has created an increased need for additional school facilities. These school districts face the challenge of locating buildable land within the UGB that meet the requirements for school buildings, field space, and parking.

Under the measure, if it is determined there is an inadequate supply of suitable land for schools, a city or county is required to work with a school district to identify land for schools by adopting appropriate zoning, aggregating existing lots or parcels, adding one or more sites to a UGB, or petitioning Metro to include sites designated for schools into the UGB.

In addition, HB 3045 requires school facility plans for high growth school districts to cover a period of at least five years, and that such plans analyze measures that increase the efficient use of school sites, such as multiple-story buildings and multipurpose sites.

Effective date: January 1, 2002

House Bill 3326

Relating to land divisions in exclusive farm use zones

HB 3326 establishes the protection of the state's land base for commercial agriculture, from being divided into multiple parcels for nonfarm dwellings, while allowing a limited number of nonfarm dwellings to exist on less productive land. The measure authorizes, under certain circumstances, the division of land in exclusive farm use zones to create up to, or to divide into, two new parcels smaller than the minimum lot size, allowing each parcel to contain one nonfarm dwelling.

In addition, HB 3326 allows a single-family residential, nonfarm dwelling on exclusive farm use land in Eastern Oregon, under the following conditions: the dwelling and related activities do not create a significant change in, or cost of, accepted farming or forest practices on nearby lands devoted to farm or forest use; the dwelling is sited on a lot or parcel created after January 1, 1993; the dwelling does not materially alter the stability of the overall land use pattern of the area; and the dwelling complies with other conditions the local government deem necessary.

Effective date: January 1, 2002

Major Legislation Not Enacted

House Bill 3089

Relating to enforcement of farm dwelling rules

HB 3089 would have required the Land Conservation and Development Commission to revise and enforce rules for approving a dwelling in conjunction with a farm use based on the gross farm income earned from the farm unit. The commission would have been asked to provide for adjustment of the gross farm income standard based on an inflation index that was to reflect the change in value of agricultural commodities. The measure would have allowed farm operators to meet the gross farm income standard by aggregating the gross annual farm income from the farm unit to qualify for one dwelling. The term “farm unit” referred to all contiguous and non-contiguous tracts of land in common ownership that are used by the farm operator for farm use.

Farm dwellings are currently permitted on land zoned for exclusive farm use under certain circumstances. The statutory standard raised concern over whether new farm dwellings would be for farmers or for people who simply wished to live in the country. In response to this concern, the Department of Land Conservation and Development established by rule in 1994, a gross income test of \$80,000 for “high valued” farmland and \$40,000 for “non-high-valued” farmland. The intent of the income test was to establish an objective standard for approval of dwellings on farm land. Currently, the gross income standard for farm dwellings requires that the tract on which the dwelling will be sited, not the farm, earn a certain gross income before the dwelling is approved.

House Bill 3998

Relating to compensation for loss of property value resulting from land use regulation

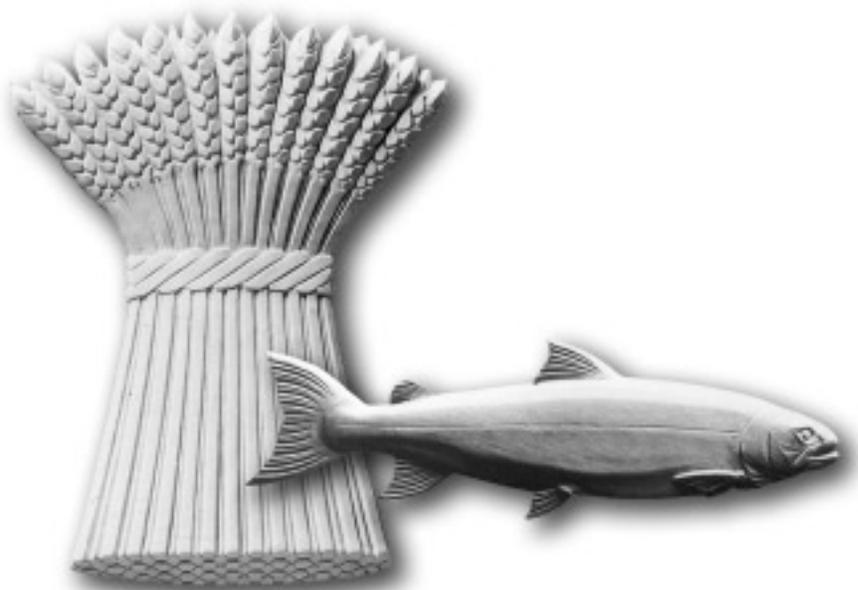
HB 3998 would have begun to address the issues surrounding the implementation of Ballot Measure 7, the property takings measure approved by voters in November 2000. The measure would have established a system to provide various types of compensation, under

certain circumstances, when private real property suffers a loss in fair market value as the result of land use regulation that restricted the use of that property. The measure would not have taken effect unless voters approved corresponding ballot measures repealing Measure 7 and would have provided adequate funding for property owner compensation.

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Natural Resource Issues

Water, Fish and Wildlife



2001 Summary of Major Legislation

Senate Bill 41

Relating to elk farming

SB 41 allows the slaughter of domesticated elk raised according to a license issued by the State Fish and Wildlife Commission, and permits the processing and sale of their meat and by-products. Domesticated elk are populations of North American wapiti, Manitoban elk, Rocky Mountain elk, Roosevelt elk and Tule elk that are born and raised in captivity. At present, sixteen ranchers are licensed by the Department of Fish and Wildlife to raise elk. The elk must be slaughtered and processed in a facility inspected and certified by the U.S. Department of Agriculture. The Oregon Department of Agriculture, in consultation with the Oregon Department of Fish and Wildlife, will adopt rules to regulate the processing and sale of domesticated elk and report to the 2007 Legislative Assembly. The provisions sunset on January 2, 2008 if the legislature does not act to extend slaughter, processing and sale authorization. SB 41 allows currently licensed elk breeders to raise domesticated elk to sell the meat and by-products in Oregon.

Effective date: September 1, 2001

Senate Bill 50

Relating to relocation of State Department of Fish and Wildlife offices

SB 50 relocates the Oregon Department of Fish and Wildlife (ODFW) headquarters from Portland to Salem. The Joint Interim Committee on Stream Restoration and Species Recovery recommended the move in order to improve the Department's access to, and information exchange with, the legislature and central government services located in Salem.

The policy of the Capitol Planning Commission is to locate all state agency headquarters offices in the Salem Capitol mall area. Land is available to site a permanent building for ODFW; however, the Department of Administrative Services will need three to five years to design and build the department's headquarters after funding is approved by the Legislature. Suitable properties for temporary headquarters are available for immediate occupancy near downtown Salem.

The Governor disapproved the emergency clause by vetoing that section of the measure.

Effective date: January 1, 2002

Senate Bill 51

Relating to water quality management plan

SB 51 addresses landowner rights and enforcement of agricultural water quality management plans. SB 1010, approved in 1993 authorized the Oregon Department of Agriculture (ODA) to develop agricultural water quality management plans for areas where: the Environmental Quality Commission has made a determination to establish a total maximum daily load (TMDL) for a body of water; a groundwater management area declaration has been made; or an agricultural water quality management plan is otherwise specifically required by state or federal law. The purpose of water quality management plans is to prevent and control water pollution.

SB 51 requires ODA to consult periodically with Department of Justice to review landowner constitutional rights with respect to inspection and enforcement. Subject to constitutional safeguards against unreasonable searches and seizures, ODA employees may go upon lands subject to a water quality management plan after making a reasonable attempt to notify the landowner, for the purpose of determining plan compliance.

Finally, SB 51 clarifies that penalties are not automatically imposed for a first violation without the landowner first having a reasonable opportunity to address the situation and extends to 30 days the time period to request a hearing regarding a violation or penalty notice. A first violation carries a civil penalty of up to \$2,500 with subsequent violations carrying a maximum penalty of \$10,000.

Effective date: January 1, 2002

Senate Bill 62

Relating to the State Wildlife Fund

SB 62 establishes a Fish and Wildlife Deferred Maintenance sub-account within the State Wildlife Fund. A portion of the interest on moneys in State Wildlife Fund, as well as other dedicated gifts and grants, is targeted for the maintenance of hatcheries and other department facilities excluding administrative facilities in Portland. The Oregon Department of Fish and Wildlife (ODFW) will pay interest on any use of principal funds and report uses of interest earnings to the legislature as part of the budget process.

In 1989, the Legislature created the Fish Endowment

Account for the purpose of providing a steady funding source for hatchery maintenance and to meet federal requirements regarding the state's use of interest earnings on revenues collected for fish and wildlife purposes. To date, no direct expenditures for hatchery maintenance have been made from the account due to the use of funds to address historic, department-wide cash flow problems. The Joint Legislative Audit Committee (JLAC) conducted a review of ODFW financial management practices related to the department's ending balance and the use of the Fish Endowment Account at the request of the Joint Interim Committee on Stream Restoration and Species Recovery. SB 62 implements JLAC recommendations to address identified financial concerns.

Effective date: July 20, 2001

Senate Bill 172

Relating to Division of State Lands permitting authority

SB 172 revises state law to make it compatible with federal requirements as a step toward allowing the Division of State Lands (DSL) to assume administration of the federal Clean Water Act dredge and fill permitting program. Currently, applicants who wanted to fill in, remove material from, or alter state waters were required to obtain separate approvals from both the U.S. Army Corps of Engineers and from DSL. Furthermore, an individual federal Endangered Species Act (ESA) consultation may be required before federal approval is granted from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

DSL has been negotiating for several years with federal agencies to streamline the permitting process and to be delegated authority to administer federal requirements, with the goal of one-stop permitting. SB 172 provisions take effect only if the U.S. Environmental Protection Agency agrees to delegate Clean Water Act authority to DSL and if the Oregon Legislative Assembly reviews and approves the agreement and budget to implement a state program.

Effective date: June 22, 2001

Senate Bill 214

Relating to wild fish policy

SB 214 exempts all rivers and streams co-managed by the State and Tribes located above the Bonneville Dam, from the state wild fish policy by deleting the sunset. In

a case before the U.S. District Court (*United States of America v. State of Oregon, et al*, Case No. 68-513 MA), the Court mandated negotiations between Oregon and the Warm Springs, Umatilla, and Nez Perce Indian Tribes to develop a fisheries management plan for the Columbia River basin. Currently, Oregon and the Tribes co-manage fisheries in the Columbia basin within areas ceded to the Tribes, including but not limited to, Hood River, Deschutes River, John Day River, Umatilla River, Walla Walla River, Grande Ronde River, Imnaha River, and Fifteenmile Creek. The resulting fisheries management plans are exempt from the wild fish policy. SB 214 requires plans to include a risk versus benefit analysis.

Effective date: April 20, 2001

Senate Bill 302

Relating to permits issued by the Division of State Lands

SB 302 allows non-motorized activities that remove or fill less than one cubic yard of material to be conducted within streams designated as essential indigenous anadromous salmonid habitat without a permit as long as fish eggs are not present. Such activities may include clam digging, taking sediment samples for water quality testing, and the placing of salmon carcasses in streams for nutrients. Approximately 17,600 stream miles are designated as essential salmonid habitat, defined as habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing. The Division of State Lands developed a General Authorization permit in order to streamline the permitting process for minimal impact activities moving less than one cubic yard of material at any one site, and cumulatively, not more than five cubic yards annually within a designated segment. SB 302 exempts those activities from General Authorization permit requirements under the specified conditions.

Effective date: April 10, 2001

Senate Bill 319

Relating to hydroelectric power

SB 319 ensures the ability of the Water Resources Department to participate in the decommissioning of hydroelectric projects for purposes of protecting public health, public safety, and the environment. The Hydroelectric Application Review Team will prepare a state position on projects irrespective of deficiencies in

the draft application for project reauthorization. Oregon currently has 166 state-authorized hydroelectric power projects, most of which operate under licenses expiring within the next 15 years. Since 1913, Oregon law has maintained a two-track system for authorizing hydroelectric projects, issuing licenses of up to 50 years for privately-owned projects while granting permanent, non-expiring water rights for public projects. The state considers a state license as the functional equivalent of a water right, except that the license is for a fixed term. SB 319 implements recommendations of the Hydroelectric Task Force created by the 1999 Legislative Assembly.

Effective date: June 14, 2001

Senate Bill 529

Relating to permits issued by Division of State Lands

SB 529 directs the Division of State Lands (DSL) to adopt rules governing issuance of removal-fill permits. Current applicants who want to fill in, remove material from, or alter the bed or banks of state waters are required to obtain permits from DSL and the U.S. Army Corps of Engineers. The state administrative rules are designed to provide uniformity in permit standards, clear application criteria, and firm decision timelines. Only criteria and standards in effect on the date of application may be considered in making a determination whether to issue or deny a removal-fill permit. Permit decisions must be made within 90 days after a complete application is filed.

Effective date: January 1, 2002

Senate Bill 606

Relating to scenic waterways

SB 606 requires the State Parks and Recreation Department to conduct a review of the Oregon Scenic Waterways System. Scenic Waterways are river areas that have been designated through an initiative petition or by legislative action to be recognized for their outstanding natural qualities, scenic beauty, and recreational qualities. Currently, 19 rivers are designated as scenic rivers, representing approximately one percent of the state's waterways.

SB 606 directs that recreational placer mining permits within scenic waterways, issued by the Division of State Lands, expire on specified dates once a Scenic Waterway System review is completed. Placer mining is the

extraction of minerals such as gold and platinum from placer deposits generally consisting of unconsolidated sand and gravel. Since recreational placer mining was first regulated in 1995, approximately 275 permits have been issued. The majority of permitted operations occur in the Rogue, Illinois, North Fork of the John Day, and Little North Fork of the North Santiam Scenic Waterway Areas. The Scenic Waterway System review will include a report on the impacts of recreational placer mining in designated scenic waterways.

Effective date: June 21, 2001

Senate Bill 644

Relating to water rights

SB 644 expands drought emergency response options and temporarily revises water right transfer processes. Two changes accelerate responses to drought conditions. First, the measure allows the Water Resources Commission to establish rules expediting notice and waiting period requirements for the substitution of a supplemental groundwater right for a primary surface water right during drought. Certain water right holders have a surface water right as their primary right and a groundwater right as their supplemental source of water. SB 644 allows the water right holder, during drought conditions, to designate their groundwater right as their primary source and their surface water right as their supplemental source under an expedited process.

Second, the measure allows the Water Resources Commission, local governments, public corporations or water right holders to enter into an agreement, at any time prior to the declaration of a drought emergency, to use an existing water right or permit during extended dry periods. After approval of the agreement by the Commission, the holder may use the transferred water right to replace water not available because of drought. The Governor must declare a severe continuing drought before the Commission can issue temporary permits for water, change in use of water, or waive notice and reporting requirements.

SB 644 also institutes temporary water right transfer provisions until July 1, 2005. First, the general water right transfer process is modified to allow any person who holds a water right to request the Water Resources Department (WRD) to approve a temporary transfer in the *type* of use identified in a right to store water for up to five years. Prior to passage of SB 644, the law allowed a change in the *place* of use only. Second, the process

for water districts to temporarily transfer water uses within the district is modified by allowing the district to notify the WRD of their intentions at least 60 days before the beginning of irrigation deliveries for the season or March 1, whichever is earlier. Such transfers are limited to one irrigation season. Temporary water right transfer provisions sunset and current water law is restored on July 1, 2005.

Effective date: July 18, 2001

Senate Bill 870

Relating to water rights

SB 870 authorizes the Water Resources Commission to allow a transfer in a point of water diversion, even if the transfer injures water right holders, if the Commission finds that the proposed change cannot occur without injury to existing water rights or in-stream water rights. An affidavit consenting to the change must be received from the affected water right holders. The Commission is required to document written findings on the extent of injury, effect on the resource, and net resource benefit in the order approving the change.

Agencies with affected in-stream water rights may only recommend consent to the change if the change will result in a net benefit to the resource. State agencies must include an analysis of the cumulative impacts of previous changes in determining the net benefit. The Water Resources Department (WRD) must provide public notice and consult with affected Indian Tribes when an in-stream water right would be injured by a point of diversion transfer. SB 870 allows any person to comment on an agency in-stream water right recommendation in writing within 30 days after publication of the change notice. Upon request, the WRD and the agency holding an affected in-stream water right must to hold a joint public meeting within 90 days.

Effective date: January 1, 2002

Senate Bill 895

Relating to ballast water management

SB 895 prohibits the discharge of ballast water from certain vessels into waters of the state and requires vessels to report ballast water management information to the Department of Environmental Quality. Ballast water is the water and associated sediment held in, and discharged from, a vessel to manipulate its trim and stability. Ballast water is commonly exchanged as a

vessel nears port and may be exchanged again as a vessel leaves port after loading or unloading. Non-native aquatic animals and plants may be introduced into local waters during ballast water exchange.

SB 895 also establishes a task force to recommend methods and improvements to ballast water management including alternative treatments of ballast water to minimize introduction of aquatic nuisance species. An aquatic nuisance species is any species or other viable biologic material that enters an ecosystem outside of its historic range.

Effective date: January 1, 2002

Senate Bill 945

Relating to the implementation of the Oregon Plan

SB 945 clarifies the mission and goals of the Oregon Plan for Salmon and Watersheds. Under the watershed enhancement program, a statewide monitoring program will be developed and implemented, in coordination with natural resources agencies, to evaluate the effectiveness of activities conducted under the Oregon Plan. The Oregon Watershed Enhancement Board will submit a biennial report to the Governor and the Legislature on Oregon Plan implementation.

A seven-member Independent Multidisciplinary Science Team (IMST), appointed jointly by the President of the Senate, Speaker of the House, and Governor, serves as an independent scientific peer review panel for state agency programs implementing the Oregon Plan. The IMST periodically reviews the Oregon Plan and makes recommendations for adjustments. SB 945 staggers the terms of appointment for members of the Independent Multidisciplinary Science Team.

Effective date: January 1, 2002

Senate Bill 946

Relating to implementation of the Oregon Plan

SB 946 directs the Oregon Watershed Enhancement Board to coordinate data collection and retrieval for use by state natural resources agencies and other entities such as watershed councils, soil and water conservation districts, and land use planners. The state Service Center for Geographic Information Systems serves as the state's repository for geographic information. The goal is to ensure access to geographic information systems (GIS) data layers and mapping capabilities that will support

Oregon Plan implementation efforts.

Effective date: January 1, 2002

House Bill 2181

Relating to pests

HB 2181 creates the Invasive Species Council, which is to promote reporting the influx of undesirable non-native plant and animal species, to increase education about invasive species, and to provide grants or loans for eradicating new introductions of such species. Invasive species are defined as non-native organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. There are a number of behaviors that increase the risk of introduction and spread of invasive plants and animals and subsequently result in severe economic problems for agriculture, forestry, and the general public.

Effective date: January 1, 2002

House Bill 2184

Relating to water banking

HB 2184 authorizes the Water Resources Commission to adopt by rule a system of water mitigation credits within the Deschutes River Basin. The measure provides for the recognition or establishment of water mitigation banks to facilitate the transactions among the holders of credits and persons who desire to acquire the mitigation credits. Under Oregon water law, new groundwater rights cannot be approved if they result in injury to senior surface water rights or to Scenic Waterway flows. However, the law does allow mitigation to offset the potential impacts to protect against injury. HB 2184 specifies that proposed projects apply to the Water Resources Department (WRD) for approval of the project and that the WRD determine a preliminary finding as to the amount of available mitigation credits. The measure specifically requires that all approved projects adhere to all applicable provisions of law, including no injury to existing water rights, and relevant portions of the Scenic Waterways System requirements.

The City of Redmond uses a combination of surface and ground water rights. The city plans to develop new wells to meet increasing water demands in the future. To obtain new ground water rights in the Deschutes Basin, the city will be required to provide mitigation. HB 2184 establishes a pilot program for the Deschutes Basin allowing for transactions between willing sellers

and willing buyers of mitigation credits. The measure provides an additional tool in developing a process for creating mitigation credits and authorizes a water banking process.

Effective date: June 28, 2001

House Bill 2712

Relating to water rights

HB 2712 allows for split-use leasing of an in-stream water right during a single calendar year in cases where the uses are not concurrent with the original right and the holders of the water rights measure and report the use of the existing water right to the Water Resources Department. Split season leases provide two options. One is to irrigate the total area of the water right for part of the season and lease the total area of the in-stream water right for the remainder of the season. The other option is to irrigate a portion of the area of the water right all season and split the other portion into irrigation for part of the season and lease in-stream for the other part of the season. These provisions sunset on January 2, 2008.

The 1987 Legislative Assembly authorized the establishment of in-stream water rights to protect water in-stream for public use. It also allowed the lease of an existing water right for a temporary change of use to an in-stream water right. In-stream leases are made on a voluntary basis and are only allowed if the change does not injure other water rights. In 1994 there were six such leases, increasing to 93 leases by the year 2000.

Effective date: May 25, 2001

House Bill 2967

Relating to dangerous wildlife

HB 2967 allows a person to take a cougar or bear that poses a threat to human safety, without a license or tag. The measure defines threat to human safety as the exhibition by a cougar or bear of one or more of the following behaviors: aggressive actions directed toward a person, including but not limited to charging, false charging, growling, teeth popping, and snarling; breaking into, or attempting to break into, a residence; attacking a pet or domestic animal; or loss of wariness of humans, displayed through repeated sightings of the animal during the day near a permanent structure, permanent corral, or mobile dwelling used by humans at an agricultural, timber management, ranching or construction site.

HB 2967 specifies that a person taking a bear or cougar

under these circumstances must report it to Department of Fish and Wildlife (ODFW) and dispose of the animal as directed. The measure requires the regional ODFW office to report to the director within 30 days of disposal to explain the taking and disposal of the cougar or bear. Reports will be compiled bimonthly by the ODFW director, who will make them available to the public.

Effective date: January 1, 2002

House Bill 3002

Relating to the Oregon Plan

HB 3002 requires fish passage around artificial obstructions in waterways where native migratory fish have existed or currently exist, and states that the policy and related rules must be consistent with the purpose and goals of the Oregon Plan. HB 3002 authorizes the Oregon Fish and Wildlife Commission to approve alternatives to fish passage if the artificial obstructions provide a net benefit to native migratory fish; to order installation of fish passage or an alternative if the commission arranges for a funding cost share of at least 60 percent; and allows a person to file protest with the commission within 30 days of the department's fish passage determination with the person entitled to a contested case hearing, which is subject to the commission's final decision.

The 1999 Legislative Assembly established a Fish Passage Task Force to address issues such as providing fish passage at existing facilities, determining financial responsibility for mitigation, and establishing appropriate standards to guide alternative mitigation measures. In addition, one of the primary objectives of the task force was to develop and craft legislation that combined existing statutes into one piece of legislation that is reasonable for owners/operators, benefits migrating fish through their lifecycle and contains enough flexibility for the commission to waive passage requirements under appropriate circumstances. HB 3002 incorporates the task force recommendations and re-establishes the Fish Passage Task Force to advise Oregon Department of Fish and Wildlife (ODFW) on continuing fish passage issues.

HB 3002 requires ODFW to inventory artificial obstructions for use in developing a priority project list to improve fish passage. In addition, the measure requires the department to determine the impact on fish passage resulting from construction, fundamental change in permitted use, or abandonment of an artificial

obstruction in effected waterways and requires ODFW to approve the proposed fish passage measures as part of such projects. If ODFW finds that a fish passage is not functioning as intended, or is inadequate as constructed, the department may condemn the fish passage and order a new installation in accordance with plans and specifications determined by ODFW. The department is directed to draft administrative rules defining the process for evaluating and approving fish passage projects.

HB 3002 also creates the Salmon Recovery Task Force which is charged with defining recovery of anadromous salmonid populations to a point where the populations may be removed from endangered or threatened status under the federal Endangered Species Act. The task force will report to the Interim Committee on Stream Restoration and Species Recovery and to the Seventy-second Legislative Assembly.

Effective date: August 8, 2001

House Bill 3147

Relating to trapping

HB 3147 requires individuals who set traps for fur-bearing mammals to check traps at least once every 48 hours. Fur-bearing mammals include beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox. The measure also requires people who set traps for predatory animals to check traps on a regular basis. Predatory animals are defined as coyotes, rabbits, rodents, and birds (excluding game birds in need of protection).

HB 3147 creates the Best Management Practices Task Force to review trapping management practices. The task force will report to Seventy-second Legislative Assembly on specific legislative recommendations for modification of state trapping regulations. The measure also requires licensed veterinarians practicing in Oregon to report incidences of treating animals injured by trapping devices to the Dean of the College of Veterinary Medicine at Oregon State University.

Effective date: January 1, 2002

House Bill 3564

Relating to conservation

HB 3564 expands the Oregon Department of Fish and Wildlife Habitat Conservation and Management program

to include forestland, and allows tribal governments to hold conservation easements. The Wildlife Habitat Conservation and Management program encourages private landowners to develop and implement conservation strategies on their private property that will improve fish and wildlife habitat. A wildlife habitat conservation and management plan is developed by the landowner and a cooperating agency with the goal of preserving, enhancing or improving the structure or function of wildlife habitat. The measure allows the sale or lease of in-stream water rights as a component of the plan and protects property owners from tax penalties if the habitat management plan sells or donates a conservation easement or if it has a deed restriction. HB 3564 allows the Fish and Wildlife Commission to establish, by rule, a limit on the number of wildlife habitat conservation and management plans that may be approved for each tax year. The measure also establishes a flexible incentive account to accept state, federal, and private moneys to fund the habitat conservation projects.

HB 3564 also directs the Oregon Watershed Enhancement Board to develop criteria for utilizing the private sector in providing technical assistance to landowners. Additionally, the measure directs the Oregon Departments of Forestry (ODF) and Agriculture (ODA) to facilitate the process with relevant state agencies, and public and private organizations to review state statutes, rules, policies and programs that affect landowner's decisions to implement conservation strategies. The measure requires ODF and ODA to report on the statewide strategic plan for landowners and the stewardship agreement programs to the Seventy-second Legislative Assembly.

Effective date: January 1, 2002

House Bill 3637

Relating to the State Fish and Wildlife Commission

HB 3637 sets the State Fish and Wildlife Commission at seven members and provides that the members serve at the pleasure of the Governor. The measure provides guidance for the Governor to consider when appointing members to the commission. In addition, the measure changes the selection of the chairperson, from the commission to the Governor and specifies that the commission may reappoint the director of the Oregon Department Fish and Wildlife (ODFW) to additional terms.

HB 3637 declares that the appointment of the ODFW

director is subject to Senate confirmation until January 2, 2003. In addition, the measure adds to the commission's wildlife policy the declaration that the commission shall represent the public interest of Oregon in the management of wildlife. It directs the commission to consider the best social, economic and recreational utilization of Oregon's wildlife resources in their decision making of such resources.

Effective date: July 6, 2001

House Bill 3956

Relating to water quality

HB 3956 requires the Department of Environmental Quality (DEQ) to develop and implement a pollutant reduction trading program, with specified requirements. Pollutant reduction trading (also referred to as effluent trading) occurs when a business or government reduces pollution output below the pollutant reduction standard. The excess reduction results in a credit that can be sold or bartered to another company or government that may be unable to reduce its own pollutants as cost effectively. The trade must result in a net decrease of pollution. The measure allows the department to collect reasonable fees from traders for program administrative costs, and requires the department to seek federal funding for program implementation.

Effective date: July 6, 2001

House Joint Memorial 4

Urging Congress to amend Marine Mammal Protection Act

HJM 4 urges Congress to amend the federal Marine Mammal Protection Act (MMPA) to allow state and federal agencies to remove harbor seals and California sea lions which prey on endangered or threatened salmonids. Under the federal MMPA, authority to manage seal and sea lion populations was removed from the states and given to the National Marine Fisheries Service (NMFS). The state may gain back authority only after a management plan is approved by NMFS and evidence exists that the mammals are at their optimum sustainable population levels. In February, 1999 NMFS submitted its report, *Impacts on California Sea Lions and Pacific Harbor Seals on Salmonids and West Coast Ecosystems*, to Congress, recommending that Congress amend the MMPA to allow state and federal resource managers limited authority to remove individual

seals and sea lions known to have long-term feeding patterns at sites of restricted fish passage.

Filed with Secretary of State: April 4, 2001

House Memorial 2

Requesting United States Congress, President and Environmental Protection Agency to develop long-term water solution for Klamath Basin and declare Klamath County a natural disaster area

HM 2 requests that the federal government provide disaster assistance to the Klamath Basin, and that it develop long-term water storage solutions for Klamath Basin irrigators. The measure also requests that the Endangered Species Act be amended, specifying that there should be a re-evaluation of the biological opinion on the Lost River and shortnosed sucker fish.

Klamath County is currently facing a drought emergency due to lack of rainfall and snow pack. Klamath County farmers have been denied waterflows for irrigation by the Bureau of Reclamation due to the federal Endangered Species Act requirements that water be provided for the Klamath shortnosed sucker fish and the Lost River sucker fish. The State of Oregon has already declared a drought emergency in Klamath County.

Filed with the Secretary of State: June 12, 2001

Major Legislation Not Enacted

Senate Bill 518

Relating to hunting

SB 518 would have addressed hunter safety by prohibiting a person from applying for a hunting license unless the person: provided proof of satisfactory completion of a hunter safety training program; or had previously held an Oregon hunting license. The measure would have deleted the current requirement that a person under 18 years of age must complete a course in the safe handling of lawful hunting weapons to hunt wildlife, except on that person's own land.

Senate Bill 762

Relating to wetlands

SB 762 would have directed the Division of State Lands to adopt a process for administering permits and revising standards in accordance with the goal of increase in wetlands acreage statewide, through the use of wetlands mitigation banks. The measure would have made off-site mitigation a priority over on-site mitigation unless an on-site wetland was of high resource value. An amendment would have prohibited the Division of State Lands from allowing the withdrawal of any credits until the mitigation bank had been constructed and wetland hydrology had been established. SB 762 would have also required the Department of Transportation to develop a plan to create a wetlands mitigation bank.

Senate Bill 845

Relating to fish hatcheries

SB 845 would have appropriated General Fund moneys to a Conservation Hatchery Improvement Program (CHIP). Conservation hatcheries are designed to recover a threatened or endangered species. In contrast, standard fish hatcheries aim primarily to provide fish for sport and commercial fisheries.

The Coastal Salmon Restoration and Production Task Force reported two primary goals of CHIP. The first was to outline proposals for how the Oregon Department of Fish and Wildlife (ODFW) should evaluate re-

search and conservation strategies for the recovery and supplementation of wild salmon populations. The second, was to address the remedial actions identified in the ODFW Hatchery Review to bring hatchery programs into compliance with existing policies and operational standards.

House Bill 3490

Relating to water quality

HB 3490 would have appropriated moneys to the Department of Environmental Quality (DEQ) for use attainability analyses. Use attainability analyses are scientific assessments done to determine whether unique and site-specific water quality standards are necessary for a water body or stream segment. As directed by the federal Clean Water Act, DEQ develops water quality standards to protect the beneficial uses of Oregon's waters. The standards apply statewide, though some waters may have uses that are not addressed by the statewide standards.

House Bill 3826

Relating to the environment

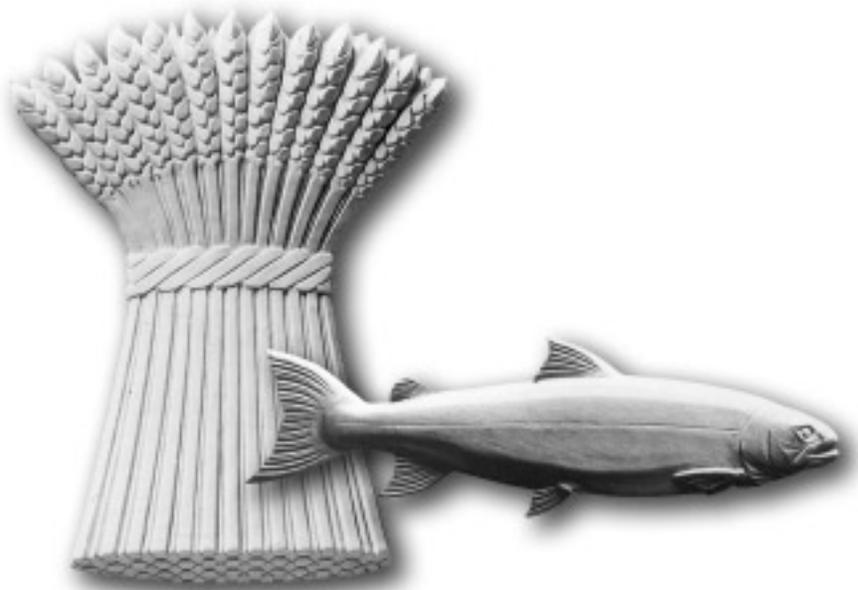
HB 3826 would have required the Oregon Watershed Enhancement Board to develop a plan for the Division of State Lands to obtain conservation easements or title to 50,000 acres of land by January 1, 2010. The measure also directed the Environmental Quality Commission to establish and enforce erosion control standards by January 1, 2004, for construction sites not currently subject to erosion regulations.

HB 3826 would have also enacted several of the 27 critical actions submitted by the Willamette Restoration Initiative Board in the *Willamette Restoration Strategy Overview, February 2001*. The 27 critical actions address the restoration and health of the Willamette Basin and focus on four areas: 1) clean water, 2) water quality, 3) habitat and hydrology, and 4) institutions and policies.

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Judiciary Issues

Civil Law



2001 Summary of Major Legislation

Senate Bill 114

Relating to genetic privacy

SB 114 creates a privacy right in an individual's genetic information and DNA sample, deleting the provision that previously declared that genetic information and DNA samples were an individual's "property." The measure imposes a duty on any person authorized to obtain, retain or use genetic information or a DNA sample to protect the information or sample from unauthorized disclosure or misuse. The measure makes a violation of an individual's privacy right enforceable through a civil cause of action that may be brought by an individual, an individual's blood relative or estate, or the Attorney General. SB 114 establishes minimum damages for violations from \$0 for inadvertent disclosure that is corrected before read by a recipient to \$250,000 for a disclosure with the intent to use for commercial advantage. In addition, the measure creates criminal penalties.

Before any DNA sample or genetic information may be used for anonymous research, SB 114 requires that the individual be notified that his or her DNA sample or genetic information may be used for anonymous research. SB 114 applies clinical standards for specific informed consent to genetic research, and requires all research to be supervised by the Internal Review Board, including anonymous research.

SB 114 delegates authority to the Health Division of the Department of Human Services to adopt rules to establish minimum research standards consistent with the Federal Policy for the Protection of Human Subjects (Common Rule); to register institutional review boards to oversee testing of genetic information; to establish guidelines for genetic research in which the identity of the individual is encrypted; and to establish criteria for re-contact of individuals when using research information with personal identifiers. The measure limits the use of a blanket informed consent for further research.

SB 114 recognizes that genetic research is a rapidly evolving area, and creates a statutory advisory committee to make recommendations to the Health Division regarding rules and to study issues such as gene patenting for presentation to the next Legislative Assembly.

Effective date: June 25, 2001

Senate Bill 120

Relating to claims against nontestamentary trusts

SB 120 creates an optional procedure in the probate court to expedite the payment of creditors' claims from a revocable nontestamentary trust, or "living trust," after the death of the grantor. This measure largely mirrors provisions in the probate code for presentation and payment of claims, and priorities. The measure requires notification of creditors by publication and requires personal service on known creditors, provides creditors four months to make any claim against the trust estate, and gives the trustee four months to disallow a claim. The measure provides procedures for settlement of claims on debts not yet due, contingent or unliquidated claims and claims by secured creditors. SB 120 allows a creditor to request a summary determination by the probate court to challenge the trustee's disallowance. The measure also sets priorities for the distribution of trust assets.

Effective date: January 1, 2002

Senate Bill 171

Relating to secured transactions

SB 171 is a complete revision of Article 9 of the Uniform Commercial Code, related to secured transactions, concerning the mechanics of granting credit and enforcing the rights of creditors and debtors. This measure is part of a national effort based on a uniform draft prepared by a work group of the National Conference of Commissioners on Uniform State Laws. SB 171 expands the kinds of property and transactions in which a security interest can be taken and clarifies the permissible methods of perfecting security interests. The measure changes the place for filing a financing statement to the location of the debtor and similarly changes the presumptive choice of law governing disputes from the location of the collateral to the location of the debtor. SB 171 continues Oregon's centralized filing of financing statements with the Secretary of State, and allows filing through electronic media. The measure retains the non-uniform Oregon renewal notification by the Secretary of State. The measure requires notice to junior lienholders upon default. The measure defines consumer transactions and adopts rules applicable to the enforcement of a security interest after default in consumer transactions including attorney fees. The measure maintains the status quo regarding the free alienability of structured settlements, leaving the issue

up to the courts.

SB 171 specifies provisions for regulation and licensing of title loan companies and any agent or facilitator of a title loan. The measure prohibits a title lender from making a loan without a good faith belief that the consumer has the ability to repay the loan. The measure prohibits title lenders from engaging in certain activities including certain provisions in title loan contracts. SB 171 stipulates that a title lender may not renew a loan more than six times after the first loan is made, and must wait until the next business day to enter into a new loan with the same consumer. The measure provides for the assessment of a penalty against a person who lends money without a license.

Effective date: July 1, 2001

Senate Bill 419

Relating to implementation of federal Adoption and Safe Families Act

SB 419 amends juvenile law to bring Oregon into compliance with federal requirements. In November of 1997, Congress adopted the Adoption and Safe Families Act of 1997 (ASFA), which was intended to assist state efforts in balancing family preservation and reunification with the need for permanency in children's lives. ASFA contains significant mandates for states, packaged with financial incentives for state compliance. Since the adoption of previous legislation meant to bring Oregon into compliance with ASFA, the federal Department of Health and Human Services issued the final federal rules interpreting ASFA. SB 419 brings Oregon's statutes into compliance with the new federal rules, ensuring that Oregon continues to receive federal funds for the state's child protective services.

Effective date: June 28, 2001

Senate Bill 773

Relating to tort claims against public bodies

SB 773 creates an exception to the requirement to give notice of a claim against the state for certain claims by children against the Office of Services to Children and Families (SCF) or the Oregon Youth Authority (OYA). The measure exempts a claimant from giving notice when the act or omission giving rise to the claim occurred while the claimant was in the custody of the SCF or the OYA and where the claimant was under the age of 18

when the act or omission giving rise to the claim occurred.

Effective date: January 1, 2002

Senate Bill 925

Relating to alcoholic beverages

SB 925 provides that an intoxicated person cannot sue an alcohol server for injuries sustained by the intoxicated person due to his or her intoxication. Additionally, the measure prohibits a person injured by an intoxicated person from filing a cause of action against the alcohol server if the injured person substantially contributed to the intoxication of the intoxicated person. This measure overrules recent Supreme Court decisions in *Fulmer v. Timber Inn Restaurant and Lounge*, 330 Or 413 (2000), and *Grady v. Cedar Side Inn*, 330 Or 42 (2000), in which the court found that both the intoxicated person and the person who contributed to the intoxication of the intoxicated person had a cause of action against the alcohol server.

Effective date: January 1, 2002

House Bill 2112

Relating to electronic transactions

HB 2112 adopts the Uniform Electronic Transactions Act (UETA), which was drafted by the National Conference of Commissioners on Uniform State Laws to encourage uniformity in electronic transactions and to establish the legality of electronic signatures and electronic records. The measure establishes that an electronic signature or record has legal effect and satisfies any law that requires a written signature or record on paper. HB 2112 also allows governmental agencies to create and retain electronic records and convert written records to electronic form and authorizes the Oregon Department of Administrative Services to adopt standards for a state agency's use of electronic records. In addition to adopting UETA, HB 2112 also adopts certain federal consumer protection provisions. The measure also correlates current electronic and digital signature law language to UETA language and replaces "electronic" with "digital" in Oregon's electronic signature law.

Effective date: June 22, 2001

House Bill 2352

Relating to unlawful practices

HB 2352 reorganizes Oregon's civil rights statutes and clarifies unclear or inconsistent language relating to enforcement procedures. The measure also creates an unlawful employment practice for discrimination based on a person holding certain religious degrees.

Effective date: January 1, 2002

House Bill 2361

Relating to appeals from stipulated judgments

HB 2361 allows an appeal of a stipulated judgment in certain circumstances if the party has reserved the right to appeal the trial court's ruling.

HB 2361 is a legislative response to *Rauda v. Oregon Roses, Inc.*, 329 Or 265 (1999), in which the Supreme Court interpreted Oregon law as barring appeals from stipulated judgments even when it was clear from the record that the parties intended that an appeal would be taken from an interlocutory ruling underlying the judgment.

Effective date: January 1, 2002

House Bill 2371

Relating to de novo appeal of certain decisions made without hearing

HB 2371 clarifies that in cases where an initial administrative decision is made without a hearing on matters involving discretionary land use permit decisions, the appeal from that decision constitutes the initial evidentiary hearing, open to any party with standing. Oregon law provides that a local government may make simple land use decisions as administrative matters, subject to public notice and appeal. If there is an appeal of a decision, the local government is required to hold a *de novo* public hearing. HB 2371 addresses the nature of that hearing.

Effective date: January 1, 2002

House Bill 2374

Relating to attorney fees

HB 2374 codifies recent Oregon case law regarding the definition of "prevailing party" for purposes of attorney fees in actions where there are multiple claims and

counterclaims to ensure a "claim-by-claim" approach to the award of attorney fees.

In *Newell v. Weston*, 156 Or App 371, rev den 327 Or 317 (1998), the Court of Appeals held that the legislature intended that a party who prevails on a claim subject to an award of fees should be entitled to them. Similarly, the Supreme Court in *Wilkes v. Zurlinden*, 328 Or 626 (1999), held that there can be more than one prevailing party in an action with multiple claims. The court's reasoning in *Wilkes* suggested that both parties would receive an award of attorney fees for the results that they obtained. HB 2374 codifies these decisions, requiring the trial court to make a determination of the "prevailing party" for each claim.

Effective date: January 1, 2002

House Bill 2386

Relating to garnishment

HB 2386 revises Oregon law relating to garnishment by clarifying the garnishment process and consolidating the four existing forms of writ into a single form. The measure authorizes the Attorney General to adopt model forms for notices of garnishment issued by state agencies and county tax collectors. Previously, Oregon garnishment statutes (ORS chapter 29) followed no recognizable sequence and many of the individual statutes contained a variety of unrelated provisions. There were four separate forms for writs of garnishment and the terminology used in the statutes varied from section to section without apparent reason.

Effective date: January 1, 2002

House Bill 2389

Relating to public officials

HB 2389 provides that a public official may be held personally liable for the unlawful expenditure of public moneys only if the expenditure constitutes malfeasance in office or a wanton neglect of duty.

Previously, Oregon law provided that a public official who expended any public money over the amount allowed by law could be held personally liable. For example, a public official could be held personally liable for a simple administrative error, misinterpretation or error in math, budgeting, or judgment, potentially bankrupting the official and his or her family. HB 2389 brings ORS 294.100 in line with the language of the Oregon Tort Claims Act, which indemnifies public

officials unless their conduct constitutes “malfeasance in office or willful or wanton neglect of duty.” The measure protects paid and unpaid public officials from personal liability for honest mistakes.

Effective date: January 1, 2002

House Bill 2414

Relating to conflict of laws

HB 2414 codifies choice-of-law for Oregon-related contracts. The measure specifies the contract-related issues to which Oregon law applies, other issues to which either Oregon law or the law of another state applies, and establishes a detailed procedure for determining the applicable law when no rule has been specified by a statute or by the parties.

Whenever a transaction or relationship crosses interstate or international boundaries, a question of the applicable law may arise. For example, if the parties to a contract live in different states or their contract is negotiated and signed in one state but is to be performed in another, two or more divergent laws could govern issues in a dispute that arises between them. Previously, Oregon’s choice-of-law approach was complicated and had been plagued by problems of application, leading to uncertainty for the parties involved. HB 2414 codifies the rules and principles that determine which law or laws should govern issues that may arise in Oregon-related contracts involving transactions or relationships across state or national lines.

Effective date: January 1, 2002

House Bill 2427

Relating to domestic relations

HB 2427 sets legal requirements for non-parents, including grandparents, seeking custody or visitation with children. The measure creates a rebuttable presumption that a legal parent acts in the best interests of the child. The measure lists factors that the court may consider relevant to custody and additional factors relevant to visitation in determining whether the presumption has been rebutted and whether to award custody or visitation under this section. HB 2427 requires the court to enter findings of fact supporting rebuttal of the presumption. The measure specifies that the presumption does not apply in a proceeding to modify an order granting relief under this section. The measure clarifies that intervention in a proceeding brought under

this section is governed by ORCP 33, but retains criteria in current law applicable to intervention in a juvenile delinquency proceeding. The measure specifies that the change in the law effectuated by HB 2427 does not constitute a change of circumstances sufficient for the court to reconsider an order. The measure consolidates the provisions of ORS 109.119, regarding custody and visitation by persons who have established a “child-parent relationship” or an “on-going personal relationship” with the child, with the provisions regarding grandparent visitation formerly in ORS 109.121 and 109.123 which have been repealed by the measure.

HB 2427 addresses issues raised by the United States Supreme Court decision in *Troxel v. Granville*, ___ US ___, 120 S Ct 2054, 147 L Ed 2d 49 (2000) concerning the extent to which the state can order third-party visitation over the objections of the parent. In *Troxel*, the court held that the United States Constitution guarantees parents a liberty interest in the care, custody, and control of their children, and a voice in decisions affecting their children.

Consistent with the *Troxel* case, the Oregon Court of Appeals in *Harrington v. Daum*, 172 Or App 188 (2001), and in other recent Oregon appellate decisions, has found a parent’s liberty interest in making decisions concerning the upbringing of his or her children.

Effective date: July 31, 2001

House Bill 2460

Relating to special motions to strike

HB 2460 allows a defendant in a civil action to make a special motion to strike if the plaintiff’s claim arises out of certain conduct by the defendant in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with an issue of public interest. The measure provides that a special motion to strike shall be treated as a motion to dismiss under ORCP 21 A. HB 2460 specifies that the defendant has the initial burden to show that the plaintiff’s claim arises from protected speech or conduct and then the burden shifts to the plaintiff to establish a probability that he or she will prevail on the claim.

HB 2460 addresses the issue of lawsuits used to intimidate people from participating in the political process, known as Strategic Lawsuits Against Public Participation (SLAPP). According to the measure’s proponents, SLAPPs arise in a variety of contexts and are often filed by persons with extensive resources in

retaliation for the defendant's public participation in a political dispute. The proponents maintain that most SLAPPs are groundless and are eventually dismissed; however, the suits can cost defendants tens of thousands of dollars, take years to defend and have the effect of silencing the defendants and other members of the community. HB 2460 expedites the legal process by allowing the defendant to make a special motion to strike if the plaintiff's claim arises out of certain conduct by the defendant in furtherance of his or her constitutional rights.

Several other states have passed anti-SLAPP legislation in recent years, including California, Delaware, Georgia, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee and Washington.

Effective date: January 1, 2002

House Bill 2494

Relating to decrees in domestic relations suits

HB 2494 permits parties to a domestic relations suit to enforce terms of certain decrees as contract terms with contractual remedies. The measure addresses *Webber v. Olsen*, 330 Or 189 (2000), in which the Supreme Court held that stipulated judgments of dissolution of marriage cannot be enforceable as contracts and that the parties are limited to enforcement of judgments by contempt or through garnishment. HB 2494 makes it easier to enforce the provisions of stipulated judgments, encouraging thorough and creative resolutions to complicated dissolution cases.

Effective date: May 25, 2001

House Bill 2938

Relating to attorneys

HB 2938 authorizes the Supreme Court to require payment of a fee by attorneys who are not admitted to practice in Oregon and who appear as counsel before an Oregon court (appearing *pro hac vice*). The measure appropriates the collected *pro hac vice* fees to the Oregon State Bar (OSB) and directs that the fees be used to fund legal services for low-income Oregonians.

OSB members pay an annual mandatory membership fee of \$416. Currently, there is no fee charged to out-of-state attorneys who appear *pro hac vice* in Oregon courts. Thirteen states and the District of Columbia

currently impose a fee on out-of-state attorneys who appear in their jurisdictions. Most of those states' fees go to the state bars and are not earmarked for any specific purpose. This measure authorizes the collection of a *pro hac vice* fee that would be dedicated to legal services for low-income Oregonians. According to the OSB, 80% of that need is not being met currently. If the Supreme Court were to set a *pro hac vice* fee of \$250 per year paid by out-of-state attorneys, the OSB estimates that approximately \$200,000 would be raised for legal services for low-income Oregonians.

Effective date: January 1, 2002

House Bill 2945

Relating to advisory committees for medical assistance program

HB 2945 makes public meeting laws applicable to any meeting of an advisory committee or similar group convened to make decisions, conduct policy research or make recommendations on administration or policy related to a medical assistance program. The measure provides the public with access to the meetings of certain advisory committees that the Office of Medical Assistance Programs had denied were covered by the public meeting laws.

Effective date: January 1, 2002

House Bill 3677

Relating to the construction of statutes

HB 3677 permits a party to offer the legislative history of a statute to aid the court in construing the statute. The measure allows the court to limit consideration of legislative history to information provided by the parties.

HB 3677 addresses the Supreme Court's three-level approach to statutory interpretation as announced in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). First, the court examines the text and context of a statute. If the meaning of a statute is unclear from the text and context, the court looks to legislative history and, if the meaning is still unclear, the court then resorts to general maxims of statutory construction to determine the legislature's intent. The court's task is to discern the intent of the legislature. *Id.*, 317 Or at 610. Proponents of the measure argue that in some cases, it is necessary to look at the legislative history of a statute in order to determine whether the meaning is clear from the statute's text and context. HB

3677 allows a party to offer legislative history to the court to aid in its pursuit of the legislature's intent, regardless of whether the meaning of a statute is clear from its text and context.

Effective date: June 18, 2001

House Bill 3912

Relating to organized communities

HB 3912 modifies provisions relating to organized communities by conforming sections of the Oregon Condominium Act and the Oregon Planned Community Act relating to the administration, operation and management of homeowners associations. The measure expands the scope of the Planned Community Act and provides existing planned communities with a procedure to form an association if existing governing documents do not provide for one. HB 3912 also provides protections for individual owners including requiring the use of secret ballots in association elections under certain circumstances, specifying a time by which an association must provide owners with certain information and establishing procedures for executive sessions of association boards. The measure also requires that associations make use of county dispute resolution programs when available.

Effective date: January 1, 2002

Major Legislation Not Enacted

House Bill 3910

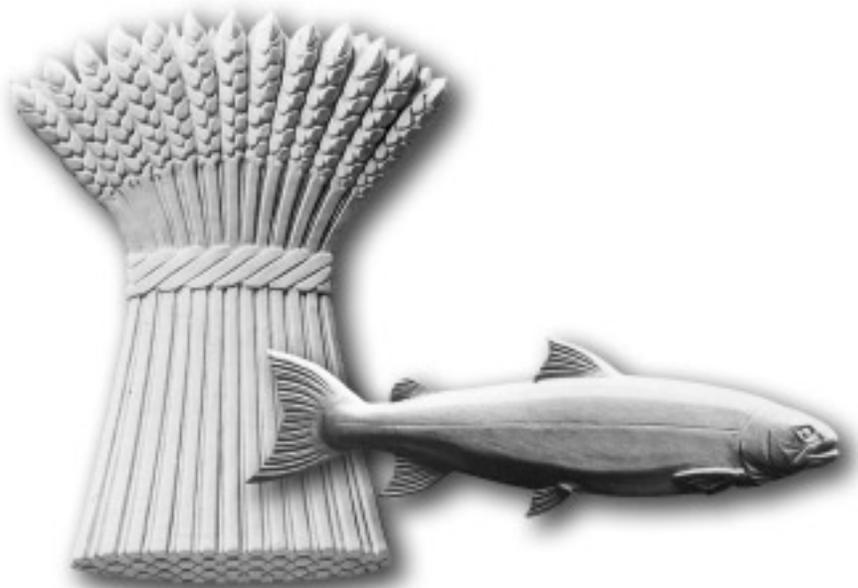
Relating to Uniform Computer Information Transactions Act

HB 3910 would have created the Uniform Computer Information Transactions Act (UCITA), a statute providing substantive rules governing electronic commerce contracts and licenses for computer information or programs. UCITA was drafted by the National Conference of Commissioners on Uniform State Laws to address concerns that expansion of the nation's digital economy could be impeded by extreme differences in the laws of each state. An interim work group will study these issues.

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2001 Summary of Major Legislation

Senate Bill 133

Relating to crime

SB 133 creates the crime of unlawful possession of body armor and classifies the crime as a Class C felony. The measure defines body armor as “clothing or equipment designed in whole or in part to minimize the risk of injury from a deadly weapon.” SB 133 covers armor designed to stop a knife or bullet. A person commits the crime if the person is in possession of “body armor” and has been convicted of a felony or misdemeanor involving violence under the laws of any state of the United States. The crime is also committed if a person, while committing or attempting to commit a felony or misdemeanor involving violence, knowingly wears body armor and possesses a deadly weapon. SB 133 classifies this crime as a Class B felony.

The measure does not apply to persons who have been provided the body armor by police for protection or if a court has issued a protective order or restraining order for the benefit of the person. Those who have only been convicted of one felony, other than homicide, and who were discharged from prison, parole, or probation 15 years or more prior to the date of the alleged violation are also exempted.

The measure also creates the offense of vehicular assault of a bicyclist or pedestrian and classifies the offense as a Class A misdemeanor. A person commits the offense if the person recklessly operates a vehicle upon a highway in a manner that results in contact between the person’s vehicle and a bicycle or pedestrian and the contact causes physical injury.

SB 133 also creates a planning and advisory committee to make recommendations on how to increase family bonding for children who have incarcerated parents.

Finally, SB 133 requires each local public safety coordinating council to establish an early disposition program for first-time offenders who have committed non-person offenses and for probation violators. The measure requires the local public safety coordinating council to report biennially to the Oregon Criminal Justice Commission on the early disposition program in the council’s county. The measure authorizes a district attorney to offer a plea agreement to a defendant in open court.

Effective date: June 27, 2001

Senate Bill 183

Relating to recovery of cost of care by Department of Corrections

SB 183 authorizes the Department of Corrections (DOC) to seek reimbursement from inmates and their personal estates for the cost of care incurred by DOC during incarceration. The measure incorporates an assessment of the inmate’s ability to pay, and specifically states that such an assessment must recognize the need to reserve an inmate’s financial resources for any child support or court obligations. If it is determined that the inmate does have an ability to pay, the inmate may contest DOC’s assessment. DOC may seek reimbursement for the expenses incurred due to the inmate’s incarceration. Assets from a court judgment that the inmate was falsely imprisoned or compensation from the state for causing the death of an inmate may not be used to reimburse costs of incarceration. The measure authorizes DOC to utilize a system that the Mental Health and Developmental Disability Services Division currently uses to gain reimbursement from patients’ assets.

Effective date: January 1, 2002

Senate Bill 199

Relating to the safe surrender of newborn children

SB 199 allows a parent to leave an infant, who is 30 days of age or younger, with an employee at an authorized facility and provides the parent with an affirmative defense to the crime of abandonment of a child. The measure guarantees the parent’s anonymity so long as there is no sign of abuse as defined in ORS 419B.005. An “authorized facility” can be a hospital, freestanding birthing center, physician office, sheriff office, police station or fire station. The measure grants immunity for an authorized facility acting in good faith. SB 199 requires the authorized facility to notify the State Office for Services to Children and Families which then takes the infant into protective custody.

Effective date: January 1, 2002

Senate Bill 230

Relating to crimes involving animals

SB 230 overhauls the statutes relating to animal neglect and animal abuse. The measure creates new definitions of “domestic animal,” “physical trauma,” “physical

injury,” “minimum care,” “torture” and “serious physical injury” in relation to animal abuse. Persons convicted of certain animal abuse crimes are prohibited from possessing a domestic animal for 5 years or 15 years, depending on the seriousness of the crime. The measure elevates Animal Abuse in the First Degree to a Class C felony if the person has been convicted of prior assault or abuse or the person abused the animal in the immediate presence of a child. The measure clarifies that vermin and pest control do not constitute animal abuse. SB 230 also clarifies that reasonable handling and training techniques do not constitute abuse. Finally, the measure creates the crime of Sexual Assault of an Animal and allows the court to order psychiatric or psychological treatment for a person who has committed the crime.

Effective date: January 1, 2002

Senate Bill 293

Relating to sentencing

SB 293 amends the repeat property offender sentencing statute. Previously recidivist property offenders that had been convicted of certain predicate property crimes were subject to enhanced sentencing upon conviction for certain felony property crimes. SB 293 expands the list of predicate crimes to include criminal mischief in the second degree, computer crime, forgery, fraudulent use of a credit card, and identity theft. The measure provides that if a person has four previous convictions for the enumerated property crimes, they are subject to presumptive prison sentences if convicted of Oregon’s most serious property crimes. SB 293 adds theft in the first degree, burglary in the second degree, criminal mischief in the first degree, computer crime, forgery in the first degree and identity theft to the list of crimes that carry a presumptive prison sentence if the defendant has committed four prior predicate property offenses.

Effective date: January 1, 2002

Senate Bill 370

Relating to sex offenders

SB 370 allows juvenile sex offenders to petition the juvenile court to lift the sex offender registration requirement at the end of juvenile court jurisdiction and sets the criteria that juvenile courts will use in determining whether to grant the petition. This portion of SB 370 applies to those juveniles who commit acts constituting sex crimes after the operative date. The measure limits the posting of sex offender information

on the internet by Oregon State Police (OSP) to information about predatory sex offenders and sexually violent dangerous offenders. SB 370 repeals the sunset provisions of the sections of Oregon Laws 1999 Chapter 626 dealing with sex offender registration. The measure also limits the OSP practice of notification to the public, so that OSP does not notify the public if the Department of Corrections never needed to notify the public of the offender’s presence and the offender was not on a high level of supervision when supervision was completed. This means that if a person has satisfactorily completed his or her supervision, OSP would not notify the public of his or her presence upon completion of supervision.

Finally, the measure creates a presumptive life sentence upon a person’s third conviction for a felony sex offense. This portion of SB 370 becomes operative January 1, 2002.

Effective date: July 31, 2001

Senate Bill 384

Relating to juveniles

SB 384 shifts responsibility for developing guidelines governing the operation of juvenile detention facilities from the State Commission on Children and Families (SCF) to the Juvenile Crime Prevention Advisory Committee (JCPAC). Oversight of youths held in juvenile detention prior to adjudication is shifted from SCF to the Criminal Justice Commission. Responsibility for administering juvenile court services is transferred from the SCF to the Oregon Youth Authority (OYA). The measure gives the Oregon Criminal Justice Commission the responsibility for oversight of programs that detain a juvenile for more than 8 days.

SB 384 removes the requirement that an attorney return copies of reports and other materials relating to a youth offender’s history and prognosis at the conclusion of the attorney’s involvement in the case. The measure clarifies that personal information concerning the victims of abuse or neglect is confidential and not subject to disclosure. The measure also modifies the definition of “Indian child.”

SB 384 allows a juvenile court judge to decide a case against a minor charged with being in possession of either alcohol or less than one ounce of marijuana without the minor being present if the minor fails to appear.

SB 384 clarifies that a person with a duty to report child abuse need not report if the person reasonably believes the abuse has already been reported. Under the measure, attorneys are not required to report abuse if the

information was communicated to the attorney in the course of representing a client.

SB 384 mandates the Secretary of State's audit division to audit county juvenile departments and clarifies that the Secretary of State may subpoena witnesses, require the production of books and rendering of reports as part of the audit of a county juvenile department. SB 384 extends the intergovernmental agreement between Deschutes County and the OYA until June 30, 2005. Under the agreement, Deschutes County supervises juvenile offenders that it would otherwise send to OYA for care and custody. The measure requires the Secretary of State to conduct an audit of the Deschutes County program by June 30, 2002 and to report to the legislature by December 1, 2002.

Effective date: August 3, 2001

Senate Bill 415

Relating to public safety personnel

SB 415 creates the Law Enforcement Contacts Policy and Data Review Committee to receive and analyze demographic data regarding stops and other contacts with individuals by Oregon law enforcement agencies. The committee's purpose is to ensure that law enforcement agencies perform their mission without inequitable or unlawful discrimination based on race, color, or national origin. SB 415 requires the committee to submit its findings to the appropriate interim legislative committee by December 1, 2002.

SB 415 also extends the period of employment for certain public safety personnel before certification is required by the Department of Public Safety Standards and Training. This change aligns the certification timeline with the 18-month probationary period of many local law enforcement agencies.

In addition, SB 415 permits a person employed as a school police officer for certain school districts to transfer to another public employer and specifies the method of determining the seniority of the transferred employees.

Effective date: June 29, 2001

Senate Bill 437

Relating to privileged communications

SB 437 eliminates the privilege barring a lawyer, psychotherapist, or clinical social worker from testifying about an otherwise confidential communication if: the

communication reveals a clear and serious intent to commit a subsequent crime involving physical injury, a threat to the physical safety of any person, sexual abuse or death; the lawyer, therapist, social worker decides there is a danger the person will commit the crime; and the person receiving the communication makes a report to another person based on the communication.

SB 437 does not create a duty to report and bars civil legal action based on whether a person discloses or fails to disclose such a confidential communication. SB 437 applies only to trials or proceedings commenced on or after the effective date of the measure. The measure is a new exception to Oregon's privilege law, and does not affect any other limitation upon privilege found in Oregon law.

Effective date: January 1, 2002

Senate Bill 444

Relating to sex offenders

SB 444 requires the Department of Corrections (DOC) and the State Board of Parole and Post-Prison Supervision to adopt rules for determining where a predatory sexual offender or sexually violent dangerous offender may live once released from incarceration and placed on probation or parole. The measure requires DOC and the board to prohibit predatory sex offenders and sexually violent dangerous offenders from residing near locations where children are the primary occupants or users, and to establish rules for any exception to this prohibition. The measure directs DOC and the Board to create rules regarding informing the community of the process for determining the residence of sex offenders. Previously, predatory sex offender placement decisions were made by individual supervising probation and parole officers. SB 444 requires that uniform rules be enacted to apply to all such placement decisions.

Effective date: January 1, 2002

Senate Bill 654

Relating to interception of communications

SB 654 allows a police officer to use a recording device, or "body wire," to record statements of suspects without a court order if he or she has probable cause to believe a suspect is engaging in a drug crime or prostitution. A "body wire" may also be used to record statements without a court order if there is probable cause to believe a suspect is committing a felony and obtaining a court order would be unreasonable because of exigent

circumstances. SB 654 requires the officer to keep the contents of a recorded communication confidential and record any communication in its entirety. The measure provides that an officer has a defense to a civil or criminal action if the officer obtained a recording with a good faith reliance on his or her authority to obtain the recording.

Effective date: June 15, 2001

Senate Bill 667

Relating to criminal procedure

SB 667 allows persons convicted of certain crimes to petition for DNA testing to establish the person's innocence. This measure applies to incarcerated persons who have been convicted of aggravated murder or a person felony, and to those persons not in custody who have been convicted of aggravated murder, murder or a sex crime. The measure requires that the identity of the perpetrator was at issue in the trial and that the testing would establish the actual innocence of the petitioner or that the person is innocent of conduct underlying a mandatory sentence enhancement. SB 667 provides that a person with favorable DNA test results may file a motion for a new trial based on newly discovered evidence. Inconclusive results of DNA testing may subsequently be compared to evidence from unsolved crimes. The measure requires that the motion be filed within 48 months of the effective date of this legislation. SB 667 directs an interim committee to evaluate the implementation of the measure and make recommendations for any modifications.

Effective date: January 1, 2002

Senate Bill 722

Relating to Oregon Board of Investigators

SB 722 deals with the regulation of investigators by the Oregon Board of Investigators. The Board of Investigators was created in 1997. This measure overhauls the Board's certification and regulation of private investigators. SB 722 changes the requirements for obtaining an investigator's license, changes membership of the Board of Investigators to five investigators and two members of the Oregon State Bar, and directs the Governor to appoint seven new members of the Board of Investigators on January 1, 2002.

Effective date: October 6, 2001

House Bill 2092

Relating to crime

HB 2092 defines the scope of home visits by probation officers, allowing a probation officer to conduct a "walk through" of the common areas and rooms in a residence which are occupied by or under the control of the probationer. The measure is a legislative response to *State v. Guzman*, 164 Or App 90 (1999), in which the Court of Appeals held that a probation officer's home visit, although authorized by statute, was limited to the common areas of the probationer's residence. Under HB 2092, a home visit "walk through" is limited in scope compared to a search; during a home visit the probation officer may not open any closed containers. The probationer must give his or her consent before a probation officer can perform a full search of the probationer's residence.

Effective date: January 1, 2002

House Bill 2216

Relating to application of state antitrust laws to interstate commerce

HB 2216 removes the limitations on jurisdiction set forth in the legislative purpose section (ORS 646.715) of Oregon's anti-trust laws. Pursuant to HB 2216, the legislative purpose of Oregon's antitrust laws is that the statutes apply to intrastate trade or commerce, and to interstate trade or commerce "involving an actual or threatened injury to a person or property located in this state." This means that Oregonians have a greater chance of recovery of damages against those who violate Oregon's anti-trust laws regardless of whether the commerce was solely within Oregon or involved goods sold in Oregon by an out-of-state manufacturer.

Effective date: January 1, 2002

House Bill 2217

Relating to antitrust damage actions by indirect purchasers

HB 2217 allows Oregon's Attorney General, on behalf of the State of Oregon, its political subdivisions and Oregon's consumers, to bring an action seeking recovery for the indirect as well as the direct purchase of goods or services sold in violation of Oregon's antitrust laws. The measure states that such an action cannot be undertaken on behalf of Oregon businesses. For

example, if several manufacturers of vitamins were to fix vitamin prices, and if Oregon's consumers were to purchase these vitamins through retail stores, the Attorney General could sue the manufacturers under this measure on behalf of Oregon's consumers, but not on behalf of the retail stores. The measure applies to conduct occurring on or after the effective date of the measure.

Effective date: January 1, 2002

House Bill 2353

Relating to controlled substances

HB 2353 creates the crime of causing another person to ingest a controlled substance or controlled substance analog. A person commits a Class B felony, if the person knowingly or intentionally causes another person to ingest the drug or analog without the consent of the other person. The offense is classified as a Class A felony if the person knowingly causes another to ingest a controlled substance or controlled substance analog for the purpose of facilitating a violent crime against the other person. HB 2353 directs the Criminal Justice Commission to set the crime serious level as a category 8 for the Class B felony offense and a category 9 for the Class A felony offense.

HB 2353 defines a controlled substance analog as a substance that has: a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II; or has a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

Effective date: January 1, 2002

House Bill 2379

Relating to crime

HB 2379 excludes riding or using public transit vehicles from the crime of unauthorized use of a motor vehicle. It creates the crime of interfering with public transportation and classifies the crime as a Class A misdemeanor.

HB 2379 allows the Department of Corrections or the county sheriff to release an inmate, whose sentence ends

on a weekend or holiday, two or three days before the release date so that the inmate's actual release does not occur on a weekend or holiday. This helps guarantee that newly released inmates will have access to parole, probation, and social service offices, and also helps accommodate those who rely upon public transportation immediately following their release.

HB 2379 allows, under certain limited conditions, a court to impose a sentence pursuant to sentencing guidelines rather than Measure 11 for the crimes of rape II, sodomy II, unlawful sexual penetration II and sex abuse I. These conditions include the following: the victim is not under the age of 12; the defendant is not more than 5 years older than the victim; consent was not obtained by violence or the threat of violence; the defendant does not have a criminal record for Measure 11 offenses and certain other listed crimes. This particular provision applies to crimes committed after the effective date of the Act.

Effective date: January 1, 2002

House Bill 2385

Relating to agricultural research

HB 2385 creates the crime of interference with agricultural research and sets the penalty as a Class C felony. A person commits the offense if the person knowingly: damages property at an agricultural research facility with the intent to damage or hinder agricultural research or experimentation; obtains any property of an agricultural research facility with the intent to damage or hinder agricultural research or experimentation; obtains access to an agricultural research facility by misrepresentation with the intent to damage or hinder agricultural research or experimentation; enters a facility to destroy, alter, duplicate, or obtain unauthorized possession of records, equipment, or specimens; obtains or exerts unauthorized control over records, equipment or specimens without authorization of the agricultural research facility, with the intent to destroy or conceal the records, data, materials, equipment or specimens; releases or steals an animal from, or causes the death, injury or loss of an animal at an animal research facility.

HB 2385 defines "agricultural research or experimentation" as the lawful study, analysis or testing of plants or animals, or the use of plants or animals to conduct studies, analyses, testing or teaching, for the purposes of improving farming, forestry or animal

research. The measure includes the crime of interference with agricultural research within Oregon's Racketeer Influence and Corruption Organization Act (RICO), meaning that an offender could receive a sentence of up to twenty-years.

Effective date: January 1, 2002

House Bill 2393

Relating to the Interstate Compact for Adult Offender Supervision

HB 2393 abolishes the current interstate compact for the out-of-state supervision of parolees and proposes a new interstate compact for the supervision of adult offenders. The compact will take effect once it has been adopted by 35 states. The compact creates an Interstate Commission to regulate the supervision of parolees and probationers who have moved or propose to move from one state to another.

The commission consists of representatives from the participating states. The commission is authorized to adopt rules that have the force and effect of statutory law and are binding in the compacting states, unless a majority of the compacting states' legislatures reject them. All lawful actions of the commission, including all commission rules and by-laws are binding upon the compacting states. The commission will oversee the interstate movement of offenders. The commission will have the authority to levy on each compact state an assessment to pay for the operation of the commission. A state may withdraw from the compact by passing legislation that specifically repeals the statute that enacted the compact.

Effective date: July 3, 2001

House Bill 2413

Relating to obscene materials

HB 2413 expands the defense to the crimes of furnishing obscene materials to minors, ORS 167.065; sending obscene materials to minors, ORS 167.070; exhibiting an obscene performance to a minor, ORS 167.075; and displaying obscene materials to minors, ORS 167.080. The measure includes as a defense the furnishing, rather than just the sale of, an item, portions of which might be contraband but are part of an item or display that serves some purpose other than titillation.

Previously, Oregon law provided a defense to the crimes of furnishing obscene materials to minors, sending

obscene materials to minors, exhibiting an obscene performance to a minor and displaying obscene materials to minors, that the item sold, shown, exhibited or displayed, although offensive in part, taken as a whole serves some legitimate purpose other than titillation. The term "sale" limited this defense to a commercial transaction and did not include gift giving. For example, a person who sold a 17-year-old a picture of Michelangelo's David as part of an art book would be protected by this statutory defense, but a person who gave the same book as a Christmas present would not be.

Recently, the Oregon Court of Appeals, in *State v. Maynard*, 168 Or App 118 (2000), held that ORS 167.065, furnishing obscene materials to minors, was unconstitutional under the Oregon Constitution. It did so on the grounds that the statute was an overly broad limitation on free expression, because it permits prosecution regardless of the significance of sexual depictions in the context of the material taken as a whole, and thereby reaches conduct that is protected. In other words, selling an art book with Michelangelo's David would be protected but giving the same book as a gift would not. HB 2413 is intended to correct the constitutional infirmities in ORS 167.065, 167.070 and 167.075 by expanding the statutory defense provisions of ORS 167.085.

Effective date: January 1, 2002

House Bill 2429

Relating to forfeiture

HB 2429 implements the provisions of the Oregon Property Protection Act, an initiative approved by the voters in November 2000 (Ballot Measure 3) regarding civil forfeitures. Civil forfeiture is an *in rem* proceeding against the seized property.

As passed by the voters, the Oregon Property Protection Act modified Article XV, Section 10 of the Oregon Constitution to require that the owner of the property to be forfeited be convicted of a crime, and that the property be instrumental in committing or facilitating that crime or as the proceeds of that crime. In addition, the forfeiting agency must prove its case by clear and convincing evidence, and the amount of the forfeiture must not be excessive in relation to the conduct for which the person has been convicted. In addition, the Oregon Property Protection Act prohibits the expenditure of forfeiture revenue for law enforcement purposes.

HB 2429 modifies civil forfeiture statutes to comply with

the Oregon Property Protection Act. The measure provides that forfeiture revenue be applied as follows: up to 25 percent for expenses incurred in the forfeiture proceeding, with the balance deposited in a Forfeiture Account. The measure prohibits the expenditure of funds from the Forfeiture Account for law enforcement purposes and directs that funds must be used for drug treatment unless a law or ordinance specifically provides another use. HB 2429 delegates oversight of civil forfeitures to the Asset Forfeiture Oversight Committee.

HB 2429 grants seizing agencies, forfeiting agencies and forfeiture counsel immunity from civil penalty based upon reasonable suspicion that property is subject to seizure or civil forfeiture. The measure allows a public body to defend against any such claim unless the claim arises from malfeasance. The measure sunsets July 31, 2005.

Effective date: July 17, 2001

House Bill 2444

Relating to youth court

HB 2444 allows a county juvenile department to offer a youth the opportunity to participate in a youth court if the youth is eligible to enter into a formal accountability agreement. The measure allows an organization to establish and operate a youth court only if it is pursuant to a written agreement between a county juvenile department and the organization.

Effective date: January 1, 2002

House Bill 2560

Relating to failure to appear in court

HB 2560 requires a court to order suspension of driving privileges for a minor (a person under the age of 21) if the person has been charged with being a minor in possession of alcohol and subsequently fails to appear in court.

Effective date: January 1, 2002

House Bill 2646

Relating to assault

HB 2646 reclassifies the crime of assaulting a public safety officer (APSO) from a Class A misdemeanor to a Class C felony, making it punishable by up to five years imprisonment and a \$100,000 fine. The measure clarifies the coverage of the statute, applying it to staff members

of the Department of Corrections and Oregon Youth Authority. HB 2646 specifies that the statute also covers persons who work with, or in the vicinity of, inmates or youth offenders and are contract employees or volunteers.

Effective date: January 1, 2002

House Bill 2663

Relating to statute of limitations

HB 2663 extends the statute of limitations for rape in the first and second degree or sodomy in the first or second degree to 12 years if the defendant is identified on the basis of a DNA sample comparison after the statute of limitations has otherwise expired.

Previously, the statute of limitations for rape I and II and sodomy I and II was six years from the date of the commission of the crime, except in cases where the victim was under 18. If the victim was under 18, the statute of limitations ran until the earlier of when the victim turned 24 or within 6 years after the offense was reported to a law enforcement agency or other government agency.

During a sexual assault, the perpetrator often leaves physical evidence behind that is subject to DNA analysis. DNA evidence is considered to be very reliable because each person's DNA is unique and, if properly maintained, does not lose its reliability over time.

Effective date: January 1, 2002

House Bill 2664

Relating to criminal procedure

HB 2664 requires a person convicted of any felony and of specified misdemeanors to provide a blood or buccal sample upon the request of an appropriate law enforcement agency. The measure requires supervisory authorities to obtain a sample from every person being supervised on parole, post-prison supervision or probation as a result of having been convicted of a felony or specified misdemeanors. The measure specifies the priority for analysis of samples by Oregon State Police (OSP) if funds are not sufficient to test all samples, with certain exceptions. Law enforcement agencies receiving a sample or criminal identification evidence must, as a condition of disclosure, agree to destroy the sample if notified by OSP that a court has reversed the conviction that created the obligation to provide a sample. HB 2664 designates that acts by juveniles found to be within the jurisdiction of the court, which if committed as an

adult would constitute a felony, subject the juvenile to the collection of a sample.

Effective date: January 1, 2002

House Bill 2918

Relating to crime

HB 2918 establishes a “fast-track” for state’s appeals in certain criminal trials. The measure sets time limits for the Court of Appeals and the Supreme Court when the defendant is charged with a felony and is in custody pending the appeal. In addition, the state may appeal a pre-trial order in a murder case directly to the Supreme Court, bypassing the Court of Appeals. The Supreme Court must issue a decision within one year.

In addition, HB 2918 establishes the Oregon Domestic and Sexual Violence Services Fund and appropriates money to the Department of Justice to carry out a program of domestic and sexual violence services. Those services include providing assistance to victims of domestic violence and sexual assault, promoting effective intervention to reduce such violence, and facilitating interagency and interdepartmental cooperation among state and local agencies.

HB 2918 also clarifies and expands the stalking and harassment statutes to prohibit threats conveyed electronically.

The measure also expands the state of mind requirement needed to sustain conviction for identity theft to include “intent to deceive.” Previously, the language of the statute was “intent to defraud.” By expanding the language to “intent to deceive or to defraud,” the statute prohibits use of another’s identity, regardless of whether the deception was for the purpose of pecuniary gain.

HB 2918 also addresses the increase in the use and trafficking of the drug “ecstasy” by setting the level that constitutes substantial quantities of the drug for purposes of its possession, delivery, or manufacture. These levels are a factor in determining whether the crime charged is a commercial drug offense. Defendants convicted of commercial drug offenses are subject to increased penalties.

In addition, HB 2918 allows a Uniform Traffic Citation to be used as a complaint if the peace officer certifies on the citation that the officer has reasonable grounds to believe, and does believe that the person named in the citation committed the offense specified. This change eliminates the need for a district attorney to create a

district attorney’s information to prosecute traffic crimes alleged in the citation.

HB 2918 requires a peace officer to give the district attorney a copy of the citation when an officer cites a youth in lieu of custody and requires the person taking a youth into custody to give a copy of the report to the district attorney. This ensures that prosecutors know the alleged facts that brought the youth within the juvenile system, so that the prosecutor may have the necessary information in deciding whether to file criminal charges.

The measure redefines the term “computer” for the purposes of computer crime. It also repeals the sunset on ORS 136.290 regarding the limitation of time a defendant may be held in custody prior to trial.

Finally, HB 2918 applies the definition section of the Uniform Controlled Substances Act to the statutes dealing with commercial drug offenses and the sale of drugs within 1000 feet of a school. These statutes contain sentence enhancements for those convicted of drug crimes, and the measure clarifies that all definitions related to controlled substances apply to these statutes as well.

Effective date: July 31, 2001

House Bill 2947

Relating to crime

HB 2947 clarifies that a person commits the crime of research and animal interference when the person does certain specified criminal activity with the intent to interfere with research. The offense is classified as a Class C felony if damage to the facility is \$2,500 or more. If damages are less than \$2,500, it is classified as a Class A misdemeanor. The measure clarifies that a person commits the crime of interference with livestock production when the person does certain specified criminal activity with the intent to interfere with livestock production.

Effective date: January 1, 2002

House Bill 3244

Relating to crime

HB 3244 expands the crime of assault in the third degree to include physical injury inflicted upon a taxi driver. Previously, assault in the third degree applied when a defendant intentionally, knowingly or recklessly caused physical injury to a person operating a public transit

vehicle, a bus, or mass transit train, but did not include taxi drivers. HB 3244 treats assaults on taxi drivers in a manner consistent with assaults on other public transportation operators.

Effective date: January 1, 2002

House Bill 3642

Relating to criminal forfeitures

HB 3642 provides a procedure for criminal forfeiture of the proceeds of all felonies and Class A misdemeanors, and of the instrumentalities of certain felonies and Class A misdemeanors. Criminal forfeiture is an *in personam* proceeding against a person charged with criminal conduct.

HB 3642 requires a criminal conviction and is consolidated with the criminal trial. The measure requires that the indictment by the grand jury include an allegation that the property is subject to forfeiture. At trial, the state must prove beyond a reasonable doubt that the property is subject to forfeiture. Following trial and prior to entry of judgment of forfeiture, the court must evaluate the defendant's prior criminal history and sentence, the seriousness of the underlying crime and the relationship of the property to the conduct, and the risk of injury to the public, among other factors.

HB 3642 requires notification to the public and to any persons claiming an interest in the property, of the seizure for forfeiture. The measure mandates that any person claiming an interest file a claim. Third-party interests may be determined by expedited pretrial hearing or in an ancillary proceeding following the criminal trial. Following the ancillary proceeding, the measure authorizes the court to modify the judgment of forfeiture and provides for an appeal from any forfeiture of third-party interests separate from the criminal case.

HB 3642 allows the court to designate a portion of the revenue from forfeited property for payment to the victim in certain person crimes. The measure specifies distribution of forfeiture revenue remaining after payments of costs and any victim compensation as follows: 3 percent to the Asset Forfeiture Oversight Commission; 7 percent to the Illegal Drug Cleanup Fund; and 10 percent to the state General Fund; with the balance allocated in equal amounts for official law enforcement use and for substance abuse treatment.

HB 3642 delegates oversight of criminal forfeitures to the Asset Forfeiture Oversight Committee and sunsets July 31, 2005.

Effective date: January 1, 2002

House Bill 3661

Relating to controlled substance precursors

HB 3661 adds additional chemicals to the list of controlled substance precursors. Precursor chemicals are used in making controlled substances, particularly methamphetamine. HB 3661 allows the Oregon State Police to inspect sale records of any retail or wholesale distributor of methyl sulfonyl methane during normal business hours.

The measure creates the crimes of unlawful possession of phosphorus, anhydrous ammonia, ephedrine or pseudoephedrine, phenylpropanolamine, iodine in its elemental form, and iodine matrix. HB 3661 sets forth who may legally possess these chemicals. The measure creates the crime of unlawful distribution of ephedrine, pseudoephedrine, or phenylpropanolamine. It creates the crime of possession of a precursor substance with the intent to manufacture a controlled substance and classifies the crime as a Class B felony.

The measure exempts possession of phosphorus if it is part of a chemical compound and used in lawful agricultural activity. It allows possession of anhydrous ammonia if contained in the appropriate container. Possession of up to and including 24 grams of ephedrine, pseudoephedrine, or phenylpropanolamine in a home for medical use is also allowed. HB 3661 allows purchase within a seven-day period of up to and including nine grams of specified substances.

HB 3661 raises the required mental state to "knowing" for the crime of unlawful possession of phosphorus, anhydrous ammonia, ephedrine, pseudoephedrine, phenylpropanolamine, iodine, or iodine matrix. The measure creates an affirmative defense to unlawful possession of phosphorus, anhydrous ammonia, iodine, or iodine matrix if the person possesses the precursor substance for a lawful purpose.

Effective date: January 1, 2002

House Bill 3669

Relating to juveniles

HB 3669 includes knowingly exposing a child to the manufacture of methamphetamine as extreme conduct in a juvenile dependency case. This allows a court to terminate parental rights without the requirement that reasonable efforts be made to reunify the child with the parents. The measure requires the court to consider the

extent of the child's exposure and the potential harm to the physical health of the child in deciding whether extreme conduct exists.

The manufacturing, or "cooking", of methamphetamine involves the use of and creation of very hazardous chemicals and by-products. Merely being present when methamphetamine is being "cooked" is hazardous to one's health. For children, the dangers are even greater.

Effective date: January 1, 2002

House Bill 3680

Relating to evidence of other acts of domestic violence

HB 3680 allows the prosecutor in a criminal case to impeach the testimony of a defendant charged with certain crimes of domestic violence by offering evidence of the defendant's convictions for previous misdemeanor crimes of domestic violence. Previously, a prosecutor was limited to impeaching a defendant's testimony by offering evidence of the defendant's convictions for a felony or a crime involving a false statement or dishonesty. HB 3680 expands the crimes that can be used for impeachment to include misdemeanors involving domestic violence when a defendant is charged with domestic violence crimes.

Effective date: January 1, 2002

House Bill 3857

Relating to attorneys for public bodies

HB 3857 creates an exception to ORS 9.527(4) by granting government attorneys the authority to direct, provide legal advice for, and participate in covert activities in order to enforce the law.

This measure is a legislative response to a recent Supreme Court decision, *In re Gatti*, 330 Or 517 (2000). In *Gatti*, an attorney was charged by the Oregon State Bar with violating ORS 9.527(4) by using willful deceit and also charged with violating the Bar's disciplinary rules by knowingly making a false statement of fact and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation when he pretended to be a chiropractor in order to investigate potential claims on behalf of a client. The court held that the attorney had violated both ORS 9.527(4) and the disciplinary rules. In addition, while acknowledging that misrepresentations inherent in undercover operations are "useful means for uncovering unlawful and unfair practices," the Supreme

Court declined to create a "prosecutorial exception" for attorneys involved in criminal investigations, opining that it was the Bar's responsibility to draft such an exception.

In response, the Bar submitted a new rule to the Supreme Court which would have allowed *any* attorney to supervise covert activities for the purpose of investigating criminal, civil and constitutional rights violations. The Supreme Court rejected the new rule, declaring the exception to be too broad.

Since the *Gatti* ruling, federal and state prosecutors in Oregon have refrained from offering advice to police officers or federal agents regarding undercover operations, for fear of being found in violation of ORS 9.527(4) or the Bar's disciplinary rules.

HB 3857 addresses only the issue of whether a government attorney violates ORS 9.527(4) by supervising or directing an undercover operation. The measure does not repeal or amend the Bar's disciplinary rules.

Effective date: June 28, 2001

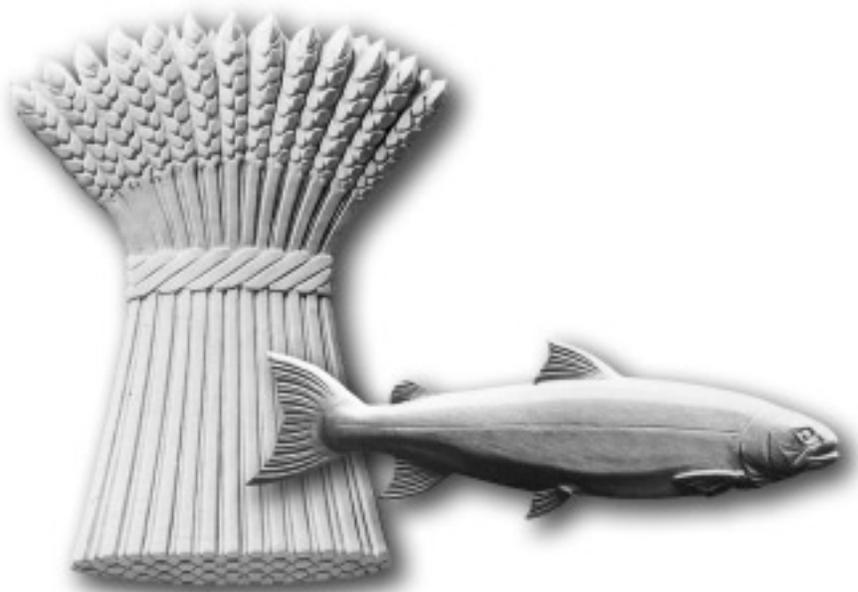
Major Legislation Not Enacted

House Bill 2930

Relating to cockfighting

HB 2930 would have made it a crime to raise gamecocks for the purpose of participating in cock fighting outside of Oregon. The measure would have included cock fighting within Oregon's anti-racketeering provisions. Under current law, it is a Class A misdemeanor to own, train, promote or participate in animal fighting. However, it is not illegal to raise gamecocks for the purpose of participating in cock fighting outside of the state. Proponents of the measure argued that it would provide law enforcement an additional tool to stop the practice of cock fighting, which inflicts pain and suffering on the birds.

Legislative Referrals



2001 Summary of Major Legislation

Primary Election - May 21, 2002

Senate Joint Resolution 17

Proposing amendment to Oregon Constitution relating to holding and disposing of stock

SJR 17 proposes to amend the Oregon Constitution to allow the state to hold and dispose of stock received in exchange for technology created by public institutions of higher education, or stocks acquired as an asset invested in technology or technology resources. A corresponding piece of legislation approved by the 2001 Legislative Assembly, SB 273, provides for the creation of a task force that will focus on technology transfer and technology investments. The combined effect of the two pieces of legislation is intended to open the door for Oregon universities to share monetary return on the innovations they sponsor, to acquire and control technology assets, and to closely manage future investments in technology resources.

SJR 17 will be voted on at the May 2002 Primary Election.

Filed with the Secretary of State: June 19, 2001

House Joint Resolution 19

Proposing amendment to Oregon Constitution relating to financing capital costs of Oregon Health and Science University

HJR 19 proposes to amend the Oregon Constitution to authorize the sale of state general obligation bonds to finance up to \$200 million in capital construction costs for Oregon Health and Science University (OHSU). The measure would restrict the total amount of the bonds to one-half of one percent of the statewide value of taxable property, and would prohibit the use of the bonds for financing any operating costs of OHSU. HJR 19 requires the Legislative Assembly to determine the source for repayment of the bonds from among the following: General Funds; State Lottery proceeds; tobacco settlement agreement proceeds; or other revenue sources, but not from state or local property taxes.

HJR 19 is the bonding-component of the "Oregon Opportunity Act" package, aimed at enhancing medical research and biotechnology at Oregon Health and Sci-

ence University. If approved by voters, OHSU would use the new funding authorized by the measure to develop capital improvements, such as laboratory space, equipment, and the resources to better attract and recruit top scientists. OHSU intends to raise an additional \$300 million from private sources in an effort to make the Oregon Opportunity package a \$500 million effort.

HJR 19 will be voted on at the May 2002 Primary Election.

Filed with the Secretary of State: July 17, 2001

General Election - November 5, 2002

Senate Joint Resolution 7

Proposing amendment to Oregon Constitution relating to references to persons by race

SJR 7 would amend the Oregon Constitution to delete references to persons by race. The Oregon Constitution currently contains provisions that establish numerical population thresholds for expanding the number of state Supreme Court Justices, dictating when additional Supreme Court and circuit judges are to be elected by the people, and requiring counties under a certain size to be reimbursed for county court expenses. The numerical thresholds relating to these provisions are not tied to the number of citizens residing in Oregon, but are instead tied to the number of white inhabitants of the state.

The Oregon Constitution was ratified in 1857, prior to the Civil War. Prior to adoption of the state constitution, the Oregon Territory had enacted two African-American exclusion bills (in 1844 and 1849) that banned African-Americans from owning property or residing in Oregon. In 1925, Oregon voters repealed the constitutional provisions relating to the exclusion of African-Americans; however, the language relating to race remains in the Oregon Constitution.

SJR 7 will be voted on at the November 2002 General Election.

Filed with the Secretary of State: June 18, 2001

Senate Joint Resolution 21

Proposing amendment to Oregon Constitution relating to issuing general obligation bonds to finance seismic rehabilitation of public education buildings

SJR 21 proposes to amend the Oregon Constitution to authorize the issuance of state general obligation bonds to fund seismic rehabilitation of school district, ESD, community college, and higher education facilities.

The amount of the indebtedness incurred under SJR 21 would be limited to one-fifth of one percent of the true cash value of all taxable property in the state. The measure specifies the source of moneys for repayment of the bonds be determined by the Legislative Assembly from either the General Fund, lottery funds, or the Education Endowment Fund.

SJR 21 will be voted on at the November 2002 General Election.

Filed with the Secretary of State: June 18, 2001

Senate Joint Resolution 22

Proposing amendment to Oregon Constitution relating to issuing bonds to finance seismic rehabilitation of emergency services buildings

SJR 22 proposes an amendment to the Oregon Constitution to allow the state to issue general obligation bonds to finance seismic rehabilitation of emergency services buildings. The measure classifies an emergency services building as a public buildings used for fire protection services, a hospital building that contains acute inpatient care facilities, a police station, a sheriff's office, or any similar law enforcement facility. SJR 22 specifies that the amount of indebtedness incurred may not exceed one-fifth of one percent of the real market value of all taxable property in the state. The measure specifies the source of moneys for repayment of the bonds be determined by the Legislative Assembly from either the General Fund, lottery funds, the Master Tobacco Settlement Agreement, or other revenue sources. The measure prohibits use of ad valorem taxes in the repayment of the bonds.

SJR 22 will be voted on at the November 2002 General Election.

Filed with the Secretary of State June 19, 2001

House Joint Resolution 16

Proposing amendment to Oregon Constitution relating to age requirement for service in Legislative Assembly

HJR 16 proposes to amend the Oregon Constitution to lower the age requirement for service in the Legislative Assembly from 21 to 18 years of age.

In addition to age requirements, the Oregon Constitution requires a State Representative or State Senator to be a United States citizen, to have lived in the legislative district for at least one year, and to not have been convicted of a felony while serving in the Legislative Assembly.

HJR 16 addresses concerns about the lack of voter participation by 18-34 year olds, increasing diversity of legislators, and enhancing the correlation between age of military service and age of legislative service.

HJR 16 will be voted on at the November 2002 General Election.

Filed with Secretary of State: June 20, 2001

House Joint Resolution 45

Proposing amendment to Oregon Constitution relating to taxation

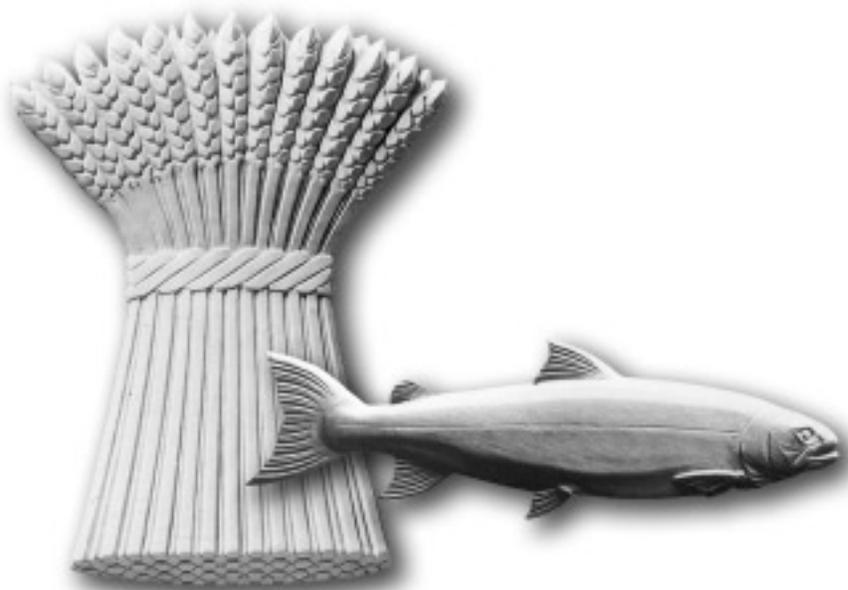
HJR 45 proposes to amend the Oregon Constitution to allow two types of taxing districts to divide into tax zones and establish permanent tax rate limits for each tax zone. This amendment would apply only to new districts or districts that have not imposed taxes since July 1, 1990. Additional local voter approval would be required to establish any new permanent tax rates for the tax zones.

Without passage of the ballot measure created by HJR 45, taxing districts have one permanent tax rate established for all taxpayers within district boundaries, but may establish different rates within the district through zones. However, these different rates are not permanent and must be renewed periodically by voters.

HJR 45 will be voted on at the November 2002 General Election.

Filed with the Secretary of State: July 17, 2001

Measures Vetoed by the Governor



2001 Summary of Major Legislation

Senate Bill 67

Relating to taxation

SB 67 would have created a six-percent tax rate for capital gains realized after June 30, 2003 and before December 31, 2004. The tax rate for capital gains would have been reduced to four-percent for tax years beginning on or after January 1, 2005. The measure would have applied only to personal income tax filers and corporate income and excise tax filers.

Under current law, capital gains are taxed as ordinary income, and the top marginal income tax rate for personal income tax payers is nine-percent. The corporate income and excise tax rate is almost seven-percent.

Governor's Veto Message

I am returning herewith Senate Bill 67, unsigned and disapproved.

SB 67 would reduce personal and corporate income taxes by reducing the capital gains tax rate and, at full implementation, result in a \$510 million loss to the state's general revenues. This tax cut would primarily benefit Oregon's higher income households without a demonstrated benefit to Oregon's economy. At the same time it would further constrain a future legislature's ability to address the demand for public services. It also comes at a time when Oregon's income tax receipts indicate that our existing tax system may soon be tested by a recession.

This measure comes after two other very significant tax relief measures: Ballot Measure 88 and HB 2281. Measure 88, referred to the voters by the 1999 legislature, will reduce Oregon's personal income taxes by raising the state tax deduction for federal taxes. It will ultimately reduce state revenues by an estimated \$248 million. In addition, this session I signed into law HB 2281 which will reduce corporate income taxes by changing the corporate tax apportionment formula and result in reduction of well over \$60 million in state general revenues.

In 1998, I empanelled a tax review committee chaired by U.S. Bank Economist, John Mitchell, to take a twenty-year look at both our economy and our tax system. This group discovered that our tax system has changed significantly as a result of both voter initiatives and a changing economy. The most critical change has been the shift in the importance of the income tax. As a state, we are increasingly dependent upon income taxes to

fund state government as well as our public school system. While our economy is more diverse than a decade ago, our revenue system is even more sensitive to changes in the economy.

After 10 years of the best economic times we may now be looking at a mild recession. We have no experience with economic weakness or recession under the current mix of revenues and responsibilities. However, we know that a recession will impact our general fund and therefore our schools.

This same tax review committee recommended the pursuit of a more balanced tax system, one less dependent upon the personal income tax. To the credit of the House Revenue Committee Chairman Lane Shetterly, the 2001 legislature briefly considered how to increase stability in our system while maintaining revenue neutrality. HB 3942, the Revenue Stabilization and Tax Reform Act, would have replaced Oregon's corporate income and excise taxes and cut the state's marginal income tax and capital gains rates with business activity tax. The proposal was designed to address more long-term stability and equity.

In the end, the legislature refused to further study this approach and chose instead to pursue a simple cut in capital gains taxes.

Oregon needs a broader tax base than the income tax can provide. Unfortunately, SB 67 would exasperate Oregon's problem by further reducing income taxes. I regret that the legislature chose not to explore the concepts outlined in HB 3924 and instead opted for a simple tax cut.

Senate Bill 234

Relating to the Willamette River Basin

SB 234 would have allocated a maximum of \$500,000 from the Restoration and Protection Research Fund to conduct studies relating to the extent and probable cause of fish deformities in the Willamette River. Oregon State University Department of Environmental and Molecular Toxicology was to manage study funds and report to the Legislature annually regarding research progress, data and recommendations for further action.

Governor's Veto Message

I am returning herewith SB 234, unsigned and disapproved.

SB 234 would dedicate \$500,000 from the Oregon

Watershed and Enhancement Board's Restoration and Protection Research Fund to the Department of Higher Education for studies to determine the extent and cause of fish deformities in the Willamette River.

As created last session by HB 3225, the Research Fund is funded from interest earned on both the Watershed Improvement Grant Fund and the Watershed Improvement Operating Fund. This interest has been accruing to the Research Fund during the 1999-2001 biennium. The Attorney General issued advice on June 22, 2001 that generally indicates that interest earned on the Grant Fund must be used for "capital expenditures" as defined in ORS 541.351. Interest earned on the Operating Fund generally is available to fund research and other uses as defined in statute.

Because the interest that has accrued to the Research Fund now must be divided consistent with the 65%/35% split for Grant and Operating Funds, there is not enough money currently available in the Research Fund to support SB 234. The Independent Multidisciplinary Science Team, at the request of both OWEB and the legislature, was asked to identify and prioritize research needs for the Oregon Plan. They have done so in Technical Report 2001-2 dated March 5, 2001. They have assessed 12 research needs and ranked them from highest priority to low priority. On the low priority list is the need to "determine the cause and effects of disease, tumors, and other abnormalities of fish on the population dynamics of the fish and the implications for ecosystem and human health." 10 other projects are ranked higher on the priority list. Limited research funds should be used to address higher priority needs at this time.

I do want to note that the OWEB budget includes a budget note that directs the agency "to report to the Emergency Board on the development of a research study for the Willamette River directed toward an investigation of toxics and fish deformities in the basin." The agency, working with the IMST, OSU and DEQ, is to develop study parameters and provide a work plan, budget and recommended funding sources. This will provide an opportunity for the work called for in SB 234 to still occur.

Senate Bill 374

Relating to regulation of lottery games

SB 374 would have required only owners owning at least a 10 percent share of a lottery-game retailing business

to disclose the owner's name, address, and such other information as specified by Lottery Commission rule. SB 374 also would have added members and managers of limited liability companies to those who must provide disclosure. The measure would have allowed the director of the Oregon State Lottery Commission to waive any disclosure that did not jeopardize the fairness, integrity, security, or honesty of the Oregon Lottery. The measure would have prohibited wagers or payment of a video lottery game prizes for persons under age 21, prohibited the possession of a lottery ticket by persons under age 18, and required confiscation of prizes or tickets that are in the possession of an underage person. SB 374 also would have allowed termination of contracts with Oregon Lottery retailers who knowingly allowed persons under age 21 to play video lottery.

Governor's Veto Message

I am returning Senate Bill 374 unsigned and disapproved.

The bill modifies disclosure requirements for video game retailers and increases the age at which video lottery games can be played from 18 to 21.

The change in the disclosure requirements is very broad. It gives the Lottery director unfettered discretion to waive disclosure requirements. Oregon has had very strong disclosure requirements to make it difficult for organized crime syndicates to get a foothold in the state's lottery operations. This is no idle risk as reports from many other states show.

Through my gaming negotiations with Oregon's tribes, I have made strict disclosure a major component of our negotiations. The Oregon State Police are now able to view every contract and every employee within that industry. It makes no sense to relax our own standards in the state-controlled Lottery system.

I understand that the original intent was to allow the Lottery Director to waive disclosure requirements to accommodate modern business forms that have come into being since the Lottery was created nearly 20 years ago.

The Lottery Commission has cited a case in which the current disclosure requirements seem to be inappropriate. That case involved a situation in which a number of individuals inherited a business that was also a lottery game retailer. This may put those inheriting the business in a situation where they are subject to undesired public scrutiny.

Nonetheless, the protection of the public in the long run is a higher value than short-term personal discomfort.

While some adjustments in this circumstance may be desirable. The decision to waive disclosure requirements should not rest with one person alone. During the session I asked that the bill be returned to committee to add oversight of this new authority to the duties of the State Police or the Lottery Commission itself. The legislature declined to do so.

Oregon must do everything it can to retain the strongest possible disclosure requirements to make sure that organized crime does not get a foothold in the state lottery.

A more narrowly tailored bill with adequate security safeguards should easily gain approval next session.

Senate Bill 500 and House Bill 2001

Relating to redistricting

Every ten years, the legislature must redraw legislative and congressional district lines based on the decennial U.S. Census data. The population of Oregon according to the 2000 U.S. Census was 3,421,399 people. This represented a 20.4% population increase from the 1990 Census.

ORS 188.010 establishes criteria to guide the legislature when redrawing congressional and legislative district boundaries. According to this statute, each district, as nearly practicable, should: be contiguous; be of equal population; utilize existing geographic or political boundaries; not divide communities of common interest; and be connected by transportation links. The criteria further state that districts shall not be drawn for the purpose of favoring any political party, incumbent legislator or other person, or for the purpose of diluting the voting strength of any language or ethnic minority group.

SB 500 would have established new congressional districts. The measure specified that: the new congressional districts would not become operative until the 2002 general election, except for the purposes of nominating candidates for the new districts at the May 2002 primary election; that any person holding an office that is based on residency in a congressional district would not be affected by the change in district

boundaries; and that incumbent members of congress would continue to be incumbents of the districts that had the same numbers as the districts from which they were elected. It also would have required any person who had filed for office before the effective date of the measure to be considered to have filed for the new district bearing the same number as the district for which the person filed. There is no statutory deadline for completion of a congressional redistricting plan.

HB 2001 would have established new State House and Senate legislative districts. According to statute, two state House of Representative districts must be wholly included within each state senatorial district. The statutory deadline for completion of a legislative redistricting plan by the Legislative Assembly is June 30th, after which, if the legislature has not enacted a plan, the task falls to the Oregon Secretary of State.

Senate Bill 500 Governor's Veto Message

I am returning herewith enrolled SB 500, unsigned and disapproved.

SB 500 proposes to redraw district lines for each of Oregon's five Congressional districts. As drafted, it violates the principals of ORS 188.010. In addition, the redistricting plan found in SB 500 fails to incorporate the overwhelming weight of public input in the committee process.

There are a number of reasons for my veto of SB 500. First, it would force a great deal of unnecessary population shifts. For example, over 120,000 citizens that currently reside in the First Congressional District would no longer be in the First Congressional District. Over 60,000 citizens that are not currently in the First Congressional District would now be in the First Congressional District. This shift is in direct violation of ORS 188.010(1)(c-d) which require that congressional districts be drawn so as to "utilize existing geographic or political boundaries" and to "not divide communities of common interest."

Another glaring example of unnecessarily altering the makeup of current Congressional Districts and dividing communities of common interest is found in that under SB 500 as presented, Oregon State University and the University of Oregon would both be in the Fourth Congressional District. Currently, they are represented by separate members of Congress. As these two major research universities often compete for the same federal

research grants, both would be highly compromised if forced to be represented by only one member of Congress.

The plan also splits the representation of Washington County in Congress for the first time in Oregon's history. In addition, western Multnomah County and Washington County have been part of the same Congressional District since 1967 and presents another violation of ORS 188.010.

Other aspects of the plan also are troubling and in violation of the statute. For example, the City of Milwaukie would be part of the First Congressional District, but is connected to the rest of the district only by a seldom-used rail freight bridge over the Willamette.

As it is now clear that the redrawing of Congressional District lines will be part of a court proceeding, it is my hope that the plan that is finally produced will more closely match the requirements of our statute.

House Bill 2001

Governor's Veto Message

I am returning herewith enrolled HB 2001, unsigned and disapproved.

Throughout session, I have maintained that I would approve a redistricting plan that had broad support both from the membership and the leadership of this Legislative Assembly. Early in session, there were encouraging signs that all interested parties were working together on the legislative redistricting plan. However, the lack of process and public input and the stark partisan vote on HB 2001 highlight its shortcomings.

I have little doubt that any redistricting plan will go through rigorous legal analysis. With due regard to the Oregon Constitution, the statutes and the voluminous case law surrounding this issue, the core purpose of redistricting should not be forgotten. Redistricting should serve Oregonians by providing representation that truly reflects the nature of our people and our communities. For example, the statutes and our courts direct that communities should not be divided, unless absolutely necessary. The strict adherence in this plan to zero population deviation — an attempt to create districts that have the same numerical population — forces its drafters to unnecessarily divide city boundaries and to divide ethnic and community populations and disregard the other criteria in the statute and in case law.

HB 2001 is well out of line with the statutory requirements set forth in ORS 188.010. With the exception of the requirements in that statute that districts be of equal population and that two House of Representative districts shall be wholly included within a single state senatorial district, it appears that there are valid questions about each of the other requirements in ORS 188.010. For example, ORS 188.010(1)(c-d) mandates that districts shall "utilize existing geographic or political boundaries" and "not divide communities of interest." Yet, in several cases, this plan unnecessarily divides city and county boundaries and creates tremendous shifts in population and representation.

It is clear after reviewing the record of testimony and the many letters my office has received regarding the bill, there is a wide gap between the public input received by the committees working on this plan and the product that was incorporated into HB 2001 hours before it was voted out of the House Rules Committee.

For example, there was overwhelming testimony that Astoria and the Columbia River communities upriver share much in common and that the "river district" should be preserved as much as possible, as this was clearly a community of interest. Yet, this plan violates the public input, unnecessarily alters the boundaries of the current river district and realigns the district north and south along the coast and not east and west along the river. In addition, there was a great deal of testimony received from residents of West Linn, Lake Oswego, Bend, Tualatin, Coos Bay and other communities that hoped to be wholly contained in a single House district. And yet, in each of these cases, the cities are inexplicably divided.

The division of Bend is particularly perplexing. Deschutes County has experienced the most rapid growth of any county in Oregon since redistricting in 1991. Based on this, it is obvious that new lines need to be drawn for the core Deschutes County House Districts — 54 and 55. The City of Bend has grown to 52,029, very close to the target House District population of 57,023. And yet HB 2001 ignores the overwhelming public testimony and written letters seeking to accomplish what common sense would dictate — create a Bend district that puts the entire city in one House District and make up the difference with 5,000 citizens that live just beyond the city limits. Instead, the city is divided so that one-third of the population is in House District 55, and two-thirds of the population is in House District 54.

ORS 188.010(3) also requires that “No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.” At least two examples of dilution appear to violate this provision. First, a district in Hillsboro reduces the Hispanic population from 26% to 19%. In addition, the Hispanic population in two Salem districts — 32 and 33 — is divided in such a way that each district has roughly 11,000. Considering that the Hispanic population in Oregon has grown at a rate of over 100% — from 4% to 8% — over the last decade, it is clear that Hispanic representation should be enhanced by whatever plan is finally approved, not diminished. The pattern of dilution evidenced in HB 2001 will and should subject this plan to close scrutiny under both ORS 188.010 and the Voting Rights Act.

I trust that as the Secretary of State works through the process of drawing new districts, he will pay heed to the statutory requirements and the volume of public testimony received by the House and Senate Rules Committees during the length of session. I have full confidence that the Secretary of State, in accord with the Constitution, the statutes and the will of Oregonians, will draw a fair and sustainable redistricting plan. For the sake of our Legislative Assembly and the people we represent, this should be handled as expeditiously and as impartially as is possible.

Senate Bill 502

Relating to highway speeds

SB 502 would have allowed the Oregon Department of Transportation to increase or decrease interstate highway speed limits based on engineering and traffic investigations. The measure limited the maximum speed to 70 miles per hour (mph) for passenger vehicles and 65 mph for trucks and buses. SB 502 also would have repealed the state’s obsolete federal maximum speed limit statute.

Federal legislation regarding speed limits was enacted during the 1970s in an effort to encourage fuel conservation. The federal law required states to adopt 55-mph maximum speed limits on interstate highways as a condition for receipt of federal highway funds. The requirement later allowed 65 mph on rural interstates. Prior to the federal requirement, some stretches of Oregon’s interstate system had posted speed limits of 70 and 75 mph. The federal requirement was removed in 1995.

Governor’s Veto Message

I am returning herewith Enrolled Senate Bill 502, unsigned and disapproved.

I believe we cannot increase our maximum interstate highway speed limit to 70 miles per hours (mph) safely. While many drivers are already traveling at speeds in excess of 70 mph, an increase from 65 mph to 70 mph will likely cause drivers to travel even faster. This incremental speed increase is the well-documented experience of most states that have increased speeds, and as speeds increase the crash and injury rates increase.

Last year, on average, one person died on Oregon roads and highways every 19 hours and one person was injured every 19 minutes. Four hundred and fifty one people died and 27,503 were injured. As large as these numbers are, they reflect a 14.3 percent reduction in fatalities and a 29.3 percent reduction in injuries since 1996. Oregon’s crash rate has also gone down 12 percent during the same time period. While we should take pride in our improving safety record, the current levels of fatalities and injuries remain a vivid and compelling reason to continue our efforts to have one of the safest highway and road systems in the western United States.

This speed limit legislation provided new discretionary authority to the Oregon Transportation Commission and Oregon Department of Transportation to increase speeds to a maximum of 70 miles-per-hour for cars on the interstate highway system (I-5, I-82, I-84, I-105, I-205, I-405). From 1985 to 2000, 774 Oregonians were killed on our interstate highway system and 38,513 have been injured. Many of the injured people and their families live with life-long debilitating injuries typical of high-speed traffic accidents.

The rural interstate highway system is consistently the most deadly. In 2000, 27 people were killed on rural interstate highway segments compared with eight people on urban interstate highway segments. This fact is disturbing because the interstate highway segments most likely to be considered as appropriate for speed limit increases are rural segments of the interstates. The resulting policy would have allowed higher speeds on dangerous segments of highway without adequate or sustainable enforcement levels.

I am unwilling to risk more lives on our interstate highway system without being able to assure the citizens

of Oregon that the speed limit will be adequately enforced. Today, we do not have the capability to provide adequate enforcement for all segments of our highway system. Without this capacity, more Oregonians will lose their lives on our freeways, and this unnecessary loss of life is unacceptable.

If I had confidence that we could enforce an increase in the speed limit on our interstate highways, I might have signed this legislation. I carefully considered implementing it through a limited demonstration project. However, I do not have confidence that such a demonstration could be implemented without creating significant diversion of Oregon State Police assets from other duties and without significant uncertainty related to a speed limit demonstration project.

The funding I sought for increased patrol was more than \$2 million, and the legislature declined to allocate these funds. The \$500,000 reported in some media as additional trooper funding was a part of my revised budget after the May forecast and does not reflect what I consider to be "increased" funding for SB 502. An explicit decision to fund patrol troopers for an interstate highway speed increase was not made by the legislature. The legislature crafted a very delicately balanced budget and I am concerned that unanticipated costs may make it difficult to fill all the trooper positions provided. For example, increased energy costs, emergency response associated with our current forest fires, or an arbitration award for salaries could easily put budgeted trooper positions at risk. It is an adequate budget but it does not provide adequate resources to accommodate a speed increase.

To assist in determining a level of enforcement adequate to control excessive speed on our interstate highway system, I have directed the Oregon State Police and the Oregon Department of Transportation to work together on this issue of effective enforcement. New speed monitoring instruments will be placed in segments of our interstate system. These devices offer us an opportunity to directly correlate speeds traveled and specific enforcement actions of the Oregon State Police. This information should be helpful to future policy discussions.

For these reasons, I am vetoing Senate Bill 502, and I encourage future governors and legislators to carefully consider the safety issue should legislation to increase the interstate highway speed limit again be considered.

Senate Bill 593

Relating to phonics games

SB 593 would have directed the Oregon Department of Education to supply an instructional phonics game to each approved Oregon preschool. The measure would have allowed the department to use funds appropriated by the legislature for the Oregon Pre-Kindergarten Program to implement the legislation. The department would also have been allowed to accept gifts, grants, donations and federal funds for the program.

The National Right to Read Foundation defines "explicit" phonics instruction as the direct teaching of a pre-planned sequence of relationships between the 44 English speech sounds and their letter equivalents. "Implicit" phonics instruction moves from the words themselves to their respective parts. There are a number of phonics instruction games available that could have qualified for the program that would have been created by SB 593.

Governor's Veto Message

I am returning herewith enrolled Senate Bill 593, unsigned and disapproved.

SB 593 directs the Oregon Department of Education (ODE) to provide an instructional phonics game to each approved Oregon pre-kindergarten program, effective on January 1, 2002. The bill raises the following concerns.

- *During hearings, no public testimony validated the effectiveness of phonics games.*
- *No public testimony was heard regarding a request or a need for these phonics games.*
- *No public testimony indicated that Oregon Head Start Programs would use these games.*
- *Head Start programs already select curriculum materials and provide reading-readiness services tailored to each child's needs. By requiring specific phonics games for pre-kindergartens, SB 593 micromanages what should be local curriculum and policy decisions.*
- *LFO estimates that the cost will be between \$22,000 and \$132,000 in 2001-03. The bill allows ODE to collect gifts, grants, donations, and federal funds to provide phonics games. However, if such funds are unavailable, ODE must use existing funds to*

provide phonics games, detracting from the purchase of requested and needed materials for pre-k programs.

- *There is no sunset provision. As new programs are added and as games need replacement, there will be a continued draw on funds to support a program that has not been requested.*

For these reasons, the Department of Education and the Oregon Head Start Association oppose SB 593. Neither they nor I are opposed to the use of phonics in pre-kindergarten or K-12 programs. This session I have signed SB 595 and HB 3941, which include the use of phonics in proposed pilot programs and research projects. Furthermore, the pre-kindergarten programs already can, and many do, utilize phonics approaches. Yet, we should not be forced to buy materials that pre-kindergarten programs have not requested, may not use, and which lacked adequate testimony as to any validation.

House Bill 2497

Relating to Oregon Health Plan

HB 2497 would have made several changes relating to drugs prescribed for persons receiving medical assistance from the Oregon Health Plan (OHP). The bill would have required OHP enrollees to designate a primary pharmacy or pharmacy network as their first choice for filling or refilling prescriptions for drugs. It would have required practitioners to list the diagnosis code on prescription orders. HB 2497 would have directed the Department of Human Services (DHS) to make significant efforts to collect outstanding balances owed to the state for unpaid drug rebates and to seek agreements to require supplemental rebates from generic drug manufacturers. The bill would have allowed DHS to adopt the maximum allowable cost for generic prescription drugs available from multiple manufacturers or labelers, and would have allowed DHS, by rule, to exclude prescription drugs for certain conditions from capitated services. HB 2497 would have established reimbursement rates for certain prescription drug purchases by nursing and communities based care facilities, and clarify that DHS may intervene when a patient has been prescribed 15 or more different medications in a six-month period.

Governor's Veto Message

I am returning herewith House Bill 2497, unsigned and disapproved for three key reasons: an undesirable policy

regarding prior authorization, the requirement that certain medications be removed from capitation, and the requirement that diagnosis codes be placed on prescriptions.

Notwithstanding this veto, there are many constructive policies embodied in HB 2497. Fortunately, these can be enacted through administrative action. I will instruct the Department of Human Services (DHS) to implement the provisions of HB 2497 which require the following:

- *Practitioners to write their OMAP provider number on the prescription;*
- *OMAP patients to designate a primary pharmacy or pharmacy network;*
- *DHS to expedite the resolution of rebate disputes between pharmaceutical manufactures and DHS and to collect the total amount of outstanding balances owed for unpaid drug rebates;*
- *DHS to seek rebates of at least 15.1% generic medications and establish a maximum allowable cost for certain drugs;*

Controlling pharmaceutical costs is a complex task and what often seems desirable at first glance can ultimately be harmful to patients and increase costs. This is true of the portion of the bill that changes state policy to allow prior authorization of prescriptions based on the number of prescriptions obtained by a given patient over a six-month period of time. While I do not object in principle to the concept of prior authorization, I believe it must be used judiciously to avoid creating access barriers to needed medications. Allowing prior authorization based solely on the number of prescriptions obtained by a patient is simply bad policy. This singles out the sickest and most vulnerable of our Medicaid patients and subjects them to increased administrative hurdles for obtaining medications that may be the difference between life and death, independence and disability, and which could prevent the need for more expensive treatment. I will instruct OMAP to aggressively case-manage patients with high numbers of prescriptions in a manner that works collaboratively with their physicians to make sure they are getting optimal care rather than making it more difficult for physicians to render the best care.

The requirement for the Department to exclude by rule certain medications from the capitation rate for OHP providers is counter productive. At present, many OHP providers have drug utilization management systems

that are effectively controlling pharmaceutical expenditures within their own provider group. Removing medications from these functioning management systems into fee for service payment by the state only increases the likelihood that inappropriate utilization will increase. In addition, some of the more effective pharmacy benefit management (PBM) contracts require the PBM to contract to provide medications on a capitated basis. This requirement would remove a potentially effective weapon in Oregon's arsenal for fighting drug costs.

Finally, the requirement for practitioners to write the diagnosis code of the condition for which a prescription is written violates patient confidentiality and increases the hassle factor that practitioners who serve OHP patients must endure. Diagnosis codes are readily available in documents easily obtainable by the public. A pharmacy technician knowing the condition being treated seldom enhances the quality of care and the risk of unnecessary disclosure of a patient's health condition is greatly increased by such a practice. Creating an additional requirement for practitioners who see OHP patients also creates a disincentive for bringing OHP patients into one's practice by making the administrative burden practitioners already bear even greater.

House Bill 2714

Relating to farm dwellings in exclusive farm use zones

HB 2714 requires the Land Conservation and Development Commission (LCDC) to establish standards for the authorization of dwellings in conjunction with farm use on land managed as part of a farm operation (not smaller than minimum lot size). It specifies the commission must adopt rules that consider the capability of the lot or parcel, including the size and soil class of the lot or parcel, the agricultural activities on adjacent lots or parcels, and other relevant factors. The consideration of factors such as these in determining whether or not to authorize the establishment of a farm dwelling is termed a "capability test".

Under current law, the Department of Land Conservation and Development (DLCD) applies by rule a gross income test requirement of \$80,000 to determine if new farm dwellings can be sited on "high value" farmland as defined by statute. LCDC rules currently allow for a capability test for non-high value farmland that is optional for counties to utilize when determining siting of a new farm dwelling. LCDC rules do not allow for a

capability test for high value farmland.

Governor's Veto Message

I am returning House Bill 2714, unsigned and disapproved.

The bill would require the Land Conservation and Development Commission (LCDC) to establish yet another way to allow dwellings on Oregon's best farmland. This topic has been debated countless times over the past several years and a compromise was reached among various diverse interests.

Under existing law, a new farm dwelling is not allowed on high value farmland unless the owner can demonstrate a gross (not net) income of \$80,000 from farming. This is intended to protect Oregon's most productive soils for farming by distinguishing between commercial farmers and those people who simply want to live in the country. On lower quality farmland, less restrictive tests have been established for dwellings.

House Bill 2714 would require LCDC to adopt a rule to allow new dwellings on high-value farmland based on the "capability" of the parcel to become a farm. In my estimation, this new "capability" test would be quite easy to meet. For example, any size parcel could be declared capable of commercial farming as long as neighboring residents are farmers.

Consequently, this new test would enable hundreds of new dwellings to be located on some of Oregon's best farmland without the need to demonstrate that the land is being used for farming purposes. Instead, an applicant would only have to demonstrate that the land could be used for farming in order to obtain permission for a dwelling.

The "capability test" proposed by HB 2714 is not a new idea. Such a test was widely used in the 1980's. Under this practice, so-called "farm dwellings" with no real connection to commercial agriculture proliferated on high-value farmland throughout the Willamette Valley. A 1990-91 study found that 75 percent of all new "farm dwellings" were occupied by people earning less than \$10,000 from farming. About 37 percent of these dwellings were approved on land that grossed no farm income after the dwelling was built, even though the residents had previously declared an intention to farm.

House Bill 2981

Relating to minimum lot size

HB 2981 would have required the Land Conservation and Development Commission to amend the administrative rules governing the minimum lot or parcel size requirements and planning requirements for land which qualifies as an urban fringe. The commission would have been instructed to develop rules that considered the effects on urban growth boundaries (UGB); the need for expansion of the UGB; the likelihood that a proposed urban fringe area would have been necessary for expansion of UGB; future urbanization of urban fringe areas; topographic limitations; and the impact on the owners of private property within urban fringe areas.

The Land Conservation and Development Commission has adopted rules to establish a mandatory 20-acre minimum lot size in areas within one mile of certain UGBs in order to provide for future urbanization needs. Minimum lot size requirements, outside of UGBs, are used to assist in UGB expansion because larger lots are easier to develop for urban use than smaller lots.

Governor's Veto Message

I am returning herewith, House Bill 2981, unsigned and disapproved.

This bill would require the Land Conservation and Development Commission to adopt rules governing the rural residential area located outside urban growth boundaries. This area is commonly referred to as the "urban fringe."

Last June, the Land Conservation and Development Commission adopted rules governing rural residential development in the urban fringe. The rules were adopted after a lengthy public process involving many stakeholders including the Oregon Building Industry Association which is the sponsor of HB 2981.

The rule established a minimum lot size for rural residential development within one-mile of urban growth boundaries. There is general consensus that it is important to maintain large parcels outside urban growth boundaries to enable a community to plan for future urban development in an efficient and more cost-effective manner. When a community decides to expand, it is easier to justify expansion of its urban growth boundary onto rural residential land located in the urban fringe land than onto prime farmland.

HB 2981 would require the Land Conservation and Development Commission to revisit this issue. I believe it is premature to take legislative action to amend an administrative rule adopted a little more than one year ago. I encourage the sponsor of HB 2981 to pursue the proposed changes directly with the Land Conservation and Development Commission and the Department.

House Bill 3344

Relating to the definition of science

The term "science" is not defined in statute. House Bill 3344 would have defined "science" and "scientific" to mean "the systematic enterprise of gathering knowledge about the universe and organizing and condensing that knowledge into testable laws and theories." This definition was developed by the American Physics Society and has been endorsed by the American Chemical Society and Geophysical Society.

Governor's Veto Message

I am returning herewith Enrolled HB 3344, unsigned and disapproved.

This bill would add a narrow definition of "science" to ORS 174.100. This particular definition is taken from the Statement on 'What Is Science?' adopted by the American Physical Society in 1999. Members of the American Physical Society have expressed serious concerns about this bill. I share that concern.

I am concerned about adding this, or any other single definition of "science," to that portion of Oregon Revised Statutes that provides definitions for use in all other ORS. The list of definitions in ORS 174.100 is short precisely because there are very few words or terms that have just a single meaning that is appropriate for all applications in state law.

From a practical standpoint, it is hard to even judge how a particular definition might affect the various statutes it is used in. The word "science" is used numerous times in Oregon Revised Statutes and Oregon Administrative Rules. The context for all these uses of "science" cover the spectrum of public policy topics from "A" to "Z."

While the definition of "science" proposed in HB 3344 is one way to define science, there are many other ways the word may be defined – all just as applicable in certain circumstances as the definition in the bill. The point is that no one definition of science fits all

applications of the term. Webster's Dictionary includes several definitions of science, none as narrow as the definition proposed in this bill.

I understand that Oregonians want "science" to be fully considered in governmental decisions (rules, laws, programs and so on), particularly in the area of natural resources stewardship.

I couldn't agree more, and I will continue to urge that the best available science be used thoroughly and in the most objective way possible in any policy formulation or program implementation where it is applicable.

I also understand that some citizens are concerned that science has not been adequately or properly considered in some natural resources policies, but this contention is controversial, and we are better off to examine the situation on a case-by-case basis. Merely adding a definition of "science" to the statutes will not contribute to resolving such controversies.

House Bill 3363

Relating to wolves

House Bill 3363 would have classified wolf hybrids as predatory animals. Wolf hybrids include domesticated wolves that have been crossed with dogs or coyotes and are no longer in captivity. Current statute lists coyotes, rabbits, rodents, and certain birds as predatory animals, but does not define wolf hybrids as predatory.

Governor's Veto Message

I am returning herewith House Bill 3363-A, unsigned and disapproved.

HB 3363-A would amend ORS 610, to include "wolf hybrids" among a list of predators that may be destructive to agricultural crops, products and activities. In early June, I indicated concern about this proposal because there is little evidence of a current problem to address or the likelihood of one emerging. In any event, if specific problems were to develop, adequate measures exist now to address them. ORS 609 provides Oregon's counties with the ability to legally authorize capture or taking of wolf hybrids as dogs when shown to kill, injure or chase livestock. This provides a sufficient tool applied at the local level to specific fact situations.

Many Oregonians have wolf hybrids as pets. This legislation would give Oregonians permission to kill

someone's pet. HB3363-A also may create a liability under the federal Endangered Species Act for local landowners who kill, albeit in rare future circumstances, a wolf thinking it's a hybrid, resulting in a "take" of a federally listed species.

HB 3363-A is an unnecessary solution looking for a problem. I believe the tools in place today are adequate to deal with problem wolf hybrids, without placing Oregonians at higher risk of needlessly killing someone's wolf hybrid pet or a federally listed species.

House Bill 3528

Relating to rural service centers

HB 3528 would have defined, outlined the purposes for, and authorized the development of, "limited rural service centers" in certain remote areas of the state. The measure stipulated the conditions necessary for the development of limited rural service centers. It would also have required a property owner seeking the "limited rural service center" designation to, upon approval by a county, file a deed restriction on the subject property prohibiting uses not already established or falling under the limited rural service center designation. The measure would have provided an exemption from this requirement for the expansion of uses that had been approved previously.

HB 3528 stemmed from a development called "The Narrows," a private, 16 acre campground on exclusive farm use land located 20 miles south of Burns in Harney County. Harney County officials initially approved a zone change and later (after the zone change was appealed to the Land Use Board of Appeals), a conditional use permit, for the development of the campground. The owner of the campground wanted to provide fueling and full service hook-ups for a recreational vehicle park to visitors to the Malheur National Wildlife Refuge south of Burns. These services would have been allowed under the zone change, but were not permitted under the later conditional use permit.

Harney County officials contended that they have a declining "natural resource-based" economy in addition to unemployment rates as high as 18 percent. They asserted that the establishment of limited rural service centers as specified in HB 3528 would help provide necessary services for tourists, and needed benefit to the economy in their rural area of the state.

Governor's Veto Message

I am returning herewith, House Bill 3528, unsigned and disapproved.

The bill would allow a gas station and full service hook-ups for a recreational vehicle park on farmland in Harney County. Under current law, these uses are prohibited in farm zones.

First, let me state that I understand the difficult economic situation in Harney County. It has been hard hit by a downturn in its natural resource-based economy and is struggling to find ways to replace lost jobs and income. The Malheur Wildlife Refuge and Steens Mountains are expected to attract valuable tourism and recreation to the region.

The proponents of House Bill 3528 are correct to point out that services such as gas stations and restaurants are needed in Harney County to accommodate tourism. They also indicate that the development would provide jobs for local residents. Both of these statements are true. Tourist-related services should be provided, to the extent possible, in existing towns to reinforce existing businesses.

Because the economy of Harney County is changing, however, it may be worthwhile to revisit historic land use patterns. Towns and developments that evolved to support a resource-based economy may not be conveniently located to accommodate the emerging growth in tourism.

As a consequence, there may be merit in the development proposed by House Bill 3528 but only if it is done in the context of a comprehensive strategy identifying special gateways to meet visitors' needs as they travel to the Steens and the Malheur Wildlife Refuge. If Harney County is so inclined to lead such an effort, I will ask state agencies to contribute staff and resources to work with them on this important issue in the interim.

House Bill 3808

Relating to federal migratory bird refuges

HB 3808 would have required that the federal government to obtain approval from the Oregon Legislature for exclusive jurisdiction over property purchased for migratory bird refuges. The measure did not apply to land acquisitions for national forests, monuments, defense, navigational aides, or other reasons. Current law grants the federal government the authority

to purchase property and have exclusive jurisdiction over it without obtaining the consent of the legislature, if the land is used for a migratory bird refuge.

Governor's Veto Message

I am returning herewith Enrolled House Bill 3808, unsigned and disapproved.

HB 3808 repeals permission for the federal government to acquire land (through sale, lease or gift) for migratory waterfowl refuges. Under the federal Migratory Bird Conservation Act, states must grant permission for such acquisitions, which Oregon did several years ago in ORS 272.060.

Repealing the general permission statute would make transactions between willing sellers and the Department of Interior subject to state legislative approval. This violates the fundamental private property rights of individual landowners, who for either economic or environmental reasons want to sell their land for this purpose.

Creation and expansion of refuges is an important tool that can be used to reduce waterfowl damage of agricultural crops by providing alternative habitats and food sources.

HB 3808 also contains changes to the Forest Practices Act that are not related to the relating clause in the bill.

House Bill 3809

Relating to hatchery bred salmon

HB 3809 would have established a moratorium, until no later than January 15, 2003, on destroying hatchery bred salmon returning to the waters of Oregon. It provided exceptions to the moratorium for sport and commercial fishing, scientific research, habitat projects, hatchery and enhancement programs, and for actions related to management and maintenance of existing, human made structures and barriers that may inhibit fish passage.

HB 3809 also would have created an expert scientific panel in the Oregon Department of Fish and Wildlife (ODF&W) to study the differences between wild salmon and hatchery bred salmon, the practice of destroying hatchery bred salmon and other issues relating to wild and hatchery bred salmon and specified the membership on the panel. The measure required the Director of ODF&W to issue a report to the legislature explaining

the results of the expert scientific panel study.

It also made changes to definitions and allowed installation and operation of fish hatcheries as part of a citizen enhancement project. The provisions in the measure would have expired on January 31, 2003.

Governor's Veto Message

I am returning herewith Enrolled House Bill 3809, unsigned and disapproved.

HB 3809 is a seriously flawed bill in two respects: (1) it creates a new and duplicative "expert scientific panel" for yet another examination of hatchery versus wild salmon issues; and (2) it represents another attempt by the Legislature to statutorily mandate state agency direction in the very complex science of salmon recovery.

A number of federal and state scientific panels have already, or are undergoing, serious reviews of artificial production (hatchery) methods and policies regarding salmon recovery in Oregon and the Northwest. Under the federal auspices of the Northwest Power Planning Council (Council) and the Bonneville Power Administration (BPA), the twin panels of the Independent Scientific Advisory Board (ISAB) and the Independent Scientific Review Board (ISRB) have been reviewing this and related salmon hatchery issues since 1997 and before.

In response to the continual federal mandates regarding the complex science of salmon recovery in Oregon, and to provide for sound scientific advice regarding Oregon Plan issues, including artificial production issues relating to recovery, Oregon utilizes its own Independent Multidisciplinary Science Team (IMST). The IMST has finished a thorough review of the policies and operations of ODFW's state fish hatcheries, and ODFW has been working closely with them in the development of the state's new Native Fish Conservation Policy and Conservation Hatchery Improvement Plan (CHIP).

In view of the large volume of scientific review now underway or just completed, the creation of one more "expert scientific panel" to review the existing science of hatchery versus wild salmon stocks is simply not needed.

ODFW is developing a new Native Fish Conservation Policy for managing Oregon's salmonids. I am confident that this effort, led by experts in fisheries management, will result in a management tool that will clarify the role of hatchery fish in salmon

recovery. ODFW needs to have the flexibility to respond to changing conditions, legal mandates and fisheries needs, and not be limited in the management tools available to address recovery efforts.

House Bill 3981

Relating to protected species

HB 3981 would have directed the Fish and Wildlife Commission to create a report, for each species listed under the Oregon State Endangered Species Act, of the economic and social impacts of recovering the species. Impacts to have been considered would have included the following: the increase or decrease in employment opportunities; the types of employment opportunities that will be gained or lost and the subsequent impact on specific businesses and wage earners; the impact on natural resources used by businesses in the affected communities; the impact on recreational opportunities; the impact on individual landowners; the impact on individuals in the affected communities in terms of quality of life issues; the impact on local governments; additional expenses for state agencies; the impact on Indian tribes; new infrastructure that must be developed to recover the species; and that the report be available for review during the public hearing process.

State listings of endangered or threatened species are limited to state-owned or operated lands and often accompany federal action to list a species as endangered or threatened. When the state receives a request to list a species, the Fish and Wildlife Commission has one year to complete the review process and may extend that period to one additional year under some circumstances. While a listing is a relatively rare event, the process can be labor intensive in a short time frame.

Governor's Veto Message

I am returning herewith Enrolled House Bill 3981, unsigned and disapproved.

This bill would weaken the state Endangered Species Act (ESA), the Forest Practices Act (FPA) and the Energy Facility Siting process. With regard to the FPA and Siting process this bill would remove the requirement to consider the needs of state listed species and other fish and wildlife needs. With the growing number of federal ESA listings, Oregon must do everything it can to minimize impacts to at-risk fish and wildlife and their habitat in order to avoid more federal listings in the state, which result in a loss of

state and local control over fish and wildlife management.

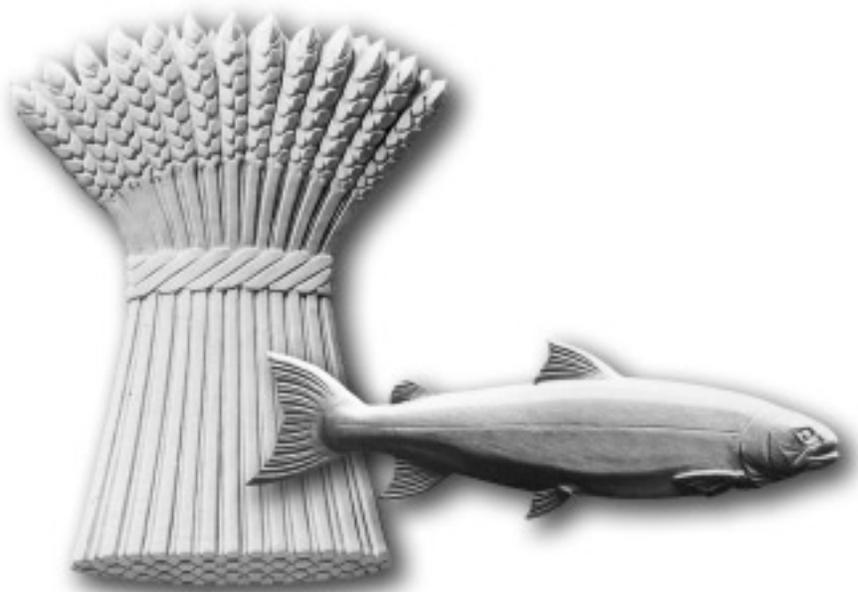
This bill also would require extensive and costly economic and social impact studies both before state listing and during state recovery planning. The decision to list a species under the state ESA should be based on the biological status of the species. Economic and social impacts should be and are taken in consideration by ODFW during the development of the recovery plan. The state ESA itself applies only to state-owned and managed lands, giving it limited applicability as it currently stands.

The bill includes some provisions I do support, including the development of a safe harbor program for lessees of state land, and the development of a candidate conservation program to avoid species listings. However, the other provisions identified above make it unacceptable to me.

Governor Kitzhaber also exercised his line item veto authority to disapprove portions of Senate Bill 50 and Senate Bill 5533.

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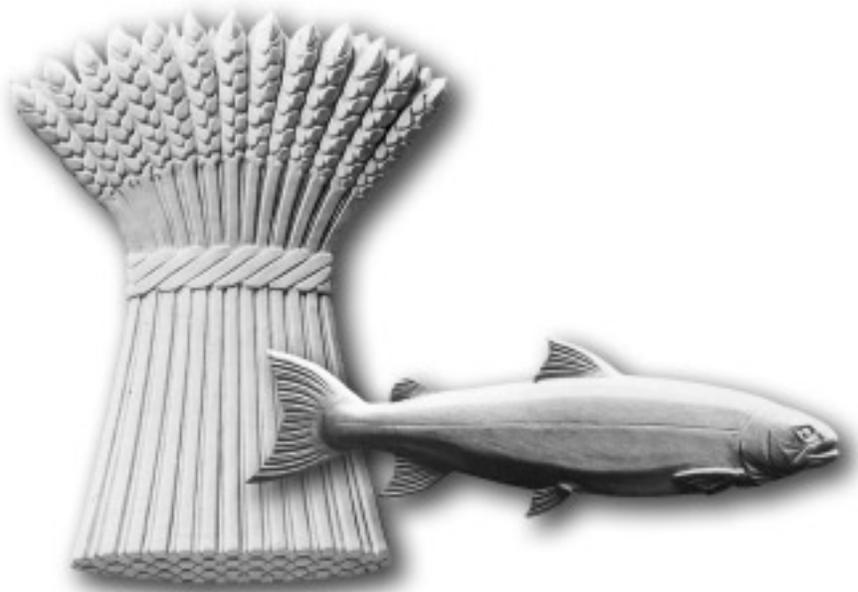
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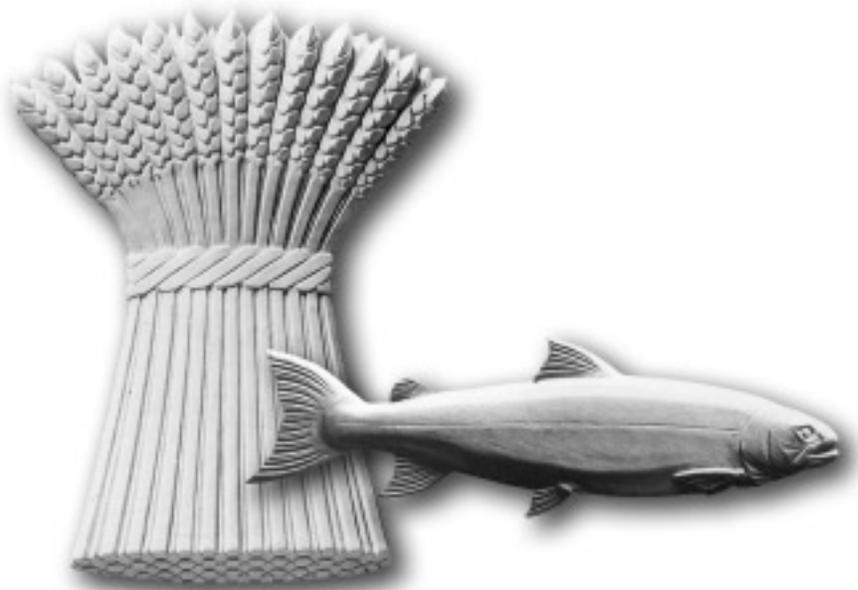
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