Oregon
Legislative Assembly

2003

Summary of Legislation

A Publication
of Legislative Administration

Committee Services

2003 Summary of Legislation

72nd Oregon Legislative Assembly

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Legislative Administration
Committee Services Office

Summary of Legislation 2003

INTRODUCTION

The 2003 Summary of Legislation is a compilation of selected bills and resolutions considered by the Seventy-second Oregon Legislative Assembly. Summaries contain background information and effects of enacted measures. Summaries of vetoed bills and text of the Governor's veto messages are also included in the publication. For ease of use, a subject index and a chapter number conversion table for the 2003 Oregon Laws can 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 and additional information about the legislature may be obtained by consulting the legislative website: www.leg.state.or.us. Copies of bills, resolutions, memorials, and amendments are available from Legislative Publications and Distribution.

This document was compiled and published by the Committee Services Office of the Oregon Legislature.

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OTHER RESOURCES

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

- *Budget Highlights: 2003-2005 Legislatively Adopted Budget* - Summarizes major budget actions
- *Revenue Measures Passed by the 2003 Legislative Assembly* - Summarizes legislation related to revenue

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Legislative Administration – Committee Services

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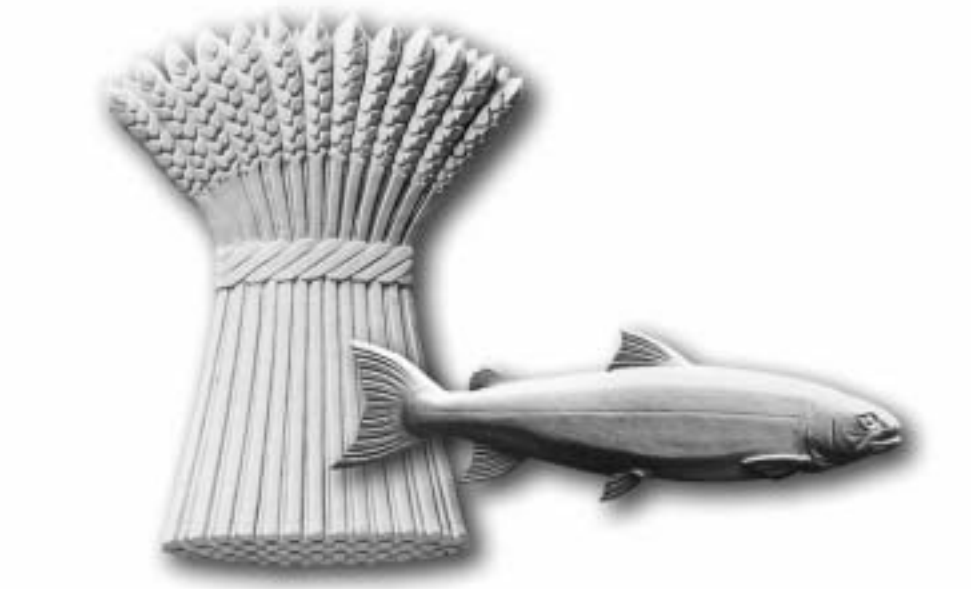
Economic Issues

Business and Trade and Economic Development

Labor; Unemployment Benefits; Workers' Compensation; Wages; Telecommunications; Utilities; Insurance; Real Estate; Housing; Building Codes; Solicitations; Credit Card Transactions; Loan Companies; Resale of Unused Goods; Promoting Job Development in Oregon; Business Development Tax Incentives; Industrial Lands/Shovel Ready Sites; International Trade Development



2003 Summary of Legislation

Labor

House Bill 3010

Relating to steel erection

HB 3010 prohibits the Director of the Department of Consumer and Business Services from requiring fall protection for steel erectors beyond that required in federal regulation. The Federal Occupational Safety and Health Administration (OSHA) issued a new federal Steel Erection Standard in January 2001, as a result of recommendations made by the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Oregon-OSHA convened an advisory committee to review the recommendations and decided to adopt the SENRAC proposal. One issue of disagreement, however, was the "trigger heights" for fall protection requirements. Oregon-OSHA adopted a uniform 10 foot fall trigger height for all construction workers and did not adopt the federal rule exemption of 30 feet for steel erector connectors and deckers. Ironworkers believe this creates unsafe working conditions for various reasons, including the weight of required fall-protection equipment, mobility required to escape danger, and tripping hazards. HB 3010 requires that the federal standards be adopted, including the 30 foot exemption for steel erectors.

HB 3010 repeals the prohibition December 31, 2007.

Effective date: January 1, 2004

Senate Bill 272

Relating to education

SB 272 authorizes the Department of Community Colleges and Workforce Development to make grants or loans to public-private partnerships for provision of advanced technology education and training opportunities in communities around the state and limits the maximum amount for grants and loans made for certain uses. The measure also creates the Advanced Technology Education and Training Fund and transfers limited funds to the Department of Community Colleges and Workforce Development for the program.

SB 272 also allows a panel of the Fair Dismissal Appeals Board to submit written questions to the Director of the Oregon Youth Authority (OYA) that the panel unanimously agrees are relevant to a case. The director must respond within 20 days and the director is required to provide information that is not confidential or privileged.

Effective date: September 24, 2003

Senate Bill 575

Relating to contractors

SB 575 exempts businesses from contractor licensure requirements if they supply personnel to a licensed contractor for the performance of work under the direction and supervision of the contractor. The definition of contractor applies to employees of a Professional Employment Organization (PEO), also known as employment contractors of temporary help. PEOs are required to possess a contractors' license for employees they lease out for building contractor jobs. Continuing education classes are a component of possessing a contractors' license and PEOs are required to comply as well.

Effective date: January 1, 2004

Unemployment Benefits

Senate Bill 2

Relating to emergency unemployment benefits

During the first special session of 2002, the Legislature passed HB 4021, which provided for an additional 13 weeks of unemployment compensation for out-of-work Oregonians. Due to a specific exception in the bill, the Oregon extension did not go into effect because the Federal government passed its own extension. These federally extended benefits ran out for many Oregonians near the end of 2002. SB 2 extends emergency unemployment benefits for up to 13 weeks. The measure applies to unemployed Oregonians who: have exhausted regular benefits; are not currently eligible for any other unemployment benefits (e.g. any federal extension); continue to meet normal eligibility requirements; and whose benefits expired after January 5, 2002. The measure prevents the Employment Department from charging an employer's account for benefits paid under this bill. SB 2 allows the Director of the

Employment Department to stop payments of emergency benefits when the total payments would exceed $29 million.
Effective date: April 1, 2003

Senate Bill 903

Relating to unemployment compensation

SB 903 increases the number of weeks emergency unemployment benefits may be paid from 13 weeks to 20 weeks. The measure limits the eligibility period for emergency unemployment benefits through September 27, 2003. Under a temporary provision, unemployed workers who have exhausted benefits are allowed to receive another 6.5 weeks of benefits for workers meeting specified eligibility criteria. The supplemental unemployment benefit period for dislocated workers in approved technical training programs was extended an additional two years, through June 30, 2005.

SB 2 (2003) extended emergency unemployment benefits for up to 13 weeks through December 27, 2003, and authorized the Employment Department Director to stop emergency benefit payments when total payments would exceed $29 million. According to the Employment Department, the $29 million ceiling was reached at the end of June 2003. SB 903 removed the Director's authority to stop payments at $29 million and extended emergency benefits through September 27, 2003. The Temporary Additional Benefits (TAB) provision of SB 903 is part of a federal-state extended benefits program.
Effective Date: July 3, 2003

Workers' Compensation

Senate Bill 286

Relating to panels of Workers' Compensation Board

SB 286 specifies the composition of panels of the Workers' Compensation Board. This bill requires that panels of the Workers' Compensation Board consist of two members with different backgrounds and understanding. If agreement is not reached on an individual case, the case would be decided by a panel of three members, two of whom have different backgrounds and understanding and one who represents the interests of the public.
Effective date: January 1, 2004

Senate Bill 757

Relating to permanent partial disability awards for workers' compensation claims

SB 757 modifies the method for calculating permanent partial disability awards for workers' compensation injuries. The lower limit for a permanent partial disability benefit increases from 33% to 50% of Oregon's average weekly wage. The bill also clarifies how the worker's return to work status impacts their permanent partial disability award and how disability benefits are determined on the worker's weekly wage with minimum and maximum levels.

In workers' compensation cases, permanent disabilities are divided into scheduled and unscheduled awards. Scheduled awards are for loss, or loss of use or function, of certain body parts, and are paid at a fixed dollar amount per degree of loss, regardless of the return-to-work status of worker. Unscheduled awards are for body parts such as the back, or for conditions such as allergic reactions, that affect the whole body. This measure eliminates the distinction between scheduled and unscheduled awards. All workers with permanent disability will receive an impairment benefit, which pays all workers at the same rate (based on state average weekly wage) per percentage of impairment. Workers who are unable to return to regular work will also receive a disability benefit, which is based on the impairment and on age, education, and adaptability factors and the workers' earnings at the time of injury. The provisions sunset on January 1, 2008.
Effective date: January 1, 2004

Wages

House Bill 2624 – Legislation not Enacted

Relating to annual adjustment of minimum wage

Ballot Measure 25, approved by voters in November 2002, increased Oregon's minimum

wage to $6.90 per hour (effective January 2003) and tied future annual adjustments to the U.S. City Average Consumer Price Index for All Urban Consumers for All Items (CPI). HB 2624 would have maintained the hourly minimum wage at $6.90 but removed the annual inflation adjustment.

Senate Bill 332 – Legislation not Enacted

Relating to wages

Oregon voters approved Measure 25 in 2002 that increased the Oregon minimum wage to $6.90 per hour (starting in 2003) and tied future annual increases to changes in the Consumer Price Index. The House version of SB 332 would have limited the inflation adjustment to years when the Oregon total unemployment rate is less than the total national unemployment rate.

Telecommunications

House Bill 2230

Relating to telecommunications

HB 2230 allows the Public Utility Commission (PUC) to assume primary responsibility for resolving consumer complaints related to the unauthorized change of telecommunications carriers in violation of federal law. "Slamming" is the illegal practice of changing a consumer's local or long distance service without permission. The Federal Communications Commission (FCC) has granted primary responsibility and authority for handling consumer slamming complaints to 36 states. HB 2230 gives Oregon, through the PUC, the authority to resolve individual consumer slamming complaints at the state level instead of at the federal level. It specifies that the PUC may not impose more stringent rules or penalties for slamming than what is allowed at the federal level. The Department of Justice retains its authority to seek remedies under existing state statutes related to unauthorized telecommunication carrier changes.

Effective date: January 1, 2004

House Bill 2304

Relating to broadband telecommunications policy

HB 2304 establishes a statewide policy for broadband telecommunications services. In 2001 the Legislative Assembly created the Oregon Telecommunications Coordinating Council (SB 765), a 12-member interim task force. The council was charged with studying approaches for providing coordinated, statewide, regional and local telecommunications services, with the primary goal being to provide services to unserved and underserved areas of the state. The council also studied ways that telecommunications investments can be coordinated to facilitate partnerships between public and private sectors and between state and local governments.

By encouraging implementation of broadband telecommunication services, HB 2304 seeks to ensure homeland security protections in the state and that a secure conduit is available for emergency communications and public safety networks in all Oregon communities. The Director of the Office of Emergency Management has responsibility for establishing the necessary rules to implement the measure.

Effective Date: January 1, 2004

House Bill 2577

Relating to telecommunications

HB 2577 modifies the name, membership, and duties of the Oregon Telecommunications Coordinating Council (OTTC). The measure directs the Public Utility Commission to include in its annual report the number of public bodies providing basic telecommunication infrastructure so that private entities may use that infrastructure to provide advanced information and communication services. The OTCC is also directed to work with health care education providers and the health care industry to develop a plan that uses existing resources for health care education throughout the state. The council is required to report to the on their progress to the appropriate interim committee by July 1, 2004, and to the Seventy-third Legislative Assembly by February 1, 2005.

The OTCC's mission is to provide all Oregonians with affordable access to broadband digital applications that will improve the quality of life in Oregon communities and reduce the economic gap between well-served and underserved Oregon communities for present and future generations.
Effective date: September 17, 2003

Senate Bill 910

Relating to electronic mail messages

SB 910 prohibits a person from transmitting electronic mail that misrepresents the subject or origin of a message, uses an Internet domain name without permission, or contains false or misleading information on the subject line in the course of offering real estate, goods or services for sale, rent, or other disposition. E-mails are permitted when there was a business relationship with the recipient, if the recipient is a member of the sending organization, or "ADV" is in the subject line. Violation of provisions of this measure are an unlawful trade practice.
Effective date: January 1, 2004

Utilities

House Bill 3376

Relating to direct access of electricity

Each year the Public Utility Commission (PUC) initiates an open enrollment period in which electricity service providers and electric utilities are required to post the prices that will be charged for electricity in the subsequent year. Customers can then determine the energy plan to meet their needs, whether that is to purchase electricity from a public utility or through a direct access provider. The window of time allowed for customers to shop the process has typically been short, 24 to 48 hours. HB 3376 requires that the PUC set a date for announcing all electricity prices. Electricity service suppliers and electric companies must announce the estimated prices that they will charge for electricity in the subsequent year or contract period at least five days prior to the date set by the PUC thus allowing consumers a minimum of three business days to choose their electricity provider.
Effective Date: June 24, 2003

House Bill 2356 – Legislation not Enacted

Relating to cities

House Bill 2356 would have prohibited a city with a population of more than 500,000 from acquiring a property by condemnation if the property belongs to an electric company and the acquisition is for the purpose of providing electricity services. As an integrated electric utility, Portland General Electric (PGE) has a service territory that covers more than 3,000 square miles in 51 cities and serves over 730,000 retail customers in Oregon, as well as wholesale customers throughout the western U.S. PGE became a wholly-owned subsidiary of Enron Corp in 1997. Enron filed for bankruptcy in 2001 to stabilize its financial situation and has decided to sell PGE.

Insurance

Senate Bill 253

Relating to insurance

SB 253 replaces the term of "insurance agent" and its definition with a new term "insurance producer" for the purpose of the Insurance Code, and authorizes a producer to transact insurance on behalf of a person other than an insurer. Federal legislation, the Gramm-Leach-Bliley Act (1999), made major changes to the regulation of insurance, banking, and securities. One aspect of the law allows states to adopt procedures for reciprocal licensing of nonresident agents in order to simplify interstate licensing of agents. Oregon enacted such procedures, but does not recognize the insurance broker category that many states do. SB 253 eliminates this category and replaces it with insurance producer, which is consistent with the national standard. It also allows an insurance producer to charge a commission, a service fee, or a combination of the two when transacting commercial types of insurance.
Effective date: January 1, 2004

Real Estate

House Bill 2639

Relating to affordable housing

HB 2639 allows a real estate broker, principal real estate broker, or escrow agent to generate interest earnings on client funds held in trust. These interest earnings can be used to assist a public benefit corporation with funding first-time homebuyers assistance and development of affordable housing. Other states have instituted such voluntary programs in which earnest money and escrow accounts are placed in a trust with the interest going to non-profit organizations that provide low-income housing options.

Effective date: January 1, 2004

House Bill 3539

Relating to construction liens

HB 3539 directs the seller of residential property to purchase title insurance, maintain an escrow fund, provide a letter of credit, or obtain a waiver from every person claiming a construction lien on the property in order to protect the purchaser from liens that have not been perfected at the time of sale. The bill addresses new construction and residential improvements where the original construction cost or contract price, completed within three months prior to the sale of the property is $50,000 or more.

HB 3539 specifies that the real estate licensee may not be liable for failure when an owner of record does not comply with this bill.

Effective date: September 17, 2003

Senate Bill 207

Relating to escrow agents

SB 207 modifies provisions relating to licensing, record keeping, bonding, and civil penalties for escrow agents. The measure authorizes the Real Estate Agency to issue a limited escrow agent license. SB 207 is the result of a work group convened to address various issues confronting the escrow industry and the Real Estate Agency.

Effective date: January 1, 2004

Senate Bill 515

Relating to real estate disclosure

SB 515 eliminates the statutory disclaimer process by modifying the requirements for seller's disclosure or disclaimer related to the sale of residential property. The seller must either disclose what they know about the property or the buyer will have until closing to revoke the offer. If the seller discloses the condition of the property, the buyer has five calendar days to revoke the offer. These changes are intended to encourage actual disclosure of the condition of residential property. Exclusion for sellers who have never occupied the property is also eliminated. Substantive changes to the disclosure questions are required to improve readability, update the form, and better address issues that have proved problematic. In particular, water intrusion, mold, and defective building material provisions are strengthened, in addition to addressing common occurrences experienced by home owners' associations.

Effective date: January 1, 2004

Senate Bill 833

Relating to housing

SB 833 requires new rental housing that receives certain forms of federal or state funding to include specific design features that enable individuals with a mobility impairment easy access. The design features must also be adaptable to allow continued use by aging occupants. The measure requires the Housing and Community Services Department to consult with advocacy groups prior to adopting rules implementing the measure.

Effective date: January 1, 2004

Housing

House Bill 2765

Relating to landlord-tenant law

HB 2765 modifies certain rights and responsibilities of landlords and tenants. Under provisions of the bill, landlords are required to treat all classes of people equally relating to guidelines, practices, rules, screenings, or

admissions criteria for a real property transaction.

A landlord is required to release a tenant from a rental agreement if provided with at least 14 days written notice and verification that the tenant has been the victim of domestic violence, sexual assault, or stalking within 90 days of the notice. A tenant is not liable for rent or damages incurred after the release date or subject to any fee due to the termination of a rental agreement. Protections for the landlord and the remaining tenants are also provided in the bill. Terms of a fixed term tenancy, including rent, may not be unilaterally amended by landlord or tenant.

The bill provides that alcohol and drug free housing (ADF) may be created when less than 100% of the units are ADF. A landlord may use as evidence that a tenant in ADF housing is using alcohol or other drugs to evict a tenant or terminate a rental agreement if the person required to take drug tests delays or refuses to take the test when requested. The bill provides that recurrence of noncompliance within six months can result in a 10-day written notice of a rental agreement termination. There is no recourse for the tenant for any subsequent breach of the agreement, however, a landlord may not terminate a rental agreement if the only breach is failure to pay the current month's rent.

The bill clarifies that a landlord's only method to forcibly remove a tenant is to file an eviction lawsuit and judges are required to enter a stipulated agreement between the landlord and the tenant in resolving an eviction. The responsibility of seizing and storing a tenant's abandoned property is transferred from a sheriff to the landlord, and a landlord may require payment of any amount owed by the tenant before allowing the tenant to remove or recover their property, if the payment is stated in a written notice. The bill also specifies conditions under which a landlord may issue a twenty-four hour notice to terminate a rental agreement for outrageous conduct.
Effective date: January 1, 2004

House Bill 3069 – Legislation not Enacted

Relating to landlord-tenant law

HB 3069 was the product of a coalition of residential landlord and tenant groups and advocates for manufactured dwelling tenancies in manufactured home parks. Currently, abandoned property statutes regulating manufactured homes require a landlord to sell an abandoned home if the home is valued over $8,000. If the home is valued at $8,000 or less, the landlord is required to dispose of the house or give it away. Landlords have liability concerns over the homes they are required to sell or give away. HB 3069 would have relieved the landlord from any liability for the condition of such homes unless they intentionally misrepresent its condition.

Building Codes

House Bill 2564

Relating to licensing of building code trades

HB 2564 requires the Department of Consumer and Business Services (DCBS) to simplify the process for issuance and renewal of contractor licenses, certificates, or other authorizations. Contractors will be able to obtain a combination license reflecting the different authorizations granted by the Electrical and Elevator Board, the Board of Boiler Rules, or the State Plumbing Board. Currently there are 15 different contractor licenses regulated by the Building Codes Division and contractors have been required to apply for and renew each license individually.
Effective date: January 1, 2004

Senate Bill 711

Relating to building codes

SB 711 is the result of stakeholder groups working with the Building Codes Division to streamline plan review and permit processes. The bill requires development of a system to prioritize essential inspections and plan review based on a customized evaluation of life, safety, and building performance, while eliminating non-life safety requirements. It authorizes the agency adopt rules clarifying provisions of the

code and requires them to report to the Seventy-third Legislative Assembly regarding those rules.
Effective date: January 1, 2004

Senate Bill 713

Relating to building codes

SB 713 is the result of stakeholder groups working with the Building Codes Division to streamline the plan review and the permit process. It allows the Department of Consumer and Business Services (DCBS) to identify resources necessary to establish a system for providing access to building codes information for all building code jurisdictions within the state. It allows the agency to develop a pilot program providing electronic access to building codes information and services in Clackamas, Washington, and Multnomah Counties. The measure exempts building code transactions conducted electronically from laws requiring a signature or handwritten materials. The provisions sunset on January 2, 2006.
Effective date: January 1, 2004

Senate Bill 714

Relating to building codes

SB 714 allows the Department of Consumer and Business Services (DCBS) to establish a statewide permitting and inspection system for minor construction work. It also allows DCBS to establish special alternative permit and inspection programs. Such a system would recognize professional licensure and certification to streamline and self-verify non-life and safety inspections, plan reviews, and permit requirements.
Effective date: January 1, 2004

Senate Bill 906

Relating to building industry activities

SB 906 is an omnibus bill that combines many changes to building codes and construction contracting laws that had been included in other pieces of legislation.

Construction industry boards assist the Building Codes Division in administering division programs. The Building Codes Structures Board's mission is to assist in administering laws pertaining to structures, mechanical devices and equipment, one-and two-family dwellings, prefabricated structures, certain energy programs, and programs to facilitate building accessibility to persons with physical disabilities. SB 906 restructures the Building Codes Structures Board and establishes two additional boards to cover more specific areas, the Residential Structures Board (operative January 1, 2004) and the Mechanical Board (operative July 1, 2004). The bill also eliminates the Tri-County Building Industry Service Board and transfers those functions to the Department of Consumer and Business Services (DCBS). Proponents assert that the resulting restructured boards will function more efficiently and better meet the needs of their customers.

SB 906 creates a new construction contractor license class for property owners who are developers. Current law requires developers of property to be licensed as contractors if the developers intend to sell the property upon completion of construction, even if the developer does none of the actual construction work. The developer is also required to complete all of the licensing prerequisites in addition to those required for insuring financial responsibility. Proponents of the new license class assert that developers should be allowed to rely upon licensed general contractors who have both technical expertise and experience in construction and its rules and have a single license covering the areas that are under the control of a developer contractor. The new license class was operative on October 1, 2003.

SB 906 makes a variety of other changes to building code enforcement laws. An informational requirement was added for contractor license applications by limited liability companies. The measure requires certain building code professionals to wear visible identification when providing professional services, unless it creates a danger. DCBS is required to establish a uniform citation process for local jurisdictions when issuing compliance violations. The bill prohibits a person from falsely advertising as being licensed to make electrical installations when they are not actually licensed as an electrical contractor. The measure also provides guidelines for payment of

contractors and subcontractors on construction contracts.
Effective date: August 21, 2003 (some provisions have different operative dates)

House Bill 2389 – Legislation not Enacted

Relating to residential construction claims

Oregon requires licensed contractors to be insured and bonded. The cost of contractor liability insurance has increased substantially in recent years and premiums have risen in addition to a reduction in the availability of insurance companies offering coverage due to claims and legal action over construction defects. The Construction Contractors Board processes approximately 5,000 complaints per biennium. Contractors are required to secure product liability insurance for 10 years. During the first nine years there are no dispute resolution remedies in place prior to seeking legal action. HB 2389 would have established a procedure for the contactor and homeowner to communicate and resolve problems before seeking costly legal action.

House Bill 3174 – Legislation not Enacted

Relating to construction contracts

Construction projects that result in project owners who do not pay general contractors in a timely manner, can result in subcontractors, material suppliers, and manufacturers of products or components not being paid on time. HB 3174 would have revised the public contracting prompt pay provisions and provided new provisions for private construction that established predictability and clarity for prompt payment to contractors

Solicitations

House Bill 2098

Relating to charitable solicitations

HB 2098 prohibits misleading solicitations from out-of-state non-profit organizations that, by their address, appear to be based in Oregon. This law prohibits such solicitations unless the non-profit either maintains an Oregon office, or lists its out-of-state address on the solicitation and states that the Oregon address is a mail drop. This law also expands the ability of the Attorney General to prohibit such activities.
Effective date: January 1, 2004

Securities

Senate Bill 609

Relating to liability under securities laws

Senate Bill 609 specifies that a person who offers security or offers to purchase security in violation of securities laws, or by means of untrue statement or omission, may be liable for damages. The bill allows investors to recover for damages involving fraud for securities purchased in open market. A three-year time limit on actions is established by the measure.

Currently, a person or public fund may not bring a claim under the Oregon Securities Law against a fraudulent corporation, such as Enron, unless the securities were purchased directly from Enron. This bill permits a public fund or other investor to state a claim even when the securities were purchased in the open market. The measure creates consistency between Oregon law and corresponding federal laws. A public fund or other investor will be able to state a claim in Oregon and have its claim decided by an Oregon jury.
Effective date: January 1, 2004

Credit Card Transactions

House Bill 2103

Relating to financial card transactions

HB 2103 prohibits creating a customer credit or debit card receipt that shows more information than the customer's name and the last five digits of the card number. It also prohibits selling, leasing or renting a credit card processing system that provides a receipt with more than the last five digits card number. Credit or debit card receipts created or retained by a merchant that contain more information must be handled in one of two fashions; 1) shredded, incinerated or otherwise destroyed on or before the copy is transferred to microfilm or microfiche, or 2) destroyed 36

months after the date of the transaction. The Attorney General or a District Attorney is authorized to bring an action to prevent a violation and obtain civil penalties for violations of an order or injunction. The civil penalty for unlawful credit or debit card solicitations is increased from $1000 to $1000 *per violation*, and the court is authorized to award attorneys fees to a prevailing party for any civil action.
Effective date: January 1, 2004 (Provision that prohibits creation of a customer receipt with more than the last five digits of the card number takes effect July 1, 2005)

House Bill 3316
Relating to commercial transactions
HB 3316 permits a merchant who accepts credit or debit card payment to require the card holder to provide additional identification. The bill voids provisions in any contract between a merchant and a credit or debit card issuer prohibiting the merchant from verifying the identity of the cardholder. The bill is intended to discourage fraudulent use of credit and debit cards.
Effective date: January 1, 2004

Loan Companies

Senate Bill 159
Relating to payday loans
SB 159 enacts several provisions related to "payday loans". It restricts locations of payday loan companies, limits the number of consumer fees and approved loans, and restricts certain loan practices. It authorizes electronic repayment of an agreement, permits only one fee for each loan transaction, and authorizes the Department of Consumer and Business Services to investigate complaints. Payday loans are small-dollar, short-term loans that borrowers promise to repay out of their next paycheck or deposit of funds. These loans typically have high fees and are frequently renewed. The loans are used by consumers to meet unexpected financial emergencies or other cash flow needs.
Effective date: January 1, 2004

Resale of Unused Goods

Senate Bill 739
Relating to unused property
SB 739 bans the sale of certain types of unused goods manufacture or production date exceeding five years at unused property markets, such as flea markets, unless the person has written authorization from the manufacturer or distributor. The types of goods include baby food, infant formula, cosmetics, personal care products, nonprescription drugs, and medical devices. The bill requires persons to keep records when purchasing new and unused property to sell at unused property markets. A violation of the new provisions is classified as a Class C misdemeanor for the first conviction, a Class B misdemeanor for the second conviction within ten years, and a Class A misdemeanor for a third conviction within ten years.
Effective date: January 1, 2004

Promoting Job Development in Oregon

House Bill 2011
Relating to economic development
HB 2011 requires the Oregon Economic and Community Development Commission to develop a mission statement for the Economic and Community Development Department outlining priorities for promoting job development in Oregon. The bill directs the commission to establish geographic regions and provide field representatives for those regions, for the purpose of job development and community assistance. Field representatives will serve as internal advocates and centralized contacts within state government to facilitate and expedite the siting or expansion of businesses in the region; the duties of the field representatives are detailed in the bill.

The measure also establishes the Economic Revitalization Team in the office of the Governor, for the purpose of coordinating and streamlining state policies, programs and procedures and providing coordinated assistance with state agencies and local governments. The

measure also establishes the Governor's Council on Oregon's Economy. The council is directed to meet quarterly to discuss and coordinate the activities that relate to economic development and improving the economy in Oregon, and make recommendations on methods for creating certainty for the development process to the Legislative Assembly.
Effective date: September 24, 2003

House Bill 3613

Relating to state investments

House Bill 3613 addresses the gap between available venture capital resources and the needs of Oregon businesses for such resources. The estimated gap is currently between $100 million and $200 million. The measure requires the Oregon Investment Council to have at least $100 million in venture capital investments in Oregon businesses by January 1, 2008, unless it is not prudent to do so. Pension funds managed by the Oregon Investment Council may be invested in start-up and expanding businesses, minority or women business enterprises, and in emerging growth businesses if prudent to do so.

House Bill 3613 also creates, within the Education Stability Fund, the Oregon Growth Account for the purpose of earning returns for the Education Stability Fund. The bill requires the State Treasurer to submit an annual report to the Governor and the Legislative Assembly on the investment of moneys in the Oregon Growth Account. House Bill 3613 provides for the transfer of funds between the Oregon Growth Account and the Education Stability Fund in the event of excesses or shortages greater than ten percent of the amount required to be transferred to the Education Stability Fund.
Effective date: July 23, 2003.

House Bill 2967 – Legislation not Enacted

Relating to small businesses

The Federal Regulatory Flexibility Act of 1980 (RFA) was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small business to compete. HB 2967 was modeled after the RFA to reduce the high regulatory compliance cost burden impacting small businesses through regulatory flexibility at the state level in order to create a healthy economic environment. HB 2967 would have required agencies to conduct a regulatory flexibility analysis and prepare a small business economic impact statement before adopting any rule with adverse impact on small businesses.

Business Development Tax Incentives

House Bill 2622

Relating to business development tax incentives

HB 2622 allows firms that are preparing to engage in electronic commerce in an enterprise zone and are pre-certified by the Oregon Economic and Community Development Department to qualify for an income tax credit. The bill clarifies that investments of capital assets made during the pre-certification stage qualify. The bill also specifies the procedure for disallowing the income tax credit if the property is not used for electronic commerce purposes and is exempt from property taxation within three years.
Effective date: November 26, 2003

House Bill 2671

Relating to buildable land supply within the urban growth boundary

HB 2671 adds new conditions under which a business can claim a long-term, non-urban enterprise zone property tax exemption. The conditions are: the total cost of the project exceeds $200 million; the facility employs at least ten full time employees; employees be hired at 150% of the county's average annual wage; and the facility is located ten or more miles from Interstate-5.
Effective date: November 26, 2003

House Bill 2299

Relating to business development tax incentives

HB 2299 revamps the Enterprise Zone Property Tax Exemption Program. The measure reduces the minimum investment needed to qualify for long-term non-urban enterprise zone tax

exemptions; establishes a Construction-in-Process exemption for property located in an enterprise zone; modifies the scope of investments that qualify for electronic commerce income tax credit; clarifies how fees are collected and distributed in the Strategic Investment Program; establishes Rural Renewable Energy Development Zones; and delete the requirement that a contractor or subcontractor pay the prevailing wage for a locality where construction, addition, modification, or installation is being performed in specific enterprise zones.
Effective date: November 26, 2003

Industrial Lands/Shovel Ready Sites

House Bill 2691

Relating to industrial zoning of mill sites

HB 2691, known as "The Mill Bill," streamlines the process for re-opening old lumber mills thereby increasing the supply of industrial land in Oregon. The bill provides for exception to statewide land use planning goals regarding agricultural and forest lands, and goals relating to urbanization, to allow abandoned or diminished mill sites to be zoned for any level of industrial use.
Effective date: June 10, 2003

Senate Bill 715

Relating to building codes

SB 715 requires the creation of a rapid approval team of state building code officials to review and inspect construction projects which are essential or vital to the state's economic well being. Essential projects are defined as projects over 100,000 square feet for traded-sector industries; projects on industrial lands listed by the Director of the Department of Economic and Community Development (OECDD) as ready for development; or projects designated by the Director of OECDD. It requires the Director of the Department of Consumer and Business Services and the rapid approval team, upon request, to determine whether adequate resources are available to ensure that essential projects proceed in a timely, consistent and flexible manner. It also authorizes the director to take all reasonable and necessary action to ensure that essential projects proceed in a timely, consistent, and flexible manner.
Effective date: January 1, 2004

International Trade Development

House Bill 2252

Relating to International Trade Commission

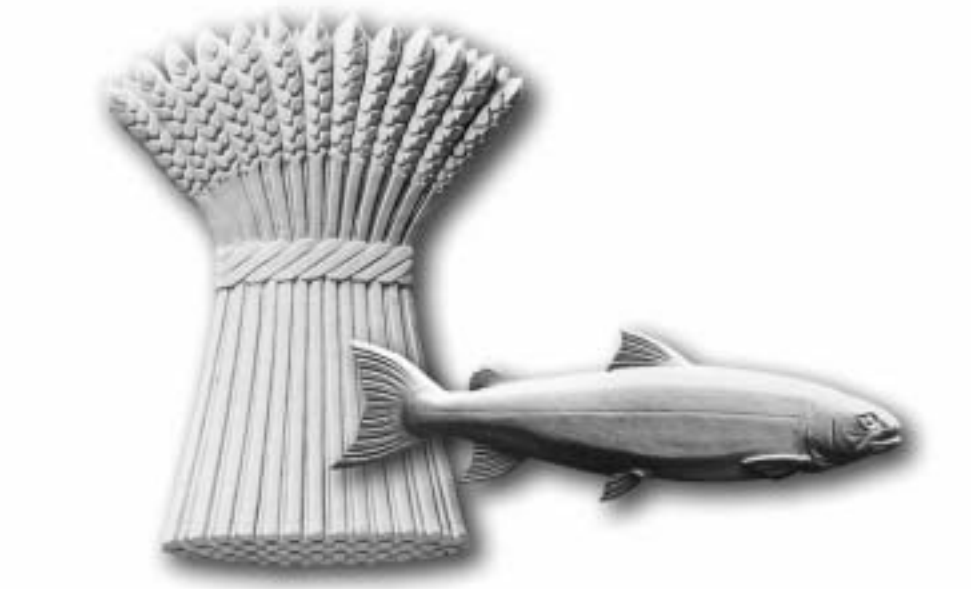
HB 2252 changes the International Trade Commission's membership from nine to fifteen members appointed by the Governor representing businesses that specialize in international trade and traded sector industries. At least one member of the International Trade Commission will be a member of the Oregon Economic and Community Development (OECD) Commission.

The International Trade Commission advises governmental bodies, agencies, and private persons on the development and implementation of state policies and programs relating to international trade and recommends changes in state policies and programs relating to international trade to the Director of the OECDD and the OECD Commission.
Effective date: January 1, 2004

Economic Issues

Transportation

Budgets and Lottery Bond Projects; Revenue and Bonding; Transit; Rules of the Road; Driving Under the Influence; Law Enforcement; Driver Licensing; License Plates / Registration; Manufactured Structures; Auto Insurance; Business Regulation; Aviation; Budget Notes from HB 5077 and HB 5045



2003 Summary of Legislation

Budgets and Lottery Bond Projects

House Bill 5077

Department of Transportation (ODOT) Budget

HB 5077 includes appropriations and expenditure limits for several agencies including ODOT (sections 81-86). ODOT's total budget is $2.17 billion including federal funds.

Highlights:

- Internally reallocates $40 million to highway/bridge preservation
- Eliminates 89 FTE from vacant positions, increases some temporary or contract services to maintain service levels
- Adds 5 FTE for access management in regions, 11 FTE for project delivery
- Maintains $9.5 million support for operation of Willamette Valley passenger rail and connecting bus service ($3.9 million in general funds plus Transportation Operating Funds including HB 2148 transfer below)
- Eliminates inflation factor for Services and supplies, and other outlays
- Removes projected employee merit increases
- Adds $5 million to Immediate Opportunity Fund for projects related to economic development

House Bill 2148

Willamette Valley Passenger Rail

HB 2148 includes a provision (section 9) transferring $4.9 million from the Environmental Quality Information Account (customized license plate fees) to the Transportation Operating fund. This is a one-time transfer that will fund a portion of the operating costs of the Willamette Valley passenger rail program and its connecting bus service. Section 21 of the bill, which would have distributed $16 million of highway funds to cities and counties instead of ODOT, was repealed by the later passage of SB 469.

House Bill 3446

Lottery Bond Distributions

HB 3446 authorizes issuance of lottery bonds for certain purposes including:

- $8 million for industrial rail spurs (section 10)
- $2 million for short line rail projects (section 6)
- $35.3[1] million for South Metro Commuter Rail (section 7)
- $3.5 million for small port maintenance dredging (section 12)

Senate Bill 5503

Aviation Department Budget

SB 5503 funds the Department of Aviation with $14 million in Federal and other funds (fees).

Highlights:

- Grants to cities for airports and hangar construction
- Eliminates projected employee merit increases and inflation factor

House Bill 5045

State Police Budget

HB 5045 funds the Patrol Division with $412.6 million in lottery and general funds.

Highlights:

- Restores 40 of 101 trooper positions eliminated in 2002 Special Session
- Internal reorganization transfers Capital Mall, Legislative Security, and Dignitary Protection from Patrol to Criminal Investigation Division
- Shifts funding for truck inspectors from general fund to federal grant funds transferred from ODOT
- Reduces or eliminates funding for merit increases and inflation

[1] Increased from $20 million authorized in 2001 but not issued

Revenue and Bonding

House Bill 2041

Oregon Transportation Investment Act (OTIA) III

HB 2041 authorizes up to $1.9 billion in bonding, including $1.3 billion for state and interstate bridge projects, $300 million for local bridge projects, and $300 million for highway modernization projects. Advance construction funding and additional revenues allocated for city and county maintenance bring the total investment to $2.5 billion over the next ten years. To provide revenue for repayment of the bonds, the bill increases biennial registration fees on cars and other light vehicles from $30 to $54 (but reduces hybrid vehicle fees from $60 to $54). It increases truck registration fees by 53 percent, and truck weight-mile taxes by nearly 10 percent. Also increased are certain driver licensing fees. The bill provides tax credits to buyers of new diesel truck engines for tax years 2005 through 2007 to provide an incentive to buy the cleaner-burning engines.

The principal purpose of HB 2041 is to fund bridge repairs and replacements throughout the state. Several hundred state bridges are reaching the end of their design life and many of them have developed substantial sheer cracking over the past few years. The deterioration has led to postings of bridges for lower truck weight limits and, in some cases, long detours for truck traffic.
Effective date: January 1, 2004

House Bill 2213

Bonding Changes and GARVEE Bond Authority

HB 2133 authorizes use of Grant Anticipation Revenue (GARVEE) Bonds backed by anticipated federal moneys for transportation projects that qualify for federal funds. GARVEE Bonds generate "up-front" capital for transportation projects. The federal government authorizes use of federal-aid highway funds for debt-financing, but prior to passage of HB 2213, Oregon bond statutes did not clearly cover this type of bonding. The bill also increases the limit on short term borrowing from $25 million to $100 million, eliminates ODOT's statutory General Obligation bond limit, and changes the maturity period on Highway User Tax Bonds from 30 years to the expected economic life of the improvement, which in the case of bridges is longer than 30 years.
Effective date: June 4, 2003

House Bill 3231

Use of ID Card Fees for Senior and Disabled Transportation

HB 3231 increases fees for state-issued identification cards from $22 to $25 (paid each 8-year renewal) and allows the fee revenue to be used for senior and disabled transportation.
Effective date: July 22, 2003

House Bill 3582

County Allocation Study

HB 3582 directs the Association of Oregon Counties to appoint a work group to study the allocation of state highway funds to individual counties. County allocations are currently based on the number of vehicles registered in the county. The bill directs the work group to consider special needs of high-growth counties, sparsely populated counties, and other allocation aspects. The bill requires the work group to report no later than February 1, 2005.
Effective date: September 17, 2003

Senate Bill 772

Public-Private Partnerships

SB 772 directs ODOT to establish the Oregon Innovative Partnership Program to solicit, accept, and evaluate proposals for transportation projects from private entities and units of government. Under the bill, ODOT is allowed to enter into agreements with private entities or units of government using any financing mechanisms, including franchise or user fees. The bill creates the State Transportation Enterprise Fund to finance projects funded by bonds, grants, and other money. It permits ODOT to use the Oregon Transportation Infrastructure Fund to ensure repayment of loan guarantees or extensions of credit made to or on behalf of private entities. It allows ODOT to exercise the power of eminent domain to acquire property or other rights in property regardless of whether the property will be owned by the department. It also allows

ODOT or other units of government to create new districts, or to designate existing districts, in which a project is located, and require all revenues from franchise or user fees be used for the benefit of the district. It increases ODOT's pledge limit to (from $10 to $50 million) to ensure repayment of loan guarantees made to or on behalf of municipalities and private entities. SB 772 incorporates the recommendations of an Innovative Finance Advisory Committee appointed by the Transportation Commission as a result of 2001 legislation
Effective date: September 22, 2003

Transit

House Bill 3183

Transit Payroll Taxes

HB 3183 includes provisions (sections 7-11) increasing the maximum payroll tax rate that can be levied by transit districts. Current law allows certain districts to impose a payroll tax on wages of employers within their districts by adoption of an ordinance. Tri-Met and Lane Transit District currently levy payroll taxes. The maximum rate under current law is 6/10 of one percent of wages paid to individuals or of net earnings on self-employment. HB 3183 raises the maximum by 1/10 of one percent but requires any increase to be phased in over a ten-year period and not to begin until the economy of the district has recovered. It also limits any annual increase to .02 percent. Tri-Met testified that the bill is important to them at this time because their request for federal funds for light rail expansion must show the ability to cover operating costs in the future.
Effective date: November 26, 2003

Senate Bill 180

Special Transportation Funds to Tribes

SB 180 allows distribution of Elderly and Disabled Special Transportation Funds directly to qualifying tribes. Under current law, ODOT distributes money from this fund to mass transit districts, transportation districts, and counties, but not directly to tribes. The 2001 Legislative Assembly (in SB 770) directed state agencies to promote positive government-to-government relations with Indian tribes in Oregon, and to cooperate with tribes in the development and implementation of programs of the state that affect tribes. SB 180 brings the transit grant program in line with these directives.
Effective date: September 17, 2003

Rules of the Road

House Bill 2176

Passing Emergency Vehicles

HB 2176 bill requires a driver to maintain a safe distance when passing emergency vehicles or ambulances at the scene of an accident or incident. The driver is required to change out of the adjacent lane if possible or to slow down when passing the scene. Failure to maintain a safe distance is a Class B traffic violation punishable by a maximum $360 fine.
Effective date: January 1, 2004

House Bill 2338

No Minors in the Back of Pickups

HB 2338 prohibits carrying minors in the open beds of pickups unless doing so for work under applicable work laws and rules. It provides exceptions for travel in parades and for travel between a hunting camp and a hunting site if the minor is a licensed hunter. Violation of the law is a Class B violation punishable by a maximum $360 fine.
Effective date: November 26, 2003

House Bill 2661

Speed Limits, Public-Private Research, "Tag and Tow"

HB 2661 combines several unrelated provisions:

1. Allows ODOT to increase interstate speed limits up to 70 mph (65 for trucks and buses) if traffic and engineering analysis of the particular interstate segment indicate that the higher limit is reasonable and safe under the existing conditions. Limits are currently 65 for rural interstates (55 for trucks and buses) and 55 for urban interstates. The bill specifies that if the agency increases speed limits to 70 mph for cars, the truck and bus speed will be increased to

65 mph (i.e. restricts the car-to-truck differential to no more than five mph).
2. Consolidates and updates speed statutes.
3. Allows ODOT to establish a public-private research and development program through joint agreements with individuals, nonprofits, businesses, or the Board of Higher Education (section 18). It also allows ODOT to recover a financial benefit if agreements lead to marketable products or methods.
4. Clarifies that ODOT can "tag and tow" vehicles in highway right-of-way (section 1). The agency had been performing this function under delegation from the Oregon State Police (OSP) until the OSP was advised that they could not legally delegate such authority.
5. Section 4b delays the effective date of SB 179 (school speed zones - see entry below)

Effective date: January 1, 2004

House Bill 2933

Accident Reports

HB 2933 increases the threshold of property damage that requires drivers to file accident reports from $1,000 to $1,500. It also deletes a requirement that the owner/driver of an undamaged vehicle report an accident so long as the accident does not involve injuries and no towing is required. Under current law, drivers of damaged and undamaged vehicles must report such accidents if at least one vehicle sustains the threshold level of damage. The bill maintains the requirement for all drivers to report the accident if there are any injuries or if either of the vehicles is towed.

Effective date: January 1, 2004

Senate Bill 179

School Speed Zones

SB 179 modifies school speed zones by creating several types of school zones. It is intended to provide more certainty to motorists as to when the 20 mph school speed limit applies. The current standard, "when children are present", has created uncertainty for motorists, law enforcement, and judges. For school zones that are adjacent to schools, the type of zone will depend on the surrounding speed designation. If a zone is adjacent to a school in a residential speed area (30 mph designation or less), the 20 mph school zone speed limit will apply at all times. If the school zone is adjacent to a school, but in a non-residential (i.e. higher than 30 mph designation) area, the 20 mph will apply only at those times of day indicated on signs or when yellow flashing lights are activated. If the school zone is a crosswalk not adjacent to a school, the 20 mph speed limit will apply when children are present and ready to enter the crosswalk, when a crossing guard is present, when yellow school zone lights are flashing, or at times specified on signs. The bill requires signing that informs passing motorists when the 20 mph speed limit applies for each of these types of zones. Under the bill cities are authorized to sign for and apply double fines when flashing lights are activated, or in crosswalk areas away from the school property, but not in residential school zones.

Effective date (delayed by HB 2661): July 1, 2004

Senate Bill 315

Motorists to Remain Stopped for Pedestrians

SB 315 changes a motorist's responsibility toward pedestrians. Failure to "yield" to a pedestrian becomes failure to "stop and remain stopped" for a pedestrian in certain circumstances. The change requires a motorist to remain stopped until the pedestrian has cleared the travel lane of the motorist and the adjacent lane. The requirement to remain stopped until the pedestrian clears the adjacent lane applies when in marked and unmarked (corner) crosswalks without a signal. If a pedestrian is legally crossing in a signalized crosswalk, the driver is to remain stopped until the pedestrian finishes crossing the street.

Effective date: January 1, 2004

Senate Bill 795

Roller Sport Helmet Requirement

SB 795 requires skateboarders, scooter riders, and in-line skaters under the age of 16 to wear helmets while operating on public property or premises open to the public. This is similar to

the requirement for helmets on bicycle riders under the age of 16.
Effective date: January 1, 2004

Senate Bill 946

Graduated Driver License

SB 946 exempts 16 and 17 year-old drivers from the existing prohibition on carrying non-family passengers during the first year of the license if the driver's parent is in the vehicle.
Effective date: January 1, 2004

House Bill 2432 – Legislation not Enacted

Motorcycle Helmet Repeal

HB 2432 would have allowed motorcycle and moped operators aged 21 or over to ride without helmets. The current requirement for all motorcycle and moped operators to wear helmets is a result of legislation referred to voters by the 1987 Legislature and passed in the 1988 primary election. Oregon also had a mandatory motorcycle helmet law between 1968 and 1977.

Driving Under the Influence

House Bill 2885

Lifetime License Revocation for Third DUII Conviction

HB 2885 requires a lifetime driver's license revocation upon a person's third conviction of Driving Under the Influence of Intoxicants (DUII). Under current law, the conviction would bring a suspension, not a permanent revocation.
Effective date: January 1, 2004

House Bill 2900

Fine for Refusal to Take a Breath Test

HB 2900 creates an offense and imposes a fine of $500 to $1,000 for refusal to take a breath test under suspicion of DUII. Under current "implied consent" law, a person suspected of DUII who refuses to take a breath test loses his or her license, but the refusal is not an offense in and of itself and no fine is attached. According to the State Police, of the 25,000 drivers arrested for DUII in a year, approximately 3000 refused to take a breath test.
Effective date: January 1, 2004

Senate Bill 302

Guilty or No-Contest Plea Required for DUII Diversion

SB 302 requires a person entering DUII diversion to enter a guilty or no-contest plea and to pay court-appointed attorney fees. It requires the court to withhold entry of the conviction if the person successfully completes diversion. Currently, if a person fails DUII diversion, he or she may still request a jury trial, and the underlying DUII case must be litigated. SB 302 would not allow a person who fails diversion to then request a trial, instead the person's plea of guilty or no contest would be entered upon failure of diversion requirements and the conviction would be entered. The change is intended to motivate successful completion of treatment and to save police agencies, courts, prosecutors, and court-appointed defense attorneys' time in litigating DUII motions and trials.
Effective date: January 1, 2004

Senate Bill 348

Increased Fine for DUII Involving Underage Passenger

SB 348 increases the maximum fine for conviction of DUII if the driver has a passenger under 18 years of age and the passenger is 3 years younger than the driver. It allows a court discretion to fine the driver up to $10,000 if the aggravating factor of a minor passenger exists. It also allows a court to consider passenger age in deciding whether to allow the driver to enter DUII diversion. Under current law, a person is subject to a mandatory $1,000 fine upon first DUII conviction, $1,500 for a second conviction, and $2,000 for a third conviction.
Effective date: January 1, 2004

Senate Bill 421

Criminally Negligent Homicide Involving DUII

SB 421 elevates Criminally Negligent Homicide and Manslaughter in the Second Degree from crime seriousness level 8 to seriousness level 9 if caused by a DUII driver of a motor vehicle. It also elevates Criminally Negligent Homicide to a

Class B felony and increases sentences for criminally negligent homicide involving DUII. As a seriousness level 8, a judge can give a defendant a probation sentence without finding any mitigating factors. The change makes prison the presumptive sentence even if the DUII driver has no prior convictions. The elevation to a Class B Felony allows the State to continue to require 3 years of post-prison supervision time after a defendant is released from incarceration.
Effective date: January 1, 2004

Law Enforcement

House Bill 2217

Farm Truck Safety Inspections

HB 2217 subjects farm trucks carrying goods in interstate commerce to state safety inspections. This brings the state into compliance with federal law and avoids a threatened loss of federal funds for the truck inspection program. The bill also requires ODOT to develop an annual vehicle safety plan using performance measures. Oregon farm-plated vehicles carrying goods in interstate commerce are currently subject to federal safety standards and to inspection by federal inspectors, but because of an exemption in Oregon law, they have been exempt from state regulation unless they are over 80,000 pounds or are operating for hire. HB 2217 subjects Oregon vehicles in interstate commerce to state regulation but continues to exempt farm vehicles in intrastate commerce. Note: Interstate Commerce case law defines many hauls between points within Oregon as legally interstate because some or all of a product taken from an Oregon farm to an Oregon elevator or other shipping point within the state, is later taken out of the state.
Effective date: July 17, 2003

House Bill 2759

Traffic Fine and Fee Increases

HB 2759 increases maximum fines for criminal violations by 20 percent, and for felonies and misdemeanors by 25 percent. The bill applies to traffic and other crimes. The fine level appearing on traffic tickets (the "base fine" plus fees) will increase by an additional increment because the method for calculating the base fine is also changed, from 40 percent of the maximum fine, to 50 percent of the maximum fine. Another provision of the bill reduces the discretion of judges to waive portions of a fine. Revenue from the increased fines and fees, along with the bill's temporary 30 percent increase on certain court filing fees, will help fund law enforcement and courts.
Effective date: August 29, 2003

House Bill 3001

Safety Corridors

HB 3001 allows ODOT to designate any safety corridor as a double fine area and extends the sunset on double fine authority through 2008. A safety corridor is a stretch of state or local highway with a history of higher crash rates than the statewide average for similar highways. ODOT works with local and state law enforcement agencies to designate corridors, target enforcement, make engineering improvements, and educate the driving public. There are currently 13 designated safety corridors in the state. The 1999 Legislature required ODOT to select two of these safety corridors for a two-year pilot program in which base fine for some traffic offenses were doubled. U.S. 26 between Sandy and Government Camp, and Oregon Highway 18 from Bellevue to Grand Ronde were selected. The 2001 Legislative Assembly extended the program through 2003.
Effective date: May 24, 2003

Senate Bill 764

Red Light Cameras

SB 764 increases the number of intersections where "red light cameras" may be operated in cities already authorized to issue citations on the basis of red light camera photos. This includes cities over 30,000 population and the City of Newberg. The increases allowed in the bill are: from 4 to 8 intersections in cities over 30,000 and Newberg; and from 8 to 12 intersections in Portland. The bill also requires yellow lights at these intersections to stay yellow for at least the time recommended by the Institute of Transportation Engineers. Photo red light cameras are placed at intersections to automatically photograph vehicles that fail to obey red traffic lights.

Effective date: January 1, 2004

Senate Joint Resolution 13 – Legislation not Enacted

State Police in the Highway Fund

Senate Joint Resolution 13 would have referred a constitutional amendment to voters allowing Highway Fund money to be used for highway patrol. Article IX, Section 3a of the Oregon Constitution dedicates revenue from fuel taxes and any other taxes on the operation or ownership of passenger motor vehicles to use on construction and operation of highways and highway rest areas. Prior to 1980, this constitutional provision also allowed the state Highway Fund to be used for state parks and highway patrol. A measure referred to voters by the 1979 legislature removed state parks and police from the constitutional dedication and thus from the Highway Fund. The Oregon State Police are currently a general funded agency. Staffing decreases since 1980 have led to concerns regarding law enforcement effectiveness and highway safety. Referral and passage of SJR 13 by voters would not have increased funding or allocated existing highway funds, but would have allowed the legislature to provide additional funding for highway patrol from the Highway Fund. It would have also allowed local governments to use a portion of their share of the highway fund distributions on police or sheriff patrol activities.

Driver Licensing

House Bill 2986

Health Care Provider Reporting

HB 2986 provides civil immunity for a health care provider who does not report to DMV impairments affecting a person's ability to drive. The bill also specifies that such reports are confidential and may not be used as evidence in civil or criminal action, but they may be used for administrative hearings or appeals regarding a person's qualifications to drive. DMV was directed by legislation in 2001 (HB 3701) to work with representatives of the medical community to arrive at reasonable reporting procedures for persons with impairments that affect their ability to safely operate a vehicle. Prior to 2001, mandatory medical reporting applied only to conditions leading to the loss of consciousness. HB 3701 provided civil immunity for professionals making such reports in good faith but did not provide such immunity for a failure to report.

Effective date: June 24, 2003

Senate Bill 342

Driver License Suspensions for Drug Offenses at School

SB 342 allows school districts to request DMV to suspend the driver's license of a student suspended or expelled at least twice for activities involving controlled substances on school property or at a school event.

Effective date: August 22, 2003

License Plates / Registration

House Bill 2388

Removal of Registration Stickers by Vehicle Dealers

HB 2388 requires vehicle dealers to remove the registration date stickers from the license plates of sold cars unless the dealer submits the title and registration paperwork to DMV for the buyer. It also allows dealers to sell 10-day trip permits to buyers. The bill is intended to reduce the practice of operating under the previous owner's registration until it expires.

Effective date: January 1, 2004

Senate Bill 508

Special and Group License Plates

SB 508 limits to three the number of plate designs issued through the special plate program. The special plate program currently includes the salmon plate, the Cultural Trust Fund plate, and the Crater Lake plate. The bill also increases the fee for establishing a new group license plate and increases from 50 to 500, the number of a particular group's plates that must be sold or renewed each year to keep the plate being issued. There are currently 30 different group plates. The proliferation of different license plates requires additional inventory and administration and in most cases

does not generate revenues anticipated by sponsoring groups.
Effective date: January 1, 2004

Senate Bill 899

Preference for In-State License Plate Manufacture

SB 899 requires Oregon vehicle license plates to be manufactured in Oregon unless Oregon bids are not reasonably competitive or the work cannot be performed in Oregon. Under this "preference clause" which currently applies to state printing, "reasonably competitive" has been determined to be within ten percent of the lowest responsible bid. Until recently, the lowest responsible bid has been from an Oregon company, but the lowest bidder in 2002 was a Canadian company. SB 899 requires the current contract with the Canadian manufacturer to be re-opened to competitive bidding in 2003 and the in-state preference to be applied.
Effective date: September 17, 2003

Manufactured Structures

Senate Bill 468

Manufactured Structure Registration

SB 468 changes the process for tracking sale and location of manufactured homes and it moves responsibility for their registration from DMV to the Department of Consumer and Business Services (DCBS) and counties. The current system, which requires titling of the homes with DMV and approval by counties was established some 30 years ago when the homes were small and were easily moved. Because the homes can still be moved, a registration and tracking system is necessary to assure that property taxes are paid before the structure is moved, and that counties and security interest holders are aware of the move. The bill also transfers the regulation of manufactured home dealers from DMV to DCBS. DCBS already trains and licenses installers, administers a consumer assistance program, and tracks structures under construction. State agencies, counties, manufacturers, lenders, and homeowners met throughout the interim to design the process in SB 468.
Effective date: August 14, 2003

Senate Joint Resolution 14

Referral of Constitutional Amendment Regarding Mobile Home Fees

Senate Joint Resolution 14 refers to voters a constitutional amendment that would delete a reference to mobile homes from a constitutional provision related to taxation on the ownership, operation, or use of motor vehicles. Because of the outdated reference to mobile homes, any fees on manufactured homes are currently dedicated to the Highway Fund or to parks. This dedication makes sense for passenger vehicles, commercial vehicles, and recreational vehicles, but not for mobile homes.
Refers question to November 2004 General Election

Auto Insurance

House Bill 2043

Mileage Based Insurance

HB 2043 allows a tax credit of $100 per vehicle for insurance companies that offer auto insurance plans that are at least 70 percent based on vehicle mileage or hours of use. Applies to tax years 2005 through 2009 and limits total tax credits available to $1 million for all taxpayers over all eligible tax years. Currently, insurance policies only provide a small discount for policy holders who use their vehicles infrequently. Encouraging insurance companies to provide mileage-based insurance would help some drivers reduce costs and is also intended to be a factor in limiting overall use of highways.
Effective date: November 26, 2003

House Bill 3668

Personal Injury Protection

HB 3668 increases the level of personal injury protection (PIP) required on vehicle insurance policies from $10,000 to $15,000. It also prohibits medical services providers from charging a person receiving PIP benefits more than the provider charges the public or the charges allowed under workers' compensation fee schedules. Though insurance companies recommend higher levels of coverage because of increased medical service costs since the minimum was set in 1989, many drivers carry

the minimum level required by law. The $10,000 coverage is adequate for many vehicle accidents, but those that require trauma services often entail costs of care beyond the minimum coverage. Emergency responders and trauma service providers are often only reimbursed by the insurance company, and thus receive no reimbursement above the minimum coverage level.
Effective date: January 1, 2004

Senate Bill 260

Use of Credit History for Insurance Rating

SB 260 restricts use of credit history for auto insurance purposes (also applies to homeowner, renter, and boater insurance). It limits use of credit history to underwriting decisions at first issuance of a policy and permits the information to be used only in combination with other underwriting factors. The bill prohibits cancellation or non-renewal of policies based on a credit history and use of credit history to re-rate insurance premiums at renewal. It requires notice be provided when an initial adverse underwriting decision is made based on credit history and requires certain information in the notice, including how the consumer can get a free copy of the credit report and how to dispute the accuracy of a report.

Over the past decade, insurance companies have begun using credit scores for individuals who apply for or renew personal insurance policies. The scores may currently be used in rate-making decisions, presumably raising premiums for individuals with poor credit history and/or lowering premiums for those with good credit history.
Effective date: January 1, 2004

Business Regulation

House Bill 2455

Vehicle Sales by Towing Companies

HB 2455 allows a towing company or vehicle repair business to sell 12 or fewer vehicles a year without having to be licensed as a vehicle dealer. It exempts vehicles sold to auctions or to other dealers. Towing companies, and to a lesser extent, vehicle repair businesses, obtain vehicles through possessory liens and are entitled to sell those vehicles. Some towing companies are licensed vehicle dealers, but many are not. HB 2455 was introduced to clarify requirements for towing companies following Attorney General advice in 2002. The bill is intended to protect consumers while not affecting occasional sales.
Effective date: June 24, 2003

Senate Bill 471

Pack and Load Service Regulation

SB 471 requires businesses performing pack and load services to register with ODOT and to have liability insurance and a bond. A pack and loader is a person or company in the business of packing household-type goods and/or loading them for transport but who does not provide the vehicle. A "household goods carrier" is a traditional moving company that provides pack and loading services as well as the vehicle and transport service. Household goods carriers are currently regulated by ODOT, but persons who perform just pack and load services are not. The new registration program is intended to assist consumers and law enforcement in tracking individuals who misrepresent their services or damage household goods.
Effective date: January 1, 2004

House Bill 2749 – Legislation not Enacted

Self Service Gas

HB 2749 would have permitted self-service dispensing of gasoline under certain conditions. It would have required a station owner to provide attendants and fueling service at no extra cost to persons 55 years of age or older, persons with disabled parking permits, and persons with medical conditions that make dispensing of fuel dangerous or difficult. Self-service fuel pumps for the general public have been prohibited in Oregon since 1951. Oregon was one of the first states to ban self service gas and the ban, according to testimony given to the 1951 Legislature, was because of safety and fire hazard. Many other states followed, but states started eliminating their bans in the late 1960's. Oregon and New Jersey have maintained their bans.

Aviation

House Bill 2173 – Legislation not Enacted

Aviation Civil Penalty Authority

HB 2173 would have given the Aviation Department civil penalty authority for aircraft owners and pilots who fail to register with the state. Under current law, pilots and aircraft certified by the federal government are required to be registered with the state Aviation Department to operate here. Although failure to register as a pilot and failure to register an aircraft in Oregon are currently Class A violations and punishable by a maximum $600 fine, the Department of Aviation cannot issue citations, and has not found a jurisdiction willing to process such violations. The department estimates registration compliance levels at about 60 percent due to their lack of enforcement capability. Pilot registration fees ($8 per year) fund air search and rescue efforts of the Oregon Office of Emergency Management. Aircraft registration fees ($50-$187 per year) help to fund the Department of Aviation and state airport operations.

Budget Notes – From House Bill 5077 (ODOT) and House Bill 5045 (OSP) Budget Reports

- Directs ODOT to reduce the time it takes to issue access permits and to integrate the permit review process with local government reviews. Directs ODOT to work with the Legislative Fiscal Office on an evaluation process and to report to the Emergency Board.

- Specifies expectation that ODOT will contract with the private sector in bridge projects and implementation of HB 2041, while maximizing traffic movement, expedient delivery, involvement of Oregon construction firms and employees, and private sector input on delivery methods and contract sizes. Directs report to an interim policy committee and the Emergency Board.

- Directs ODOT to report to the next legislative assembly on each project completed under the Immediate Opportunity Fund.

- Directs ODOT to partner with the State Police to perform commercial vehicle safety inspections and allocates $3.2 million for activities performed by the State Police.

- Directs ODOT to assist local governments in analyzing the North Willamette River Crossing Study and to provide a status report to the Emergency Board.

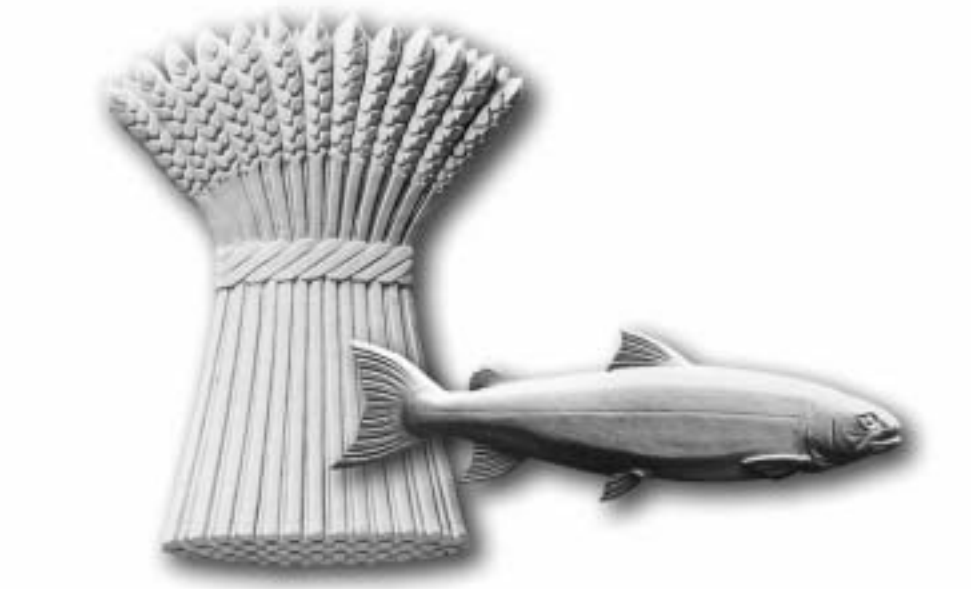
- Directs Board of Maritime Pilots to study access to on-the-job training on barges with a goal of increasing minority participation and to report to the Emergency Board.

- Directs State Police to report to the Emergency Board on the status and optimal distribution of staff across the state for the Patrol, Criminal, and Fish and Wildlife Divisions and to provide a timeframe for achieving the optimal distribution.

Governmental Issues

General Government

Agencies; Boards and Commissions; State Property; Public Employees; Public Contracting; Open Source Software; Public Safety; Utilities / Special Districts; Elections; Development / Housing; Military and Veterans; Libraries; Major League Baseball; Wrestling



2003 Summary of Legislation

Agencies, Boards and Commissions

House Bill 2267

Relating to tourism

House Bill 2267 abolishes the Oregon Tourism Program and transfers the records and other property of the program to the Oregon Tourism Commission. The bill establishes a one-percent state tax on transient lodging and transfers the revenue, less Department of Revenue administrative costs, to the Oregon Tourism Commission to fund state tourism marketing programs. The bill converts the Oregon Tourism Commission into a semi-independent state agency, requires the Governor to appoint all members, and specifies the qualification terms of those members. The bill specifies that the duty and purpose of the commission is to implement a comprehensive marketing plan to promote tourism in Oregon.
Effective date: November 25, 2003

House Bill 2526

Relating to administrative hearings

HB 2526 repeals the sunset on HB 2525 (1999), which created the Hearings Officer Panel, and changes the name of that body to the Office of Administrative Hearings. Hearings officers are hereafter referred to as Administrative Law Judges, are to serve four-year terms, and may be removed only for certain specified causes.

The Office of Administrative Hearings presides over contested case hearings conducted by almost all state agencies with the exception of a handful of state agencies that are specifically exempted from the purview of the office. HB 2526, in addition to eliminating the sunset and making the office permanent, also provides the office greater autonomy, granting the Chief Administrative Law Judge additional stability by making him or her subject for removal for but a few specified reasons and granting him or her additional enumerated powers, such as the appointment of student interns.
Effective Date: May 22, 2003

House Bill 3120

Relating to agencies

HB 3120 directs the Department of Business and Consumer Services (DCBS) to appoint an advisory committee to develop criteria for streamlining state agency rules, to sunset December 31, 2004. The advisory committee appointed under this section is to present the determinations and recommendations made by the advisory committee under this section to the Governor and the Seventy-third Legislative Assembly.

In addition, the measure makes several other discrete changes. The period of time an agency is given to consider a petition is increased from 30 to 90 days. Occupational licensing agencies are granted the authority to deny, suspend, or revoke a license based on conduct outside the scope of the license, so long as that conduct is substantially related. State agencies are authorized to enter into agreements for information exchange, under certain conditions.
Effective Date: September 2, 2003

House Bill 3442

Relating to wine boards

House Bill 3442 abolishes the Wine Advisory Board and establishes the nine-member Oregon Wine Board as a semi-independent state agency. The measure also sets requirements for paying a wine tax by a person selling or providing grape products to a winery. Collection of certain wine taxes is transferred to the Oregon Liquor Control Commission. The measure allows the Governor to appoint a temporary Wine Board administrator to transition functions, duties, and accounts from the Wine Advisory Board to the Oregon Wine Board.
Effective date: September 23, 2003

State Property

House Bill 2175

Relating to military facilities

HB 2175 authorizes the Oregon Military Department (OMD) to sell, exchange or lease real property, and authorizes the Oregon National Guard Association to utilize armories and other military facilities at no cost.

Statute currently allows OMD to sell state-owned armories that are no longer suitable for use by the department. However, OMD is also in possession of real property that is not needed, but does not fit the classification of "armory." Because statute provides authority to sell only armories, the department is not able to dispense with this surplus real property, even though some of it is not suitable for military uses. Examples of real property owned by state through OMD include Camp Rilea in Warrenton and Camp Withycombe in Clackamas. Federal approval would be required to sell the property in cases where an applicable property is owned jointly by the state and federal government.

The Oregon National Guard Association (ONGA) is a professional organization that supports the constitutional roles and missions of the National Guard by influencing legislative, congressional, and executive action. All commissioned officers and warrant officers of the organized militia are eligible for membership, including retired personnel. The ONGA currently utilizes armory facilities for various activities; HB 2175 allows them to use these facilities free of charge.

Effective Date: January 1, 2004

House Bill 2739 – Legislation not Enacted

Relating to state real property

HB 2739 would have required all state agencies to sell, lease, or otherwise dispense with all real property not needed for public use unless it was determined that doing so would not be in the public interest or was inconsistent with the trust responsibility of the state or agency. Current law allows state agencies to dispose of real property if it is deemed unnecessary, or if doing so could further the public interest. HB 2739 would have altered the current permission to dispose of surplus real property to a directive to do so.

Senate Bill 676 – Legislation not Enacted

Relating to state-owned vehicles

SB 676 would have prohibited state agencies other than the Department of Administrative Services (DAS) from owning light-duty vehicles unless the agency could demonstrate that its cost of doing so was less than that of comparable vehicles owned and operated by DAS.

The measure was developed by the State-Owned Vehicle Efficiency Task Force, which was created by SB 817 (2001). The task force was charged with studying the costs associated with state-owned general purpose vehicles, including the feasibility of replacing such vehicles with rental cars from private sector companies and with considering the impact replacing vehicles on the overall cost of fleet operations.

Pubic Employees

House Bill 2576

Relating to public employees prohibited from striking

Oregon law currently prohibits emergency telephone workers, police officers, firefighters, and guards at correctional institutions and mental hospitals from going on strike or recognizing picket lines while in the performance of official duties. HB 2576 adds parole and probation officers to the list of employees who are prohibited from striking.

Statute (ORS 243.742-243.756) provides binding arbitration as an alternate method of dispute resolution for employees prohibited from striking. Because the aforementioned employees are considered vital to public safety, and because a strike by one or more of those classifications could constitute a threat to public safety, arbitration offers a way to resolve disputes that allows employees to remain on the job for the duration of the resolution process.
Effective Date: January 1, 2004

Senate Bill 494 – Legislation not Enacted

Relating to union organizing

SB 494 would have prohibited public employers, recipients of state grant monies, and businesses receiving more than half of their revenues from state contracts from using state funds to assist, promote, or deter union organization activities. The measure set up civil action procedures for violations and penalties for actions taken in bad faith.

Public Contracting

House Bill 2341

Relating to public contracting

In order to revise and reorganize the Public Contracting Code, House Bill 2341 repeals almost all of the existing public contracting law (ORS 279) and separates the provisions into three separate chapters (279A, 279B, and 279C.) The modifications to public contracting statutes become operative March 1, 2005, but rulemaking activities are authorized effective September 22, 2003.

ORS 279A applies to all public contracting activities whether covered by ORS 279B or ORS 279C. This chapter consolidates over-arching provisions, definitions, policy statements, and contract preferences in one location. The chapter outlines who is subject to Public Contracting Code; the authority of public bodies to enter into contracts and develop administrative rules; and specifies who is exempt from the competitive bidding process. ORS 279A contains procurement requirements that apply only to state agencies and updates and sets guidelines regarding cooperative procurement and intergovernmental relations.

ORS 279B applies to general procurements and contains all contracting activities relating to nonpublic improvement contracts. The chapter outlines and makes consistent source selection process for procurements. It establishes policy and applicability of public procurement, expands the requirements for describing specifications on procurement contracts. ORS 279B adds new legal remedies that standardize the appeal process for bidders to appeal contracting actions and outlines judicial relief.

ORS 279C applies to public improvement contracting activities relating to construction of roads, bridges, buildings, and other similar public improvements. The chapter reorganizes current law to reflect current contracting practices and consolidates provisions relating to architect, engineering, land surveyors, and related services. Competitive proposals and competitive quotes are added as options for procurement of construction services.
Effective date: September 22, 2003

House Bill 3422

Relating to disclosure of first-tier subcontractors on public improvement contracts

House Bill 3422 requires all bids made to a public contracting agency be opened publicly by the agency immediately after the deadline for submission of bids. Bidders are required to disclose first-tier subcontractors within two hours after bids are due and the disclosure must include the subcontractor's name, type of work, and the dollar value of each subcontract. Deadlines for bid submissions are now required to have a date and time that is Tuesday through Friday between 2 p.m. and 5 p.m. Provisions of

the measure apply to non-highway public improvement contracts valued at more than $100,000.
Effective date: August 1, 2003

Open Source Software

House Bill 2892 and Senate Bill 941 – Legislation not Enacted

Relating to software acquisitions by state government

HB 2892 and SB 941 would have required state government to consider the use of open source software when acquiring new software, provide justification when purchasing proprietary software instead of open source software, and to avoid acquiring products that provide access to state government systems by parties outside of the control of state government. Open source software programs are those whose licenses provide users the freedom to run them for any purpose, to study and modify the program code, and to redistribute copies of either the original or modified program without paying royalties to previous developers.

Public Safety

House Bill 2052

Relating to agreements to perform security functions for the United States

One of a package of bills developed by the Department of Justice following the terrorist attacks of September 11, 2001, HB 2052 is designed to help state or local entities work in conjunction with the federal government. It authorizes those entities to enter into agreements with the United States to perform security functions at federal installations and to be reimbursed for those services. For example, in the event of a natural disaster or terrorist incident that strained federal resources at federal installations in Oregon, a state entity could enter an agreement to provide security at one of those facilities in exchange for reimbursement.

A state agency wishing to enter into such an agreement would need to seek prior approval from the state Attorney General, and must file those agreements with the Department of Administrative Services (DAS). DAS is directed by the measure to maintain an index of these agreements.
Effective Date: February 26, 2003

House Bill 2410

Relating to emergencies

HB 2410 authorizes the Department of Human Services (DHS) to establish a registry of emergency health care providers to help facilitate coordination of response services in the event of an emergency. Health care professionals may choose to register with DHS in order to volunteer their services under statewide coordination and to be dispatched to any place where their services were needed due to the emergency. Registered providers are considered agents of the state for purposes of the Oregon Tort Claims Act for the duration of the event.

HB 2410 also allows DHS to designate health care facilities as emergency health care centers, where emergency health care providers would be allowed to volunteer their services. To be designated as an emergency health care center, a facility must have an emergency operations plan and a credentialing plan to govern the use of emergency workers.

Oregon law authorizes the Governor to declare a state of emergency by proclamation, either in response to a threat that has occurred or is imminent, or at the request of a county governing body through the Office of Emergency Management.
Effective Date: June 11, 2003

House Bill 3154

Relating to emergency communications

HB 3154 abolishes the Primary Public Safety Answering Points Consolidation Incentive Fund. The Office of Emergency Management is directed to transfer any

moneys in the fund to the Emergency Communications Account.

Public Safety Answering Points (PSAPs) are call centers that receive and respond to telephone calls to the 9-1-1 emergency number. There are currently 52 PSAPs throughout Oregon, some serving cities and others serving counties. While some counties have multiple PSAPs, four others, Gilliam, Polk, Sherman and Wheeler, have no PSAPs, and contract with neighboring counties for the provision of 9-1-1 services.

The Primary PSAP Consolidation Incentive Fund was created by HB 3977 in 2001, to be continuously appropriated and available for the purpose of consolidating emergency communications operations and improving efficiency by funding no more than one primary PSAP per county as directed by the Legislative Assembly. HB 3154 effectively repeals HB 3977.
Effective Date: January 1, 2004

Senate Bill 8

Relating to emergency response

SB 8 directs the Department of State Police to work with other law enforcement agencies, the Department of Transportation, and the media to implement the state Amber Alert Plan. The plan was previously implemented through Governor John Kitzhaber's executive order in 2002.

The Amber Alert program was created following the abduction and murder of 9-year old Amber Hagerman from Arlington, Texas. It stands for America's Missing: Broadcast Emergency Response, and is designed to provide timely dissemination of information to the public regarding the abduction of a child, with the goal of safely recovering the child as quickly as possible. Timely response is considered of paramount importance in preventing harm from coming to abducted children.
Effective Date: June 12, 2003

House Bill 3206 – Legislation not Enacted

Relating to urban search and rescue

HB 3206 would have directed the State Fire Marshal to adopt a statewide urban confined space and structural collapse emergency response plan. It would also have directed the director of Oregon Emergency Management to appoint an Urban Search and Rescue Coordinator. Sheriffs and chiefs of police would have been authorized to restrict access to urban search and rescue areas. HB 3206 was designed to provide statewide coordination for training and response related to structural collapse and confined space rescue.

Utilities/Special Districts

House Bill 2227

Relating to water utilities

HB 2227 authorizes water supplier utilities that serve fewer than 500 customers to choose to become subject to financial regulation by the Public Utilities Commission (PUC). Smaller water utilities often do not have the resources to acquire the funds necessary for capital improvements, especially when those funds must all be paid immediately. This can complicate both expansion and improvement of services and emergency repairs of infrastructure.

By becoming subject to PUC financial regulation, small water utilities gain the ability to use rates to generate funding to pay for required capital improvements when it would otherwise be unavailable. In return, HB 2227 authorizes the PUC to impose fines of up to $500 for violation of PUC statute, rules or orders, and directs that such fines be directed back to affected customers. In order to implement the program, PUC is directed to create an application process for water utilities to apply for exclusive service territories.
Effective Date: January 1, 2004

House Bill 2818

Relating to annexation by special district

HB 2818 allows a special district annexing a city at the city's request to do so without a vote of the special district's existing residents under certain conditions. An election would not be required in cases where the city being annexed represents less than 20 percent of the total population of the district it is being annexed into, or if the city's boundary is entirely encompassed by the special district.

Current law requires that an annexation of a city by a special district, after approval of the district's governing board, be approved by a vote of the residents of both the city to be annexed and of the special district itself. However, the cost of holding such elections can be costly; Tualatin Valley Fire and Rescue, for example, encompasses 223 square miles and provides fire protection and emergency medical services to over 400,000 residents. An election can still be triggered via petition of either 100 electors of the special district or 10 percent of its electors, whichever is fewer. Residents of the city to be annexed will still be required to vote to approve the annexation.

Effective Date: January 1, 2004

Senate Bill 321

Relating to natural gas

SB 321 allows the Public Utilities Commission (PUC) to approve a contract authorizing Coos County to construct a natural gas pipeline into territory allocated to another person providing natural gas in Coos County.

The 1999 Legislative Assembly approved the expenditure of up to $24 million in lottery funds for a natural gas pipeline stretching from the interstate gas pipeline in Roseburg to Coos County. Funding was made contingent upon passage of a bond measure in Coos County to provide matching funds, which passed with the necessary double majority. Once the agreement was signed by Coos County and Northwest Natural representatives it was determined that the PUC lacked the statutory authority to approve the contract. SB 321 provides the PUC with the necessary contract authority.

Effective Date: March 28, 2003

Elections

House Bill 2145

Relating to elections

HB 2145 implements the requirements of the federal Help America Vote Act (HAVA), which Congress enacted in 2002 (PL 107-252). HAVA established federal standards for the administration of federal, state and local elections, and will allocate over $3.8 billion to states during the next three years for equipment technology improvements, process improvements and ballot security measures.

The Congressional Research Service estimates that Oregon could receive as much as $42.7 million over the next three years through HAVA; however, receipt of those funds is contingent upon state legislative action to enact the necessary provisions. HB 2145 implements laws necessary for compliance.

Effective Date: April 29, 2003

Senate Bill 552

Relating to elections

In the past few years at least two candidates for U.S. Senate (Paul Wellstone (MN) and Mel Carnahan (MO)) died shortly before the general elections in their states. Oregon has no procedures in place to postpone an election in such a situation so that a replacement candidate could stand for election under Oregon's vote-by-mail system.

The legislature referred a proposed constitutional amendment to voters (SJR 19) that would allow enactment of laws to address this situation. Provided voters approve the constitutional amendment during the November 2004 General

Election, SB 552 sets the statutory process for the Secretary of State to postpone an election and hold a special election if a candidate for a state office dies during the 30 days prior to a general election. The provisions apply only to candidates for the offices of Governor, Secretary of State, State Treasurer, Attorney General, state Senator, or state Representative. Replacement candidates would be selected using the current law process described in ORS 249.190 and ORS 249.205. The special election would be held in the January following the general election.
Referred to Voters at the November 2004 General Election

Senate Bill 102 – Legislation not Enacted

Relating to initiative petitions

Under current law, the chief petitioner of a prospective statewide initiative petition must file a prospective petition with the Secretary of State that contains a statement of sponsorship signed by at least 25 eligible electors. After the prospective petition for a state measure is approved by the Secretary of State, the Secretary sends it to the Attorney General (AG), who begins the ballot title drafting process. The process includes ballot title drafting by the AG, public comment, and depending on challenges to certified ballot titles, the possibility of judicial review by the Supreme Court. If judicial review is triggered, signature gathering is halted until the court completes its review.

The Senate version of SB 102 sought to increase the number of signatures required to begin the ballot title process from 25 signatures to a number of signatures equaling at least 10 percent of the total number of signatures required to certify an initiative for the ballot.

The House version of SB 102 would have increased the number of signatures required for filing a prospective petition for a state initiative measure to 2,500 electors. The House version of SB 102 also transferred the drafting of ballot titles from the Attorney General to Legislative Counsel and also transferred review of ballot titles from the Supreme Court to a three-judge panel of "Plan B" retired judges.

Senate Bill 139 – Legislation not Enacted

Relating to elections

Statewide voters' pamphlets are prepared by the Secretary of State for the primary and general elections held in each even-numbered year. Filing fees for candidate and ballot measure statements are used to pay for a portion of the preparation and production costs. However, the Secretary's budget typically includes an additional General Fund appropriation as the filing fee revenues are not sufficient to cover the cost of producing the pamphlet.

The Senate version of SB 139 changed the filing fees for candidate statements and ballot measure arguments. General election candidate voter-pamphlet space prices would have been increased to $10,000 for President, $7,000 for statewide (U.S. Senator, Governor, etc.), $4,000 for U.S. Representative, $2,000 for State Senator, and $1,000 for State Representative and any other office. The measure would have also established a fee for voters' pamphlet measure arguments based on size, from $500 for six square inches to $2500 for 30 square inches.

The House version of SB 139 included all components of the Senate version, with several additions. The measure would have revised campaign finance reporting laws in several ways, including increasing the threshold for full reporting to $200 (from $50). The measure would have required county clerks to mail ballots between the 14th and 10th days before the date of a vote-by-mail election (current law is between 18th and 14th days). The measure also allowed a county clerk to designate an "end of line" at the county clerk's office at 8:00 p.m. on

election day. This version of the measure also directed the Secretary of State to reimburse county clerks for the expenses of conducting special elections on state measures held on a date other than the primary or general election. The measure also included many technical changes to elections laws.

Senate Joint Resolution 11 – Legislation not Enacted

Proposing amendment to Oregon Constitution relating to sessions of the Legislative Assembly

Six state legislatures (Arkansas, Montana, Nevada, North Dakota, Oregon, and Texas) still meet biennially. SJR 11 would have referred voters a constitutional amendment to require annual sessions of the Legislative Assembly. The sessions would have been limited to 120 calendar days in odd-numbered years, 45 calendar days in even-numbered years, with 5-day extensions by a vote of two-thirds of the membership.

Development/Housing

House Bill 2169

Relating to loan guarantees

HB 2169 authorizes the Department of Housing and Community Services (HCS) to guarantee loans on the commercial components of structures that contain both commercial property and low-income housing. Currently, HCS is authorized to guarantee loans only on the residential portion of mixed-use properties.

HCS maintains the Housing Development and Guarantee Account to provide funding for housing for low and very low income families and individuals, including the elderly, disabled, farm workers and Native Americans. Money is distributed in the form of grants for the construction, rehabilitation, or expansion of low income housing, and preference is given to proposals that provide the greatest number of units, ensure the longest use, or include social services to occupants.

Effective Date: January 1, 2004

House Bill 3224

Relating to authority of cities to issue certain bonds

HB 3224 authorizes cities with more than 50,000 residents to issue nonrecourse bonds to provide for retail, commercial and industrial development, and to loan bond proceeds for low-income housing and other housing development.

The State of Oregon is currently authorized to issue nonrecourse bonds for the creation and financing of lands for industrial, solid waste disposal, commercial, and research and development uses. Cities of populations over 300,000 are given similar authority for industrial development and growth, residential housing, and low-cost mortgage financing for multiple-unit home purchasers. HB 3224 reduces the population size necessary for such bonding authority from 300,000 to 50,000 residents.

Effective Date: January 1, 2004

House Bill 3060 – Legislation not Enacted

Relating to local improvement charges

HB 3060 would have prohibited governing bodies from revising final assessments or estimated assessments on local improvement districts (LIDs) unless it could be demonstrated that doing so was essential to secure an equitable assessment. Such a determination would have needed to be based upon the facts available to all parties to the original agreement.

Military and Veterans

House Bill 2743

Relating to Oregon Veterans' Home

HB 2743 permits the use of moneys from the General Fund to pay for operating expenses of the Oregon Veterans' Home. The Oregon Veterans' Home is located in

The Dalles, and is one of 102 facilities in 44 states providing low-cost skilled nursing care to veterans. Residents are charged $71 per day for general admission, and $75 for admission with Alzheimer's care.

The legislature authorized construction of the Oregon Veterans' Home with the passage of SB 447 in 1993. The facility was constructed with federal funds ($9.2 million) and funds from Wasco County ($4.7 million), with the land donated by a private citizen. The enabling legislation stipulated that General Fund monies were not to be used for the home's operating expenses once it was opened. However, during the intervening years the cost of operating the home has outpaced the ability of existing funding sources to support it. The home currently operates below capacity due to lack of funding, despite a waiting list for services.
Effective Date: November 26, 2003

House Bill 3212

Relating to military leave of absence for state active duty

HB 3212 provides that members of the Oregon National Guard on state active duty status are not subject to employment limitations related to the Public Employees Retirement System (PERS). It also allows seven days to resume duties of regular employment after leaving state active duty status.

Oregon's Governor is empowered to order into active service the members of the Oregon National Guard in response to certain events. Guard members are compelled to serve in a manner and extent to be determined by the governor. While on state active duty status, guard members receive the pay and allowances of their corresponding grades in the Armed Forces of the United States.

Some guard members have retired from state employment positions and receive benefits from PERS. Typically, a retiree drawing PERS benefits will see those benefits reduced if they work 1,040 hours or more during a given calendar year. HB 3212 would exempt hours accumulated by retirees while on state active duty status from PERS calculations.
Effective Date: June 11, 2003

House Bill 3601

Relating to active members of military

HB 3601 establishes certain rights of persons called into active state military service for more than 90 consecutive days. It specifies how a National Guard member may terminate a rental agreement and provides that a court of law is allowed to stay an eviction of a state service member called into state service for more than 90 days. The bill prohibits certain consumer interest charges imposed on active state service National Guard members and specifies how creditors must amortize the balance of the obligation. Creditors are allowed to petition a court to consider applicable circumstances involving the debt and ability of the member to make payments.

HB 3601 also allows state and local governments authorize transfer of accrued vacation to employees while absent due to military duty and requires continuation of health care coverage for a state employee and family member provided coverage prior to the employee's military leave. Other employers are allowed to continue health care coverage. Current federal law offers protection to National Guard members who are called into federal service, but no such law existed prior to this bill to cover National Guard members called into state service by the Governor for duties such as fighting wildfires.
Effective date: June 16, 2003

Senate Bill 9

Relating to military leave

SB 9 requires the State of Oregon to provide coverage under employer-sponsored health plans to state employees while they are absent on federal or state military leave. The

coverage is limited to 12 months. The measure also provides similar authority to local employers on a permissive basis.

When an employee is called up for federal active service duty, they and their families may be forced to transition from their regular health care coverage to federal health care coverage, which may or may not include coverage for medical treatments covered by their previous insurance. SB 9 requires the state, and allows local employers, to continue to provide coverage to employees while they are absent from work on military active duty.
Effective Date: May 9, 2003

Libraries

House Bill 3062

Relating to financial assistance for libraries

ORS 357.770 stipulates that in order to be eligible for state financial assistance, a public library must not reduce its actual operating expenditures for public library service for that year, including funds from all local sources. If funding is reduced below the amount expended in each of the two previous fiscal years, it would not receive state financial assistance. HB 3062 suspends this requirement for the 2003-2005 biennium.

The State of Oregon provides financial assistance to public libraries from funds specifically appropriated by annual grants to local governments, to be used to develop public library services for children, with emphasis on preschool children. The preschool 'Ready to Read' grant program is the only state-funded program of aid to public libraries in Oregon.

The Legislative Assembly also suspended the maintenance of support provision for the 1997-1999 biennium, in response to budget cutbacks resulting from passage of Ballot Measure 50 (1997).
Effective Date: June 4, 2003

Senate Bill 12

Relating to libraries

SB 12 establishes a new program to provide grants and other assistance for the statewide licensing of electronic databases for all types of libraries. The program will be administered by the Oregon State Library, and funded through the elimination of a 10-year old net lender program that reimburses libraries that lend more materials than they borrow from other Oregon libraries. The measure prohibits libraries from charging other libraries for interlibrary loans as a condition of participating in the new program.

The previous net lender program was funded by an $800,000 allocation of funds from the federal government. Under SB 12 that funding is shifted to the database licensing project.
Effective Date: July 17, 2003

House Bill 3101 – Legislation not Enacted

Relating to public libraries

HB 3101 would have directed public libraries to install pornography filtering software on all library terminals that provide Internet access to the public. It would have penalized any noncompliant library by withholding state funds.

Major League Baseball

Senate Bill 5

Relating to state finance

Senate Bill 5 authorizes the Department of Administrative Services (DAS), with the approval of the State Treasurer and the Department of Revenue, to enter into agreements to grant incremental baseball tax revenues to the City of Portland for the purpose of building a major league baseball stadium. Agreements may not extend beyond 30 years and the estimated cost of the stadium may not be less than $300 million. Incremental baseball tax revenue is defined as the personal income tax revenue

generated by team members under the current tax rate schedules and team members are defined as individuals rendering service with compensation in excess of $50,000 annually. Teams are required to withhold 8 percent of member compensation attributable to Oregon or in accordance with withholding criteria adopted by rule by the Department of Revenue. The attribution of other team revenue is based on the ratio of duty days in Oregon to total duty days.

The measure established the Major League Stadium Grant Fund in the Treasury separate and distinct from the General Fund and prohibits deposit in the find before July 1, 2005. Before a grant agreement may be executed, DAS must have a written request from the City of Portland, a franchise must have agreed to locate in Portland and remain in Portland for at least the term of the grant agreement, all other required funding must be committed, and a review committee must have approved that the methodologies for estimating and determining actual incremental baseball tax revenue and provisions for requiring appropriation requests are reasonable.
Effective date: November 26, 2003

Wrestling

House Bill 3581

Relating to regulation of wrestling

HB 3581 alters the definition of wrestling in statute to create the separate definition of 'entertainment wrestling.' It also alters the parameters for regulation of entertainment wrestling by the Boxing and Wrestling Commission.

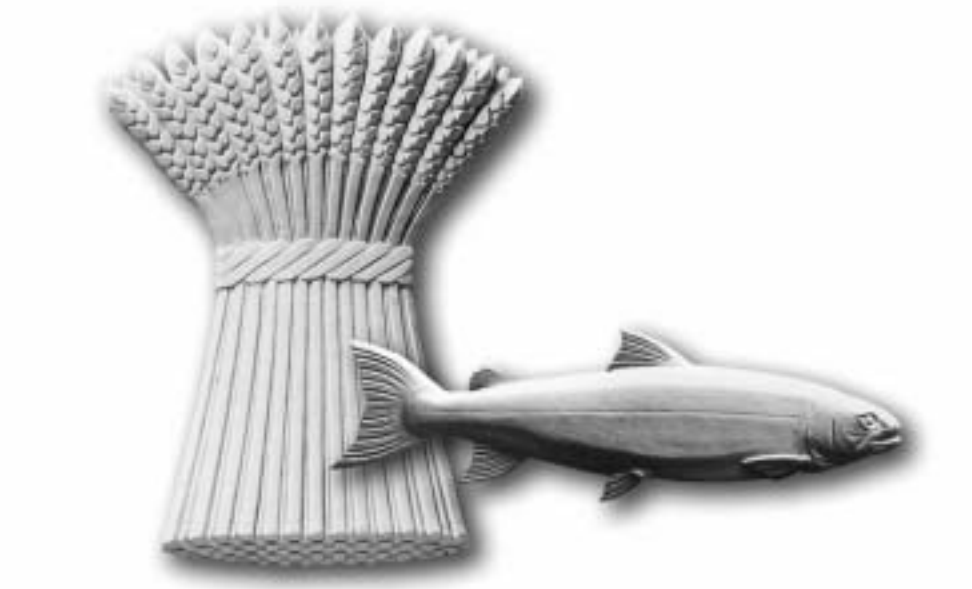
Created by the 1987 Legislature, the Oregon Boxing and Wrestling Commission is part of the Department of State Police's Gaming Enforcement Division. It is responsible for creating rules regulating boxing and wrestling contests in the state. Because of the commission's stringent requirements for athletes, major professional wrestling organizations such as World Wrestling Entertainment had refused to hold events at venues in Oregon for several years.

Proponents of HB 3581 asserted that loosening regulation on entertainment wrestling would bring major professional wrestling events to the state. Since the measure's passage there have been two such events held at the Rose Garden in Portland. The Legislative Revenue Office estimates that the change will result hundreds of thousands of dollars in additional state revenues.
Effective Date: January 1, 2004

Governmental Issues

Public Employees Retirement System

Earnings Crediting to Tier One Regular Accounts; Employee Contributions for Tier One and Tier Two Members; Actuarial Equivalency Factor Update; Cost of Living Adjustment for Certain Retirees; Employer Rates; Expedited Judicial Review; PERS Board Membership; Oregon Public Service Retirement Plan for New Hires; Legislator Participation in PERS; Other Changes to PERS Statutes



2003 Summary of Legislation

In this chapter, the original measure, which made specific changes to the Public Employees Retirement System, is identified by **BOLD** text. Other bills that made subsequent changes are listed in regular text.

Earnings Crediting to Tier One Regular Accounts
(**HB 2001**, HB 2003, HB 3020)

Tier One regular member accounts may not be credited earnings in coming years until the deficit reserve account has been eliminated. Accounts may not be credited with a level of earnings that would create a new deficit reserve. Tier One regular accounts may be credited in excess of the assumed interest rate (currently 8%) only after the deficit reserve account has been eliminated and the Tier One assumed rate reserve account is fully funded in each of three previous calendar years.

The limit on earnings crediting does not apply to any Tier One member who retires before April 1, 2004 or to judges (who are judge members on June 30, 2003). Only earnings on Tier One regular accounts may be used to eliminate the deficit account. The measures also eliminated the five-year limitation on a deficit reserve account.

Each Tier One member will have a minimum account balance guarantee if they retire on or after April 1, 2004. At the time of retirement, the regular account may be no less than what it would have been if it had been credited with the assumed interest rate (currently 8%) in every year the account existed. PERS must make an adjustment to the member's regular account if the account balance does not meet this test.

Employee Contributions for Tier One and Tier Two Members
(**HB 2003**, HB 2020, HB 3020)

Tier One and Tier Two members may not contribute or transfer funds to the Variable Annuity Account after January 1, 2004. Those accounts will continue to gain or lose interest earnings on existing balances.

Also starting January 1, 2004, the six percent employee contribution for Tier One and Tier Two members may not be made to a member's PERS account. Active members must instead make payments equaling six percent of their salary to the individual account program (IAP) portion of the Oregon Public Service Retirement Plan (set up for new hires per HB 2020, see below). Each member will have a separate account that will be credited with earnings and losses over the lifetime of the account. At retirement, the amount in a member's IAP will be distributed to the member in a single lump sum or an employee may opt to receive installment payments over 5, 10, 15, or 20 years.

All employers may agree to pay the employee contribution on behalf of the employee. Employers that are currently "picking up" employee contributions must continue to make these payments to the IAP until December 31, 2005. Employers may also agree to make an additional employer contribution (ranging from one to six percent of salary) to the IAP. Employers are required to notify the PERS Board regarding their agreement to pay the employee contributions.

If a court challenge is made to the modifications to employee contributions, the action is subject to expedited judicial review (see "Expedited Judicial Review" below).

Actuarial Equivalency Factor Update
(HB 2003, **HB 2004**, HB 3020)

Beginning January 1, 2005, the PERS Board must adopt actuarial equivalency factor tables, including factors for mortality, every two calendar years for the purpose of calculating retirement payments. For all members retiring between July 1, 2003, to January 1, 2005, PERS is required to use the updated actuarial equivalency factor tables adopted by the PERS Board on September 10, 2002.

Updated actuarial equivalency factors will be used to calculate all retirements after July 1, 2003 (except for certain judge members). PERS will perform two calculations to determine the member's retirement allowance. One calculation will use a member's account balance, final average salary, years of service, and the actuarial equivalency factors in effect on their effective retirement date. The calculation will be adjusted for the retirement option selected by the member. The second calculation, called a "look-back", will be made using the member's account balance, final average salary, years of service, and the actuarial equivalency factors in effect on June 30, 2003. The member will receive the higher of these two calculations.

The PERS Board is also required to conduct a study regarding the life expectancy of police and firefighter members of the system. If the board finds a substantially shorter life expectancy, the board is directed to use separate actuarial equivalency factor tables for those members starting January 1, 2005.

If a court challenge is made to the actuarial equivalency factor modifications, the action is subject to expedited judicial review (see "Expedited Judicial Review" below).

Cost of Living Adjustment for Certain Retirees
(**HB 2003**, HB 3020)

For all Tier One members (except judge members) who retire with a Money Match calculation between April 1, 2000, and April 1, 2004, PERS will perform two calculations. First, PERS will calculate a "fixed service retirement allowance," which is the benefit amount the member would receive on July 1, 2003, or the member's actual retirement date (whichever is later). The fixed service retirement allowance may not be adjusted for future cost of living (COLA). Second, PERS will calculate a "revised service retirement allowance" using the member's account balance adjusted as though 11.33 percent was credited for earnings in 1999 (instead of the actual 20 percent). The revised service retirement allowance will include any adjustments required by HB 2004 (actuarial equivalency factor tables) and an annual cost-of-living adjustment. Retirees will receive the fixed allowance (with no additional COLA) until the revised allowance (with COLA) provides the higher benefit.

If a court challenge is made to the cost of living adjustment provisions, the action is subject to expedited judicial review (see "Expedited Judicial Review" below).

Employer Rates
(HB 2003, HB 2004, HB 3020)

The PERS Board is required to recalculate employer rates to reflect the effects of all bills passed pertaining to PERS. The new rates are effective July 1, 2003. Non-pooled participating employers whose recalculated rates would be higher than the rates set by the PERS Board in February 2003 are allowed to elect to pay the February rates. The employer must make the election in writing by October 28, 2003.

Expedited Judicial Review (**HB 2003**, **HB 2004**, **HB 2409**, HB 3020)

The Oregon Supreme Court has jurisdiction regarding challenges to the constitutionality of the changes made by HB 2003 and HB 2004 or to claims of breach of contract. The deadlines for filing challenges to these bills was in August 2003. Nine lawsuits have been filed naming nearly 500 plaintiffs and 90 defendants.

The court is required to give the proceedings priority over all other matters and may appoint a special master to hear evidence and prepare recommended findings of fact. The legislature also directed the Court of Appeals to transfer the *City of Eugene et al v. State of Oregon* case to the Supreme Court (cases 99C-12794, 00C-16173, 99C-12838, and 99C-20235).

PERS Board Membership (**HB 2005**, HB 3020)

The PERS Board was changed to a five-member board beginning September 1, 2003, and the Governor now appoints the board chair. Starting October 1, 2007, one of the five PERS Board members will also serve on the Oregon Investment Council.

The Governor's appointees were confirmed by the Senate in August 2003: James Dalton, Thomas Grimsley, Eva Kripalani, Michael Pittman (chair), and Brenda Rocklin.

Oregon Public Service Retirement Plan for New Hires (HB 2020)

Effective August 29, 2003

HB 2020 established a successor retirement plan, the Oregon Public Service Retirement Plan (OPSRP). The new plan consists of a defined benefit program (the pension program) and a defined contribution portion (the individual account program (IAP)). OPSRP will be governed by the PERS Board and administered by the PERS agency. The Oregon Investment Council will make investments on behalf of the plan.

New public employees hired on or after August 29, 2003, become part of OPSRP. Tier One or Tier Two PERS members who have a six-month service break will become a member of OPSRP when rehired for any subsequent employment. Beginning January 1, 2004, all current PERS member contributions will go into the Individual Account Program (IAP) portion of OPSRP (see "Employee Contributions" section, above).

The pension portion of the OPSRP provides a life pension funded by employer contributions. The formula for the life pension and retirement age varies for general service and police and fire members.

	Pension Calculation	Retirement Age
General Service	1.5% x final average salary x years of service	65 or 58 with 30 years of retirement credit
Police and Fire	1.8% x final average salary x years of service	60 or 53 with 25 years of retirement credit

OPSRP members are required to contribute six percent of their salary to the individual account program (IAP). Each member will have a separate account that will be credited with earnings and losses over the lifetime of the account. At retirement, the amount in a member's IAP will be distributed to the member in a single lump sum or an employee may opt to receive installment payments over 5, 10, 15, or 20 years. The IAP will also be used by Tier One and Tier Two employees for their employee contributions (see description, above).

Employers are allowed to agree to pay the six percent contribution ("pick up"). An employer picking up the employee contribution must do so until December 31, 2005. The employer must continue picking up the contribution after this time, unless the employer notifies the PERS Board in writing of a change in the employer's policy.

Legislator Participation in PERS
(HB 2020)

Effective August 29, 2003

Within 30 days of being elected or appointed to the Legislative Assembly, a person must decide whether to: 1) become a member of the Oregon Public Service Retirement Plan (OPSRP); 2) become a legislator member of the state deferred compensation plan; or 3) decline to become a member of either the OPSRP or state deferred compensation plan. Legislators are allowed to rollover their regular PERS accounts to the OPSRP or the state deferred compensation plan if they choose those options. The Legislative Assembly is required to make a six percent of salary contribution on behalf of legislators opting to become a member of the OPSRP or the state deferred compensation plan.

Legislators serving on August 29, 2003, may elect to stay in the current PERS system, so long as they continuously serve in the Legislative Assembly. However, upon re-election to office, service performed after August 29, 2003 will be subject to a reduced retirement calculation (1.67 percent × final average salary × years of service).

Other Changes to PERS Statutes

HB 2278 resolves the issue of who will pay for the $70 million unfunded actuarial liability for Multnomah Rural Fire Protection District #10. The bill requires Multnomah Rural Fire Protection District #10 to pay $50,000 of the unfunded liability. The City of Portland is apportioned a percentage of the liability and the remainder is charged to all other PERS employers. The Cities of Fairview, Gresham, Troutdale, and Wood Village will be charged double the liability of other employers. The bill also clarifies how future unfunded liabilities or surpluses are to be handled when public employers merge, split, or transfer employees. (*Effective January 1, 2004)*

HB 2343 allows refunds to individuals who have an inactive Judges Retirement Fund account and are not eligible to draw a retirement benefit. *(Effective May 24, 2003)*

HB 2401 gives the PERS Board authority to charge fees for certain administrative expenses, including costs incurred to locate former members, administrative expenses for full cost purchases, fees for estimates, and interest charges for certain overpayments to members. *(Effective January 1, 2004)*

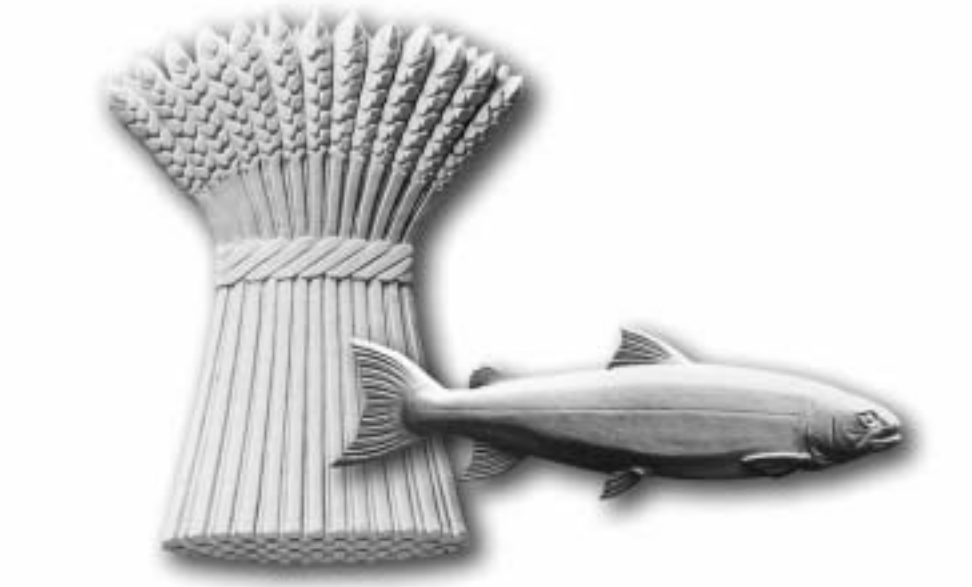
HB 3020 made many technical changes to previously passed legislation (see notations, above). The bill also modified how PERS is to distribute death benefits, how employer lump sum payments are credited, reinstated judge's health benefits (repealed in 2001), required PERS Board to re-test exempt "equal to or better than" plans every two years; and made many other technical changes to PERS statutes. In addition, the bill expanded the exceptions for those who may exceed the 1039 hour limit on PERS employer re-employment of retired members. Those that may exceed the limit include: certain sheriffs in counties under 75,000 population; certain police and correctional employees in smaller cities and counties; people hired to replace those called up for National Guard or active military duty; road assessment district employees; and certain elected officials who receive benefits while in office. These exceptions apply to all employed retired members, regardless of when the employment started. *(Effective July 30, 2003)*

SB 258 allows certain inactive vested PERS member to withdraw 150% of their inactive member account between July 1, 2004, and June 30, 2006. *(Effective January 1, 2004)*

Human Service Issues

Education

K-12 Education; Education Finance; Higher Education



2003 Summary of Legislation

K-12 Education

Senate Bill 11

Abolishes County School Districts

SB 11 repeals the county school district statutes and directs county school districts to become common school districts. Currently there are four school districts organized as county school districts: Lincoln County School District, Crook County School District, Josephine County School District and Klamath County School District.

The measure was in response to a recent merger done under the provisions of the county school district statutes. Under common school district law a majority of voters in each of the affected districts vote to change the boundaries. Under county school district law, a majority of all those affected determine the boundaries; thus, it is possible for a larger school district to merge with a smaller district against the wishes of the smaller district.

Proponents of SB 11 argued that county school district statutes are antiquated and fail to take into account the wishes of all those affected by a boundary change. They have asked that this form of organization be repealed, and that the county school districts become common school districts.

Effective Date: Effective July 1, 2003

Senate Bill 287

Summer School Lunch Program

While low-income students have access to meals during the school year, not all schools operate a summer nutrition program. SB 287 directs certain school districts to create summer food service programs at public schools where 85 percent or more of students are eligible for free and reduced price meals under U.S. Department of Agriculture's guidelines.

Prior to June 1, 2004, each local commission on children and families shall place on the agenda of at least one meeting of the local commission a discussion of the coordination and provision of summer food service programs to children. Each school district that is within the attendance area served by the local commission and that has a school with a student population in which 70 percent or more of the students enrolled at the school are eligible for free and reduced price meals shall have a representative of the school district at the meeting.

During the 2003-2005 biennium, the Department of Education shall convene an advisory group to study summer food service programs. SB 287 appropriates $49,000 from the General Fund to the Department of Education for grants**.**

Effective Date: July 8, 2003

Senate Bill 272

Charter School Enrollment & Advanced Technology Education and Training Fund

SB 272 consists of two distinct provisions. The first authorizes the Department of Community Colleges and Workforce Development to make grants or loans to public-private partnerships for provision of advanced technology education and training opportunities in communities around the state. The measure specifies the maximum amount for grants and loans made for certain uses and creates the Advanced Technology Education and Training Fund. Appropriates $49,000 from the Administrative Services Economic Development Fund to the Department of Community Colleges and Workforce Development for the grant and loan program.

The second provision modifies the enrollment requirements for public charter schools, specifying that a public charter school that is located in a district with fewer than 250 students does not have to maintain a minimum active enrollment of 25 students, but rather maintain an enrollment that is specified in the school's charter.

Effective Date: September 24, 2003

Senate Bill 372

Creates Ione School District

SB 372 creates provisions to allow the Morrow School District to split—the first district to do so since districts were consolidated in 1991. The measure directs the district boundary board to

approve a petition to divide Morrow County School District No. 1 if specified requirements, including a petition requesting the change containing at least five percent of the electors or 500 electors of the district, whichever is less, are met. The measure directs that the two districts will be designated Morrow County School District No. 1 and Ione School District, and that each district will offer a K-12 education program.

The measure requires the petition for the division to contain a proposal for the distribution of all real and personal property of the former district and directs district boundary board to appoint the initial five-member Ione School District board. SB 372 prohibits a remonstrance petition or election on any petition for a boundary change and allows employees of the Ione School to transfer to the new Ione School District, without deprivation of seniority or accumulated sick leave.
Effective Date: June 12, 2003

Senate Bill 456

Student Medication

School personnel sometimes recommend medicating students who exhibit behavioral problems. One such medication, Ritalin, is a central nervous system stimulant often prescribed to treat Attention Deficit Disorder (ADD), Attention Deficit Hyperactivity Disorder (ADHD) and Tourette's Syndrome. In addition to Ritalin, more young children are also taking Clonidine, a blood pressure drug used to treat sleep problems stemming from attention disorders, and antidepressants such as Prozac. There is concern that school personnel do not have the training to be making such recommendations.

SB 456 prohibits a public school administrator, teacher, counselor, or nurse from recommending to a student's parent or legal guardian that the student should seek a prescription with the intent of affecting the mood, behavior, or thought processes of the student.
Effective Date: June 26, 2003

House Bill 2450

TANF Recipients May Attend School

Under the Temporary Assistance for Needy Families (TANF) program, temporary assistance is paid to the parent of a child while the parent participates in programs to obtain a high school diploma or develop employment or self-sufficiency skills. The temporary assistance is limited to 24 months unless the person is participating in an employment and training program including any employment search activities.

HB 2450 creates a new provision for an additional allowable work activity under the TANF Program. It allows a parent receiving assistance to enroll in and attend a two-year or four-year program at a post-secondary institution as an allowable work activity. The measure requires that the participants be accepted for full time attendance or be enrolled full time at a post secondary institution, that the completion of the education program is likely to result in employment, and that the student make satisfactory progress toward a degree or certificate. The assistance does not include tuition or fees associated with enrollment. Additionally, the bill requires the Department of Human Services to inform all parents of the education program. The total number of parents enrolled in the education program may not exceed one percent of the number of households receiving temporary assistance on January 1 of the calendar year.

Proponents argue that by allowing parents receiving TANF payments to attend school, those student parents will be better able to support themselves when payments end, as well as enhance their long-term employment prospects.
Effective Date: January 1, 2004

House Bill 2575

Teacher Licenses

In January 1999, the Teachers Standards and Practices Commission (TSPC) implemented a new licensure system that was approved by the 1997 Legislature. As of that date, the TSPC issues only Initial or Continuing licenses. An initial teaching license is valid for three years and may be renewed once. The continuing

license is issued for five years and may be renewed upon verification of successful teaching experience and professional development as established by TSPC rule.

TSPC reports that it needs greater flexibility in determining how long licenses are valid and how often licenses may be renewed, as beginning teachers are not always able to find employment and meet statutory time frames.

HB 2575 allows the TSPC to determine how long teaching licenses are valid by rule, rather than by statute and allows the TSPC to renew an initial license more than once. The measure also requires the TSPC to study and report on teaching license issues to legislative interim education committees and the next Legislative Assembly.
Effective Date: July 1, 2003

House Bill 2744

21st Century Schools Act Revision

The Education Act for the 21st Century was enacted in 1991 and revised in 1995. The act established state standards and assessments for K-12 students. State standards exist in the academic areas of English, mathematics, science, social science (history, geography, economics, civics and government), health, the arts, second languages, and physical education. State assessments are given in grades 3, 5, 8, and 10 in math, English, and science (social sciences assessments have not yet been implemented). Local assessments are given in the areas of the arts, physical education, health, and second languages.

HB 2744 proposes a number of changes to the law, primarily in response to reduced funds. The measure reduces the number of academic areas in which students must demonstrate proficiency for a Certificate of Initial Mastery (CIM) to math, English, and science—the same academic subjects in which the federal No Child Left Behind requires statewide assessment.

A school district could allow students the opportunity to earn an endorsement on their CIM in the areas of the arts, physical education, social sciences, and second languages. School districts would use state assessments developed by the Oregon Department of Education (ODE) for the subjects of geography, economics, civics, and history. Local districts would develop their own assessments, based on state standards, for the subjects of the arts, second languages, health, and physical education. The State Board of Education would set the requirements for the CIM and its endorsements.

HB 2744 also prohibits Oregon Department of Education or a school district from requiring student portfolios as evidence of proficiency for the CIM and directs the State Board of Education to establish a minimum number of work samples a student must complete in each subject to receive the CIM or a CIM endorsement.

The measure also delays implementation of the Certificate of Advanced Mastery (CAM) program from September 1, 2004 to September 1, 2008.

Proponents argue that Oregon's schools need to comply with the federal No Child Left Behind Act, yet in an era of limited resources, scaling back some aspects of state law is prudent.
Effective Date: July 1, 2003

House Bill 2894

Deficient School Districts

State law requires school districts to maintain state standards or be found deficient. If a school district is found deficient by the Superintendent of Public Instruction, the school district must submit a plan for meeting standardization requirements. When an acceptable plan has been submitted, the superintendent may allow an extension of time, up to twelve months. Due to financial pressures this biennium, many school districts are unable to hire some personnel or are shortening the school year.

HB 2894 allows the Superintendent of Public Instruction to grant an extension of time longer than 12 months to a school district for remedying deficiencies, if the superintendent determines that the reason for the deficiency is primarily due to a lack of adequate funds. The measure prohibits the superintendent from

granting an extension if the deficiency may be remedied through merger with another district. HB 2894 directs the State Board of Education to adopt criteria for determining when to grant an extension and directs the superintendent to oversee school districts granted an extension, based on rules of the State Board of Education. These provisions apply to school districts found to be deficient on or after January 1, 2002. Provisions sunset July 1, 2007.
Effective Date: June 18, 2003

House Bill 3642

Tapping Education Endowment Fund

The Education Stability Fund (ESF) was established in the Oregon Constitution by voters in a September 2002 special election to be used for education funding in times of economic downturn. The ESF received 15 percent of Lottery net proceeds in the 2001-03 biennium. This percentage rises to 18 percent after July 1, 2003. The treasurer diverts 10 percent of this revenue to the Oregon Growth Account within the ESF. The ESF account balance, exclusive of the Oregon Growth Account, stood at $2.7 million as of June 6, 2003.

HB 3642 finds that the May 2003 economic and revenue forecast meets one of the conditions in the constitution for a withdrawal of principal funds in the Education Stability Fund and directs the treasurer to transfer 90 percent of the Education Stability Fund balance as of May 1, 2005 to the State School Fund.

The ESF will continue to receive 18 percent of net lottery proceeds on an ongoing basis. The amount of the transfer is uncertain, because it is expressed as a percentage of funds that will be transferred into the Education Stability Fund in the future, but based on the May 2003 quarterly economic and revenue forecast, this bill will transfer $108.66 million to the State School Fund on May 1, 2005.
Effective Date: June 30, 2003

Senate Bill 761 – Legislation not Enacted

Eliminates Testing Requirements of Children Schooled at Home

Oregon law requires all children between the ages of 7 and 18 years who have not completed the 12th grade to attend public school. Exceptions included those children attending a private school or are being schooled at home. Current law requires the parent or legal guardian to notify the local education service district of their intention to home school their child. Furthermore, children who are home schooled are required to take tests in grades 3, 5, 8, and 10. If the child tests below the 15th percentile, it sets in motion several steps that could ultimately result in sending the child to public school.

SB 761 would have eliminated the testing requirement of students who are home schooled and the requirement that parents notify their local education service district of their intention to home school their children. It would have allowed the home instruction to be carried out by someone other than a parent, as long as the teaching is at the direction of the parent or legal guardian.

Education Finance[1]

Senate Bill 550

School Expenditures

Effective Date: November 26, 2003

SB 550 outlines how schools may spend their state dollars and encompasses a number of subjects.

Special Education: SB 550 creates a High Cost Disabilities Grant as part of the school equalization formula and establishes a High Cost Disabilities Account within the State School Fund. The measure transfers $12 million per year from the State School Fund into the account and requires these funds be used to pay approved special education costs for high cost students; the grant equals the costs exceeding $25,000 per student. ESD student cost is included in the district cost. If district costs exceed funds in the account, grant revenue is

[1] For more detailed information on finance, see Legislative Fiscal Office's publication, *Budget Highlights 2003-05 Legislatively Adopted Budget.*

prorated among districts. High cost disability grants provisions sunset July 1, 2005. SB 550 repeals the Out-of-State Disabilities Placement Education Fund as of January 1, 2004 and transfers any remaining balance to the State School Fund.

Transportation: SB 550 increases school equalization formula transportation grants for 20 percent of districts with the highest transportation costs per student. Grants increase from 70 percent to 90 percent of costs for the top 10 percent of districts with the highest cost per student, and from 70 percent to 80 percent for the next 10 percent highest cost districts.

Small Schools: SB 550 continues the Small School District Supplement Fund during 2003-05 and transfers $2.5 million per year to the fund from the State School Fund. Funds are distributed based on a small district's proportional share of high school students.

If high schools merge, the measure allows the district to continue to add a small high school extra student weight that is the higher of (1) the sum of the extra weight each small high school was eligible for prior to the merger or (2) the eligible extra weight of the merged high school if still a small high school, but limits the additional small high school weight to four years. The provisions apply to mergers on or after January 1, 2003.

Local Option Tax: SB 550 increases the limit for the amount of school local option tax revenue excluded from school local revenue in the school equalization formula from the lesser of 10 percent of school formula revenue or $500 per weighted student to the lesser of 15 percent of school formula revenue or $750 per weighted student.

Portland: SB 550 allows the Portland Public School (PPS) district to transition from a gap bond tax to an operating tax two years early without loss of state school funding. The increase in operating property taxes is excluded from local revenue in the school equalization formula in 2003-04 and 2004-05 if a statutory tax rate increase is triggered by paying off the gap bond early. Beginning in 2005-06, the exclusion of PPS property taxes from school formula local revenue is repealed and the district's statutory tax rate reverts back to its 2002-03 rate.

Indian Reservations: SB 550 allows a school district to have the Oregon Department of Education use the district's State School Fund dollars to make payments to a bond debt service account used to repay bonds to finance school capital improvements on an Indian reservation; diversions sunsets June 30, 2029.

Senate Bill 855

Education Stability Fund Depletion

SB 855 directs the State Treasurer to transfer $112,000,000 from the Education Stability Fund to the State School Fund. The measure requires a finding be made that economic and revenue forecast conditions required by Oregon Constitution to make the transfer have been met. The state treasurer may divert funds and/or reduce the amount of funds in the Education Stability Fund accounts for purposes of making the transfer.

Effective Date: March 4, 2003

Senate Bill 5554

Local Option Tax Equalization Grants

SB 5554 appropriates $400,000 to match revenues raised by school districts with low property values that have passed local option levies. Four school districts were expected to receive grants during the 2003-05 biennium: Pendleton, Colton, Oakland, and Seaside.

Effective date: August 29, 2003

House Bill 5009/5077

Community Colleges/Dept. of Community College and Workforce Dev. Funding

Effective Date: August 29, 2003

Community Colleges: A budget of $417.9 million General Fund and $316,292 Other Funds was approved for the Community College Support Fund. Also approved was a $10.7 million special purpose appropriation to the Emergency Board for distribution to the community colleges following the development of a revised

distribution formula to be implemented beginning with the 2004-05 fiscal year. This budget does not support any increases in salaries, wages, or benefits for community college employees during the 2003-05 biennium.

Dept. of Community College and Workforce Development: A budget of $2,011,367 General Fund, $12,454,377 total funds, and 44.70 full-time equivalent positions was approved. This budget eliminates funding for merit increases in the 2003-05 biennium, reduces amounts budgeted for Dept. of Administrative Services assessments and Department of Justice charges, and eliminates inflation increases on Services and Supplies.

House Bill 5028

Higher Ed Capital Construction

This bill provides appropriations and expenditure limitations for Capital Construction projects for the Department of Higher Education. Approval of bonding amounts for Article XI-G, Article XI-F(1), and Lottery Bonds is included in separate legislation. The budget consists of $11,519,853 General Fund and $434,578,120 Other Funds for 33 projects. Projects include funding for signature research centers at the University of Oregon, Oregon State University, and Portland State University for multi-scale materials and devices manufacturing; expansion of the theatre complex at the University of Oregon; and small capital projects system-wide. Funding was increased for academic modernization and repair, the Oregon State University College of Veterinary Medicine, and the Portland State University Helen Gordon Child Care Development Center. The budget increased a 1999-2001 expenditure limitation by $206,766 Other Funds to allow Portland State University to expend donations received in excess of projections. Three system-wide projects were approved, totaling $11.5 million General Fund, $12.5 million Other Funds (Article XI-G bonds), $29 million Other Funds (Article XI-F(1) bonds), and $16 million Other Funds (Other Revenues).

Effective Date: August 29, 2003

House Bill 5042

OHSU Funding

HB 5042 provides direct state support funding to the Oregon Health & Sciences University (OHSU). The bill appropriates $84,379,467 General Fund to support the education and clinical services of the university. This is a 10.6 percent decrease from the prior biennium. The bill does not specify how the General Funds must be spent, but stipulates certain actions for the OHSU board in distributing funds. The bill also provides $106,298,400 in bond proceeds for the Oregon Opportunity Program and $20,692,900 to finance debt service and issuance costs of the bonds.

Effective Date: August 29, 2003

House Bill 5052

Oregon Student Assistance Commission

State funding for the Oregon Student Assistance Commission totals $45.5 million. This is an increase of $6.6 million (or 17.1 percent) over the 2001-03 biennium level that remained after special session and rebalance reductions, and an increase of $978,000 (or 2.2 percent) from the 2001-03 biennium level originally adopted in the 2001 session. The budget increases funding for the state's principal student aid program, the Opportunity Grant, by $7.9 million total funds (or 21.2 percent) over the prior biennium, and by $1.4 million (3.2 percent) over the level approved in the 2001 session. The amount of Lottery Funds available for the Opportunity Grant fell by $3.1 million from the level in the Governor's recommended budget proposal due to the withdrawal of Education Stability Fund moneys to support the State School Fund, and because of declining interest rates. The Legislature added $11.5 million of General Fund to the Opportunity Grant to offset this reduction and the General Fund cuts in the Governor's recommended budget. The net funding increase will fund an estimated 7,800 more Opportunity Grant recipients than possible under the Governor's budget. The approved level of state support provides sufficient match to receive the maximum amount of Federal Funds available for the Opportunity Grant ($1.2 million). The budget approves another transfer of funds from the Education Stability Fund to the State School Fund in May 2005. This will reduce Lottery

Funds available for the Opportunity Grant in the 2005-07 biennium by an estimated $1.9 million.

The budget reduces funds for other General Fund-supported scholarship programs, including reductions in the Nursing Services Program and suspension of the Former Foster Youth Scholarship. The budget also reduced funding for the Office of Degree Authorization/Policy Research Section by $200,000 General Fund, allowing the same amount of fee revenue to be spent instead.
Effective Date: August 29, 2003

House Bill 5077

State Funding for K-12 Schools, Higher Education
Effective date: August 29, 2003

HB 5077 appropriated funds to education, kindergarten through higher education.

K-12 Schools & ESDs: $5.2 billion total funds were appropriated for the State School Fund ($4,737,207,754 General Fund, $452,100,536 Lottery Funds, and $17,191,710 Other Funds). This funding includes $122 million in Lottery Funds from the transfer from the Education Stability Fund on May 1, 2005 (HB 3642). It also includes other Lottery Funds resources as follows: $263.1 million under the current forecast, and $67 million anticipated as a result of legislative and administrative actions. An Other Funds expenditure limitation of $2.9 million is provided for timber severance taxes to be distributed through the State School Fund (HB 2197). Local revenue projections have also been reduced to reflect this bill. Another $14.3 million Other Funds expenditure limitation is included for the property tax discount revenues directed to the State School Fund for 2004-05 (HB 2152). A maximum of $100 million in additional funding for the State School Fund, to be allocated in 2004-05 is appropriated only if certain conditions are met. If the economy recovers, once the state's General Fund balance is the State School Fund will receive 50 percent of the unappropriated General Fund over $100 million. In addition, 100 percent of unallocated 2003-05 lottery revenues as of June 2004, over the $67 million anticipated as a result of legislative and administration actions, goes to the State School Fund. The additional resources for the State School Fund from either or both sources are capped at $100 million. When added to the base amount of $5.2 billion, the State School Fund appropriation could be as high as $5.3065 billion.

Higher Education: The legislature appropriated an operating budget of $667,427,272 General Fund, $8,123,462 Lottery Funds, $3,705,842,180 total funds, and 12,092.26 full-time equivalent (FTE) positions. General Fund and Lottery Funds are reduced from the Governor's budget by 13 percent and 8.2 percent respectively, while total funds and FTE are increased by 1 percent and 2.3 percent. The approved budget includes a variety of General Fund reductions from the Governor's budget. These include $68 million in reductions in specific allocations in the Resource Allocation Model, $12.3 million General Fund in projected vacancy savings, $6.4 million from statewide reductions that include the elimination of funding for inflation increases and reductions in Department of Administrative Services assessments and Department of Justice charges. An additional $5 million General Fund in information technology expenditures was shifted to Other Funds on a one-time basis to be financed with Certificates of Participation. The Legislature increased General Fund by $1 million for operation of three Signature Research Centers, and $4.5 million to pay debt service costs of Article XI-G bonds that have already been sold; debt service on these bonds was omitted from the Governor's budget.

Senate Bill 240/Senate Joint Resolution 1 – Legislation not Enacted

Higher Education Bonding
SB 240, and its companion measure SJR 1, would have allowed the State Board of Higher Education to issue general obligation bonds to fund deferred maintenance, modernization, and the equipping of educational buildings and structures of the Oregon University System. The measure limited the amount of the bonds for the

2003-05 biennium, but the amount had not yet been identified. SB 240 would have only been enacted if the constitutional amendment was approved (SJR 1).

Senate Bill 720 – Legislation not Enacted

Community College Bonding

SB 720 sought to address construction needs at the state's community colleges. The measure would have authorized the State Board of Education to issue bonds under Article XI-G of Oregon Constitution to finance capital construction at community colleges. The measure created funds and accounts associated with finance capital construction at community colleges and limited expenditures from proceeds of bonds and other revenue sources.

Senate Joint Resolution 7 – Legislation not Enacted

Higher Education Bonding

SJR 7 proposed to amend the Oregon Constitution to reduce the General Fund match required to issue general obligation bonds under Article XI-G. SJR 7 would have reduced the amount of match to one-third of the bond issue amount. Currently the amount of General Fund match required is equal to the amount of the bonds issued. The proposed Constitutional amendment would have gone to the voters at the general election on November 8, 2004.

Higher Education

Senate Bill 437

Higher Ed "Efficiency Act"

SB 437 proposed a number of changes in state law to provide the Oregon University System (OUS) more flexibility in an effort to save money in an era of shrinking state support. In its final form, the measure makes the following changes:

- Exempts donor records from the state public records law;
- Establishes timeframes for the approval of new academic degree programs;
- Allows the Oregon University System to buy, manage, and sell real or personal property not encumbered by certificates of participation without being subject to state laws otherwise governing property disposition;
- Allows the State Board of Higher Education to acquire, manage, and sell services and information technology;
- Allows the Office of Degree Authorization to collect fees for information requests and degree validations;
- Allows interest earned in match accounts for OUS Article XI-G bond-funded capital projects to be credited to the accounts (OUS);
- Exempts OUS from the state's purchasing and planning rules for information technology and telecommunications;
- Allows the board to delegate duties, functions and powers to institutions within the OUS;
- Directs the Oregon Student Assistance Commission to report on the possible impact of changing the Opportunity Grant program to limit award amounts to students at independent colleges to no more than the level awarded to OUS students.

Effective Date: August 21, 2003

Senate Bill 10 – Legislation not Enacted

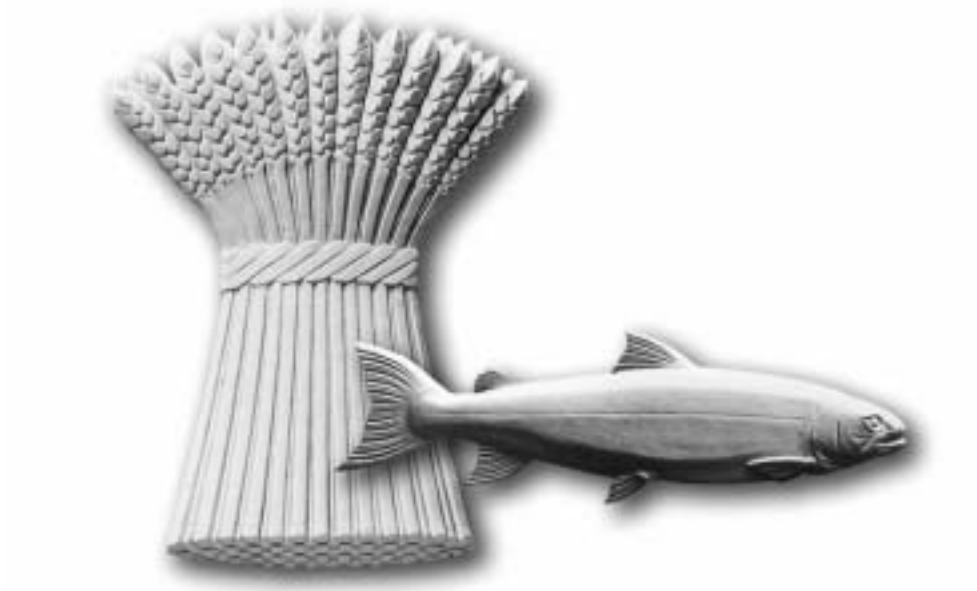
Defines Certain Non-Citizens to be Residents for Purposes of College Tuition

SB 10 would have changed residency requirements for purposes of determining tuition and fees at institutions of higher education. Under SB 10, a student would have been considered a resident if the student lived in Oregon with a parent or legal guardian for at least three consecutive years while attending a secondary school, received a high school diploma or its equivalent from an Oregon secondary school, and the student planned to become a citizen or a legal resident alien. The provisions would have first applied in the 2004-05 school year.

Human Service Issues

Health Care

Oregon Health Plan Policy and Budget Issues; Health Insurance; Pharmaceuticals; Mental Health; Miscellaneous Issues



2003 Summary of Legislation

Oregon Health Plan Policy and Budget Issues

While not an exhaustive list, several bills signed into law significantly impact the Oregon Health Plan (OHP). HB 2511 identifies the populations that the OHP will serve, and the benefits for which various populations are eligible. HB 3624 made a number of changes to the OHP service delivery system. HB 5030, the Department of Human Services' (DHS) budget bill, allocates General, Lottery, Tobacco Settlement, Tobacco Tax and Other Funds to the OHP. Additionally, HB 2189 impacts the Family Health Insurance Assistance Program (FHIAP) and Oregon Medical Insurance Pool (OMIP), both of which are part of the OHP. Below is a more detailed summary of these various pieces of legislation.

House Bill 2511

Relating to Department of Human Services

During session, the Senate and House heard similar bills (SB 540 and HB 2511 respectively) that would revamp the OHP in terms of populations served and benefits for various populations. Both chambers eventually agreed upon provisions that are contained in HB 2511. This bill, signed by the Governor on August 29, creates several changes from the federal Waiver program under HB 2519 (2001 regular session), which was never fully implemented due to state budget problems. HB 2511 directs DHS to seek federal approval to:[1]

- Provide all federally required health services to people who are categorically eligible for Medicaid, persons under age 19 years old and no more than 200% of the federal poverty level (FPL), and to pregnant women up to 185% FPL. Services for this population also include several optional benefits including prescription drugs, dental, outpatient mental health treatment, outpatient chemical dependency treatment and other services.
- Provides services for populations of the former medically needy program. The program will serve individuals age 65 years and over, people who are blind, and the disabled. Recipients must not have over a certain amount of gross income as determined by DHS. Benefits are limited to prescription drugs and eligibility for mental health and chemical dependency treatment are contingent on available funds.
- Cover persons age 19 years and older who are at or below 100% FPL and who do not have Medicare. This population, referred to as the OHP Standard population, will receive primary care benefits (with premiums and other cost-sharing) such as physician care, prescription drugs, limited durable medical equipment, lab/X-ray, outpatient mental health/chemical dependency treatment, and emergency dental services. They will also have a limited hospital benefit to treat more life-threatening conditions. The state is attempting to identify resources to fund a fuller hospital benefit for this population.

Effective date: August 29, 2003

House Bill 3624

Relating to medical assistance program of Department of Human Services

House Bill 3624 was the sole bill that emanated from the House Audit and Human Services Budget Reform committee after hearing considerable testimony on a variety of health care issues including: Medicaid populations and services; the inter-relationship of the private and public sectors; cost drivers; stakeholder perspectives; mental health services; and a wide variety of related topics. Several stakeholder workgroups were conducted over a several week period to make specific recommendations about OHP benefit designs and to address issues about the OHP service delivery system. The committee generated recommendations to the Joint Ways and Means Committee regarding

[1] The table at the end of the chapter shows which populations are covered by HB 2511C and the benefits each population is both eligible for and those benefits which the Legislature allocated funds to cover. The table also describes various caveats in the bill regarding limitations on which populations can receive what services, how benefits packages can be modified and the possibility of expanded benefits per available funds.

funding for a revamped OHP, and through HB 3624 directed cost-saving and other changes to the OHP services delivery systems including:

- Requires OHP clients, with certain exempt populations, be enrolled in fully capitated health plans (FCHP) and other local managed care mental health, chemical dependency and dental plans, and that OHP clients receive timely notice of the plan in which they are enrolled and information on appealing decisions.
- Creates physician care organization (PCO) model to serve OHP clients, outlines the state's role in contacting with PCOs, and specifies circumstances under which a FCHP can provide services as a PCO.
- Allows specific managed care contractors to provide services to OHP clients in a PCO model, and allows the state to accept donated funds to help in offsetting cost of implementing the PCO.
- Specifies covered practitioners and medical services in the OHP.
- Directs that Health Services Commission retain an actuary to develop a benchmark for health care provider costs and for the state to retain an actuary to set rates; reports to legislators on differences in findings.
- Requires state to contract with FCHPs to administer certain services (prescription drugs except mental health drugs, hospitalization, non emergency transportation, durable medical equipment) for fee-for-service clients.
- Prohibits DHS from setting capitation rates for mental health drugs; requires that mental health drugs are reimbursed on a fee-for-service basis.
- Sets rates between local health plans and hospitals when there is no contract in place between the two.
- Directs state to contract with a pharmacy benefit manager (PBM) that will purchase prescription drugs in bulk or reimburse pharmacies for certain drug costs; PBM will set up a bifurcated system; state will consult with FCHPs in developing contract with PBM.
- Directs state to seek additional rebates on prescription drugs and permits state to participate in multistate purchasing pools for prescription drugs.
- Requires state to document eligibility for OHP by ensuring need for services, residency and financial resources.
- Allows state to review prescription drug usage for OHP clients who exceed use of 15 drugs over a six-month period.
- Prohibits state from requiring prescribers to contact the state prior to requesting an exception to the preferred drug list.

Effective date: September 24, 2003

House Bill 2189

Relating to public subsidiaries for health insurance

House Bill 2189 makes a number of changes in the Family Health Insurance Assistance Program (FHIAP) including authorization for the Oregon Medical Insurance Pool (OMIP) to bill FHIAP for both the FHIAP member's monthly premium and the unpaid cost of services. Current law only allows OMIP to bill for premiums. The bill also expands FHIAP's definition of "subsidy" to include the unpaid cost of services that OMIP incurs on behalf of FHIAP members. Under current law, FHIAP can only pay for premiums. This additional statutory authority allows FHIAP to claim federal matching funds on the portion of the OMIP assessment used to pay for medical claims and related administrative services for FHIAP members.

Effective date: August 21, 2003

House Bill 5030

Relating to the financial administration of the Department of Human Services

The DHS budget bill contains the legislatively approved budgets for all the department's service clusters including Health Services, which includes public health services, non-OHP mental health /chemical dependency treatment and OHP services through the Office of Medical Assistance Programs. DHS is appropriated $1.1 billion General Funds, $3.5 billion of funds from other sources (lottery, tobacco settlement, etc.) and federal funds for a total of approximately $4.6 billion. HB 5030 also includes several budget notes on the OHP including directives for DHS to:

- initiate efforts to expand OHP clients use of mail order pharmacy as a cost-saving measure;
- convene a workgroup to study the potential saving related to return of unused prescription drugs to pharmacies that dispense prescription drugs to nursing homes and community-based residential settings;
- analyze the impact that paying premiums and other cost-sharing have on the OHP Standard population to remain in the plan; and,
- identify staffing needed to implement the revised OHP and to request additional funding and staffing as needed.

Effective date: August 29, 2003

House Bill 5031

Relating to the financial administration of the Insurance Pool Governing Board

The Insurance Pool Governing Board (IPGB) operates FHIAP, which subsidizes the purchase of private health insurance for people up to 185% FPL. The program, as part of the OHP, has a General Fund appropriation of $15.1 million, Other Funds of $2.1 million (fees, moneys or other revenues but excluding lottery funds and federal funds) and Federal Funds of $30 million as the maximum limit for payment of expenses from moneys collected or received by the IPGB from DHS, which are federal Medicaid funds.

Effective date: August 21, 2003

Miscellaneous Bills related to the Oregon Health Plan

There are several bills that have policy and financial impact on the health plan:

- **House Bill 2095** – reduces OHP costs by making the health plan the payer of last resort if a child is covered by parent's health insurance (*Effective date: October 1, 2003*)
- **House Bill 2368** – diverts tobacco tax dollars from the OHP to tobacco tax enforcement task force, which requires General Fund dollars to backfill the loss of funds (*Effective date: January 1, 2004*)
- **House Bill 2747** – contains a fully capitated health plan and hospital provider assessment (pending federal approval). These assessments will be earmarked for OHP services including enhanced hospital rates, retroactive eligibility, and a limited hospital benefit of emergency services and admissions for OHP Standard clients (non-categorical clients age 19 years and older at or below 100% FPL and who do not have Medicare). Although not OHP-related, HB 2747 contains a third assessment against nursing homes to use for increasing Medicaid rates for nursing homes. (*Effective date: November 26, 2003*)

Health Insurance

House Bill 2537

Relating to health benefit coverage

The Small Employer Health Insurance (SEHI) reform, created by SB 1076 (1991), required regulation of the marketing of health benefit plans to small employers with 2-25 employees. The reform created the Basic Health Benefit Plan with benefits "substantially similar" to Oregon's Medicaid benefits priority list in the Oregon Health Plan (OHP). SEHI established marketing and underwriting standards, guaranteed issuance, rate band requirements, renewability provisions, pre-existing condition provisions and other requirements. Plans are subject to review and approval by the Department of Consumer and Business Services. In 1997 statutory changes extended the SEHI Basic Health Benefit Plan to businesses with 26-50 eligible employees.

The current SEHI basic plans, paralleling Oregon's Medicaid benefits, include hospital inpatient and outpatient services, professional services (physician visits, therapies), preventive services, and additional services that include women's wellness, vision services, transplants, laboratory tests, skilled nursing care, home health, mental health/chemical dependency treatment and prescription drugs.

HB 2537 permits the Insurance Pool Governing Board to contract for and offer health benefit for certain small employers that are not eligible for

subsidies under the Family Health Insurance Assistance Program.
Effective date: September 2, 2003

House Bill 2987

Relating to health benefit plans

In response to continued decline in the small group and individual insurance markets, House Bill 2987 permits insurance carriers to impose a waiver of coverage for one or more pre-existing conditions for a limited time period for individuals accepted for individual health benefit plan coverage. Specific conditions can be waived for up to 24 months. Also, insurers base their group rates on a Geographic Average Rate (GAR) and specific group rates are limited to adjusting the group rates from the GAR by approximately 33 percent. The bill modifies the adjustment rate to go up or down from the GAR by approximately 43 percent. The measure also allows for a participation credit of five percent to small groups when all employees enroll for coverage. Insurers have been able to require that a certain percentage of employees enroll for coverage in a plan.
Effective date: January 1, 2004

House Bill 3431

Relating to individual health benefit plans

Prior to passage of this measure, if an individual applied for and was approved for an individual health benefit plan, that person was eligible for any individual plan offered by the carries (e.g., $500-$1,000 deductible). However, if a person was denied, they were denied for every plan offered by the carrier. Carriers had no flexibility to offer different products to applicants based on their health status.

House Bill 3431 allows a health insurance carrier to limit the plans in which an individual may enroll if the individual is accepted for coverage. If an applicant is offered a plan that doesn't meet their needs, they have the ability to choose whether to accept the plan offered or pursue coverage through the Oregon Medical Insurance Pool (OMIP).
Effective date: January 1, 2004

Senate Bill 6 – Legislation not Enacted

Relating to benefit plans for education district employees

Although Senate Bill 6 was not approved by the legislature, it would have established the Oregon Educators Benefit Board. The board would have been authorized to contract for health and dental benefits plans and other benefits for employees of certain school districts, education service districts and community college districts. The board would have been allowed to administer flexible benefit plans and contract for life insurance, supplemental medical, dental and vision and accidental death or disability plans. The board would have been required to offer a long term care insurance plan.

The measure would have required districts to participate in board plans by July 1, 2004 unless their current contracts expire after July 1, 2004 and then only until the expiration date, with some exceptions. However, community college districts would have been able to provide alternate plans. School districts and ESDs that are self-insured or independent trust districts would have been allowed to provide alternate plans until July 1, 2006 and after July 1, 2006 only if their costs were no more than comparable board plans.

Mandate Bills

Three expiring mandates for health insurance coverage were renewed this session. They were for: treatment for coverage for inborn errors of metabolism (SB 74 – *Effective date: July 3, 2003*); reimbursement for services provided by physician assistants (SB 646 – *Effective date: October 4, 2003*); and coverage for emergency services (HB 2642 – *Effective date: October 4, 2003*). A mandate covering breast reconstruction required by the Women's Health and Cancer Rights Act of 1998 was modified by HB 3654 (*Effective date: January 1, 2004*) which was similar to SB 785.

Pharmaceuticals

Senate Bill 875

Relating to prescription drugs

Senate Bill 875 establishes the Oregon Prescription Drug Program within the Department of Administrative Services. The program is designed to allow participants to receive discounted prices and rebates, making drugs available to participants at a lower cost. The department must also maintain a list of recommended drugs that are the most effective at the best possible price.

The bill identifies a list of potential individuals and entities that are eligible to participate in the program, however participation is voluntary. The pool of participants includes the Public Employees' Benefit Board, state agencies, local governments, enrollees in the existing Senior Prescription Drug Assistance Program, and state residents who are over age 54 and meet certain requirements. The Department of Human Services is excluded from participating in the pool.

Effective date: August 29, 2003

House Bill 3624

Relating to medical assistance program of Department of Human Services

As a cost management tool, a portion of House Bill 3624 allows the Department of Human Services to require prior authorization for Oregon Health Plan clients whose prescription drug use exceeded 15 drugs in the preceding six-month period. The bill also prohibits the department from adopting or amending administrative rules requiring prior authorization for medically appropriate or necessary drugs that are not on the list of the Practitioner Managed Prescription Drug Plan, established by SB 819 (2001).

Effective date: September 24, 2003

Mental Health

Senate Bill 1 and Senate Bill 54 – Legislation not Enacted

Relating to limitations on health insurance coverage

The issue of parity of insurance coverage for mental health and chemical dependency services was addressed by the legislature in Senate Bill 1. The measure ultimately did not pass, but when it was last discussed in committee, beginning January 1, 2005 it would have prohibited health insurers from imposing treatment limitations, limits on total payments or financial requirements on coverage for chemical dependency and mental or nervous conditions unless similar limitations or requirements are imposed on coverage of other medical conditions. Group health insurers would have been allowed to manage benefits through a number of common methods including contracted panels, health plan benefit differential designs, preadmission screening, prior authorization of services, utilization review or other mechanisms designed to limit expenses. Also, health maintenance organizations and health care service contractors would have been allowed to create plan benefit and reimbursement differentials at the same level as, and subject to no more restrictive limitations than, those imposed on other medical conditions. Similar to SB 1, SB 54 would have prohibited health insurers from imposing treatment limitations, limits on payments or limits on coverage of biologically based mental illnesses limited to: schizophrenia; schizoaffective disorder; bipolar affective disorder; major depressive disorder; and obsessive-compulsive disorder.

Senate Bill 636 and Senate Bill 925 – Legislation not Enacted

Relating to mental health

This session, there was discussion about developing a formula for funding local mental health services. Senate Bill 636 proposed that funding be distributed to counties on a per capita basis whereas Senate Bill 925 would have required the Director of Human Services and local mental health authorities to develop a funding formula by January 1, 2005 and specify

how it would be phased in over time. Neither measure was approved by the Legislature, however agency and local officials plan to continue the distribution formula discussion.

Senate Bill 267

Relating to public safety

Senate Bill 267, which was approved by the Legislature, requires, for the biennium beginning July 1, 2005 and continuing through the '09-'11 biennium, that an increasing percentage of moneys received by, among other agencies, the part of the Department of Human Services that deals with mental health and addiction issues be spent on evidence-based programs. Evidence-based program is defined to mean a program that incorporates significant and relevant practices based on scientifically based research and is cost effective.

Effective date: August 18, 2003

Miscellaneous Issues

Compliance Legislation for the Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1966 (HIPAA) was designed to improve the efficiency and effectiveness of the health care system by encouraging the development of standards for the electronic transmission, privacy and security of certain health information. Since its passage and with an effective date of April 14, 2003, states have been taking action to meet HIPAA requirements. To this end, the 2001 Legislative Assembly established the 17-member Advisory Committee on Privacy of Medical Information and Records (SB 104). The Advisory Committee was directed to analyze the impact of HIPAA for, inconsistency or conflicts with state laws and develop legislation that amends or repeals the law as necessary to comply with HIPAA. The Advisory Committee's recommendations are incorporated in House Bills 2305, 2306, 2307 and 2309. *Effective dates: May 24, 2003*

House Bill 2305 – Revises state policy and requirements for use and disclosure of specific health information. Defines the right of individuals to access and review protected health information. Allows health care providers or state health plans to charge up to $25 for 0-10 pages of written materials and no more than 0.25 per page for each additional page, postage costs, and cost-based fee for labor and supplies. Offers providers a model authorization form to use to obtain authorization for disclosure of appropriate health information and protects health care providers and state health plans from private rights of action.

House Bill 2306 – Revises the Oregon Insurance Code to conform with HIPAA relating to state privacy requirements for certain health insurers including the use and disclosure of certain health information. Authorizes the Director of the Department of Consumer and Business Services (DCBS) to adopt rules implementing state privacy requirements.

House Bill 2307 – Revises requirements for disclosure of or access to certain health information. Defines health related terminology and authorizes the Department of Corrections (DOC) to disclose "individually identifiable health information" under certain circumstances without inmate or inmate's guardian authorization.

House Bill 2309 – Requires physicians and psychologists, with patient authorization or court order, to provide certain information to court visitors in protective proceeding. Requires health care providers providing medical care immediately after a motor vehicle accident to a person believed to have been the operator of a motor vehicle in the accident to notify a law enforcement officer that the driver's blood alcohol level meets or exceeds the legal limit, grants immunity for providing such notice, and establishes reporting timeline (within five calendar days). In addition, the bill allows a physician, with patient authorization or a

court order, to provide relevant information concerning involuntary commitment of a mentally retarded person.

Medical Professional Liability Insurance

House Bill 3630

With medical liability insurance costs continuing to rise and Oregon's rural health care providers leaving their practices (primarily obstetrics, pediatrics and neurology specialists), HB 3630 directs the State Accident Insurance Fund Corporation (SAIF) to develop and implement a short-term program of reinsurance for medical professional liability insurance for qualified rural medical and osteopathic doctors. The reinsurance program will provide premium relief to qualified providers from 2004-2007. The bill requires that SAIF submit a plan to the Director of the Department of Consumer and Business Services (DCBS) and the Office of Rural Health for approval by September 30, 2003 and directs SAIF to engage a qualified consulting firm to gather, analyze and evaluate data on the availability, costs and transaction of medical professional liability insurance. The bill directs DCBS to report to the legislature and the Governor on the program's implementation and performance, and requires the Office for Oregon Health Policy and Research and the Office of Rural Health to report to the Governor on the attraction and retention of doctors in rural Oregon. Additionally, HB 3630 creates a six-member Professional Panel for Analysis of Medical Professional Liability Insurance that is directed to advise SAIF in the selection of the consulting firm, establish a work plan for the consulting firm, approve the consulting firm's work product, and evaluate the data reported by the consulting firm.

Effective date: September 17, 2003

Oregon Patient Safety Commission

House Bill 2349

House Bill 2349 emanates from recommendations presented by the Patient Safety Workgroup, which was comprised of health care stakeholders and convened by the Department of Human Services Health Services, to improve patient safety. HB 2349 creates a semi-independent Oregon Patient Safety Commission. The commission's goal is to "improve patient safety by reducing the risk of serious adverse events occurring in Oregon's health care system and by encouraging a culture of patient safety in Oregon." The commission will administer a voluntary Oregon Patient Safety Reporting Program that will gather and analyze data concerning serious adverse events and the causes of these events. Additionally, the commission will use the data to develop recommendations for health care improvements. The commission may assess fees on voluntary participants to fund the reporting program and voluntary participants may include hospitals, long-term care facilities, pharmacies, ambulatory surgical centers, outpatient renal dialysis facilities, freestanding birth centers and independent professional health care societies or associations. The reporting program and the commission's authority to assess the fees sunsets on January 2, 2010.

Additionally, the bill creates the 17-member Oregon Patient Safety Commission Board of Directors, which will include the Public Health Officer and 16 members appointed by the Governor and subject to Senate confirmation. The Board of Directors is required to report to the Legislative Assembly no later than September 30, 2004 on the implementation of the commission and the Patient Safety Reporting Program.

Effective date: August 21, 03

Public Health

House Bill 2153

House Bill 2153 allows the Department of Human Services to share immunization registry information with other state registries in the U.S., and allows registration of clients receiving immunization services in Oregon in addition to clients born in or living in Oregon.

Oregon Immunization ALERT is a statewide childhood immunization information system that was developed to achieve complete and timely immunization of all children in Oregon, particularly in the birth through two years age groups who are most at risk. The bill allows data

in immunization registries to be shared between Oregon and other state registries, which will help ensure that residents who receive immunizations in other states have accurate immunization records. A major barrier to timely immunization of all children is the continuing difficulty of keeping immunization records accurate and up to date. Oregon's immunization registry addresses this problem by collecting immunization data from public and private health care providers and linking children's records. Information from other states will contribute to efforts to immunize children in Oregon on time and reduce the occurrence of vaccine-preventable diseases.
Effective date: January 1, 2004

House Bill 2251
House Bill 2251 authorizes the Governor to proclaim a state of impending public health crisis under certain circumstances, and allows the Governor to seek assistance under the Emergency Management Assistance Compact during a state of an impending public health crisis.

The Oregon Department of Justice had analyzed the state's emergency powers authority, and the Governor's Security Council examined approximately 15 potential issues relating to public health. The Health Preparedness Advisory Committee (HPAC) reviewed the Security Council list and identified four issues requiring legislative solutions: Public Health Alert; Liability and Emergency Licensing; Isolation (Quarantine); and Access to Medical Records.

House Bill 2251 responds to the recommendations relating to public health alerts and provides the Governor with the ability to implement public health measures to address a public health emergency or imminent emergency.
Effective date: July 8, 2003

Oregon Health Policy Commission

House Bill 3653
House Bill 3653 abolishes the Oregon Health Council within the Office for Oregon Health Policy and Research (OHPR), and creates the Oregon Health Policy Commission. The bill specifies commission membership and adds two new duties: (1) to develop a plan to monitor the implementation of the state health policy and to review State Medicaid Plan amendments, modifications operational protocols, and waiver applications submitted to the Centers for Medicare and Medicaid Services (CMS) by the Department of Human Services (DHS); and (2) to review any changes to administrative rules relating to the state's medical assistance program and other health care programs.
Effective date: January 1, 2004

Informed Consent

House Bill 2547 – Legislation not Enacted
HB 2547 would have enacted the "Woman's Right to Know Act," requiring informed consent of a pregnant woman 24 hours prior to an abortion. The bill prescribed the information to be provided by the physician in order for the consent to be considered informed, and also required the pregnant woman to certify in writing that the required information was provided. A process was also established for health care providers to provide information in case of a medical emergency. The measure included authority for the Director of Human Services to impose civil penalties on health care providers who willfully failed to comply with the reporting requirements included in the measure.

2003 Federal Poverty Level Guidelines

Size of Family Unit	48 States and D.C.	Alaska	Hawaii
1	$ 8,980	$ 11,210	$ 10,330
2	12,120	15,140	13,940
3	15,260	19,070	17,550
4	18,400	23,000	21,160
5	21,540	26,930	24,770
6	24,680	30,860	28,380
7	27,820	34,790	31,990
8	30,960	38,720	35,600
Each additional, add	3,140	3,930	3,610

Source: *Federal Register*, Vol. 68, No. 26, February 7, 2003, pp. 6456-6458

House Bill 2511C Organization of Populations and Services

(The plan below is contingent on federal approval of the state's request to amend the Oregon Health Plan. As of this date, approval is still pending)

X: Services for which population is eligible

X Shaded box indicates benefits that Legislature appropriated money for based on available funds including federal approval of the provider tax

Persons to Receive Services /// Eligible Services[1]	**a.** Federally required services	**b.** Physician, NP, other practitioners; ambulance	**c.** Prescription drugs	**d.** Lab and X-ray	**e.** Medical supplies	**f.** Outpt. mental health treatment	**g.** Outpt. chemical depend. treatment	**h.** Emergency dental	**i.** Non-emergency dental[7]	**j.** Other provider services[3]	**k.** Outpt. hospital	**l.** Inpt. hospital
1. Categorically needy[2]	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**
2. Persons under 19 years of age and no more than 200% FPL[2]	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**
3. Pregnant women up to 185% FPL[2]	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**
4. Medically needy (age 65+, blind, disabled and under certain gross income set by DHS)[4]			**X**[5]			**X**[5]	**X**[5]					
5. Persons age 19 years of age and older, no more than 100% FPL and no Medicare[6]		**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**[8]

NOTES: ***(A table of 2003 Federal Poverty Level Guidelines is available on the preceding page)***

[1] Based on funding, allows Legislature to adjust health services funded by modifying benefit packages or population of eligible people. Populations cannot be reduced below what Department of Human Services (DHS) was approved for funding within current budget.

[2] Services a - g must be provided as a single benefit package to people in categories 1- 3. The order in which benefits h – l are listed does not imply a priority.

[3] DHS must develop at least three benefit packages under other provider services. Examples of other provider services include preventive services, physical/occupational/speech language therapy, targeted case management for HIV, acupuncture, naturopathic services, chiropractic services. DHS is also requesting that Oregon be allowed to reduce or eliminate other provider services if necessary to adults age 19 and over who are categorically needy and pregnant women up to 185% FPL to sustain the OHP within available funds.

[4] DHS may periodically restrict enrollment of this group to stay within legislatively adopted budget.

[5] Person cannot be covered by other public or private prescription drug plan and requires person to pay certain percentage (established by DHS) of Medicaid drug price. Prescription drug services, at a minimum, must be provided to people in this category. DHS is currently in the process of developing the specific details of this program.

[6] This is the OHP Standard population, which is eligible to receive benefits b – l based on available funds. At a minimum, services b – h must be provided if this population is included in the OHP.

[7] DHS is requesting in the current waiver request to the Centers on Medicare and Medicaid Services that Oregon be allowed to reduce or eliminate non-emergency dental services if necessary to adults age 19 and over who are categorically needy and pregnant women up to 185% FPL to sustain the OHP within available funds.

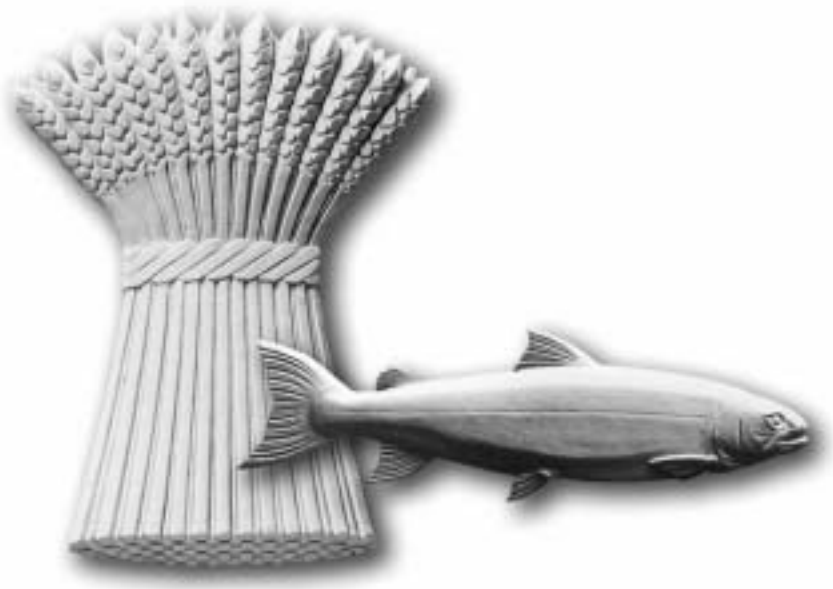
[8] The OHP Standard population will initially receive a limited hospital benefit (emergency services and admission for those conditions for which prompt treatment will prevent life threatening health deterioration) and hospice services. The limited benefit (indicated as "emergency hospitalization" in the bill) is funded based on federal approval of the provider tax.

10/1/03

Natural Resource Issues

Natural Resources

Agriculture; Environment; Forestry; Fish and Wildlife; Resource Extraction; Utilities – Electric and Water; Water; Ecosabotage



2003 Summary of Legislation

Agriculture

Senate Bill 242

Relating to State Department of Agriculture inspection programs

The Department of Agriculture is authorized to certify Oregon agricultural *products* upon request from producers. SB 242 expands the Department's authority to certify *processes* associated with production if asked by the producer. Under a pilot program with the U.S. Department of Agriculture (USDA), the state's Commodity Inspection Division/Shipping Point Inspection Program is currently inspecting and certifying processes such as Good Agricultural Practices (GAP) and Good Handling Practices (GHP) for some fresh produce and fruit. GAP and GHP are defined by USDA rule. SB 242 expands the availability of this service to other producers who desire process certification. In addition, seeds, bulbs and tubers that are not nursery stock are added to the definition of "horticultural and agricultural products" making services available to these growers. Under the measure, the producer requesting the service pays a fee to cover the costs of process inspection and certification.

Effective Date: July 22, 2003

Senate Bill 673

Relating to Oregon seafood cooperatives

The Capper-Volstead Act of 1922 allows growers to form cooperatives and collectively pool their products to negotiate with buyers while providing legal protection from antitrust laws. Under the Act, grower cooperatives may only negotiate with buyers individually except under a state-supervised price negotiation process. SB 673 establishes a state-supervised process for harvesters of seafood (crab, shrimp, and fish) to negotiate with dealers to establish season starting prices. Participation by dealers is voluntary. The measure authorizes the department to adopt rules that can tailor the process to the respective commodity and needs of the parties. SB 673 also allows the department to adopt rules to set and collect fees from the participants to pay the costs of supervising negotiations. Participation is voluntary for all individuals/entities that may be involved.

Effective Date: June 26, 2003

Senate Bill 854

Relating to commodity commissions

Twenty-eight commodity commissions have been established in the state; eight by the Legislature and 20 by petition. The commissions fund promotion, research, and education functions on behalf of producers through assessments on the producers at the point of first sale. The U.S. Supreme Court recently ruled on the question of the constitutionality of mandatory assessments imposed under the Mushroom Promotion, Research and Consumer Information Act with respect to free speech protections. Both the U.S. Supreme Court and Oregon Court of Appeals have made it clear that there is no First Amendment violation when the government speaks; therefore, continued use of mandatory assessments to fund promotion is permissible as long as the promotion is clearly identified as a government activity. Further, the court ruled that the reasons the government has for requiring people to associate and to fund speech must be for some broader governmental purpose than promotion alone.

SB 854 addresses the court findings by re-creating all Oregon commodity commissions in statute and confirming that they are state commissions. Additional oversight by the Department of Agriculture and ratification of prior actions by commissions also serve to address the court decisions. Several provisions are sunset on March 1, 2009 in order to require the legislature to revisit commission structure and authority and to take direction from anticipated future court cases regarding collection of mandatory assessments.

Effective Date: July 22, 2003

House Bill 3549 – Legislation not Enacted

Relating to agricultural commodity indemnity

During the late 1990's, Agribiotech, Inc. (ABT), a grass seed company, accounted for about one-third of global grass seed production and distribution. On September 29, 1999, ABT

announced preliminary unaudited results for its fiscal year ending June 30, 1999. The outcome estimated a net loss of approximately $47 - $51 million. After several unsuccessful attempts at securing new credit, the company filed for protection under Chapter 11 of the U.S. bankruptcy law. ABT has been subject to Chapter 11 proceedings since January 25, 2000.

According to Oregon attorneys involved in the case, 40 to 50 percent of Oregon's grass seed farmers are involved in this bankruptcy situation. These farmers were owed approximately $27 million. According to the Oregon Department of Agriculture, the ABT bankruptcy affected approximately 650 Oregon growers. The ABT bankruptcy was one of the largest agricultural bankruptcies in United States history. HB 3549 would have created a Task Force on Agricultural Commodity Indemnity to study and make recommendations on the establishment of a commodity indemnity fund for the payment of claims by agricultural commodity producers against first purchasers of agricultural commodities or against grain warehousemen.

Environment

House Bill 2899

Relating to the environment

When property owners seek permits to alter wetlands, they are required to replace or mitigate the resource by improving, creating or restoring wetlands. Compensatory mitigation is creating, restoring or enhancing wetlands to replace or 'compensate' for the wetland area and functions lost through some type of alteration. Compensatory mitigation is required as a condition of any state permit to place fill in or remove earth from a wetland.

A wetland mitigation bank is a larger wetland restoration, creation and/or enhancement effort. The bank's purpose is to offset several anticipated, smaller wetland impacts. A mitigation bank replaces wetland functions that are lost due to development when there are no other feasible options to replace wetland function at the site being developed. Banks are normally large blocks of wetlands operated by private individuals or government agencies. There are about seven approved wetland banks in Oregon totaling approximately 200 acres. An entity unable to replace wetland functions may buy credits in the wetland bank to compensate for the wetland loss at the site of development. HB 2899 makes performance standards for mitigation banking consistent with individual compensatory mitigation. The measure further provides for dispute resolution. HB 2899 authorizes the Division of State Lands to utilize funds available in the Oregon Wetlands Mitigation Bank Revolving Fund and to prioritize expenditures from the fund including purchasing credits from mitigation banks in some circumstances.

Effective Date: November 26, 2003

House Bill 3175

Relating to the environment

In the early 1900s, cities and industries discharged untreated sewage and industrial process water directly into the Willamette River. This created a river who's water was too toxic to sustain fish life, be used for recreation or be used for consumption. In 1938 a citizens' initiative demanded clean-up of the river. The state Sanitary Authority, which was DEQ's predecessor agency, required increasingly stringent treatment and control on municipal and industrial wastewater. In 1969, in concert with the passage of the National Environmental Policy Act (NEPA), the Department of Environmental Quality (DEQ) was formed. In 1972, National Geographic magazine produced an expose' which reported the river 90% free of pollutants. Even so, the river still had significant pollution problems. In order to combat these, the DEQ continued managing specific areas of river clean-up, including, but not limited to, the establishment of Total Maximum Daily Loads of toxins which can remain in the river while maintaining the river as a beneficial water resource.

The Green Permit program was established to provide incentives for businesses to pursue environmental objectives that benefit water quality. HB 3175 directs the Commission to promulgate rules specifying criteria and

procedures to obtain green permits and extends the sunset through January 2, 2008. The measure provides that administering and issuing green permits is at the discretion of the Environmental Quality Commission. HB 3175 increases the initial permit deposit from $5,000 to an amount not to exceed $25,000 and requires the department to recover full direct, indirect and associated costs.
Effective Date: June 18, 2003

Forestry

House Bill 2200

Relating to liability for entities engaged in fire protection

A forest landowner is responsible for fire protection on his/her land. This responsibility can be accomplished either through membership in a Forest Protective Association approved by the State Board of Forestry or through payment to the State Forester for protection. The Department of Forestry maintains a forest protection system which includes both association districts and state districts. The standards of protection, training, and personnel qualification requirements are the same for both types of districts and personnel are used interchangeably. HB 2200 provides the same liability limits for employees of private, non-profit, forest protective associations and rangeland protective systems as a Department of Forestry employee when fighting a fire under the direction and control of the State Forester. The measure also exempts agents of forest protective associations, rangeland protection systems or public bodies (Department of Forestry fire fighters) from liability for injury to persons or property while acting within the scope of their fire fighting duties except in instances of willful misconduct or gross negligence. Finally, forest landowners or operators who are not negligent in the origin of a fire and who make "every reasonable effort" to extinguish the fire has their liability limited to extra suppression costs (those that exceed regularly-budgeted district resources) and no more than $300,000. HB 2200 modifies the definition of "every reasonable effort" to allow a landowner or operator to take actions which are necessary and effective in the judgment of the forester and, thereby, allowing the landowner or operator to act while maintaining their liability limitation.
Effective Date: April 4, 2003

House Bill 2344

Relating to forests burned by fire

Directs the Forestry Department, the Parks and Recreation Department, the Department of Fish and Wildlife, the Division of State Lands and any other state agency with state forestland responsibilities to adopt statewide policies that promote the effective use of state resources by adopting and implementing policies and management plans to restore and recover burned forestlands.

In 2001, the Bridge Creek fire in northeastern Oregon burned nearly 6,000 acres of state-owned land. According to the Department of Forestry and Department of Fish and Wildlife, land burned was purchased with federal dollars, which created a nexus between timber salvage rules under Oregon law and the federal Endangered Species Act. This caused a delay in salvage operations and increased Oregon's concern regarding left over fuels. HB 2344 provisions apply to all timber salvage operations. (See also HB 3152)
Effective date: June 24, 2003

House Bill 3152

Relating to healthy forest programs

The Oregon Department of Forestry manages 789,000 acres of state forests throughout western Oregon. The state also manages state forest lands in Klamath, Douglas, Jackson and Josephine counties which have frequent, periodic fires, with the potential for fuel build-ups. HB 3152 directs the Department of Administrative Services (DAS) to coordinate state agencies with state forestland oversight responsibilities to develop state forestland plans to address excess fuels build-up and forest health. (See also HB 2344)
Effective Date: January 1, 2004

House Bill 3264

Relating to forest operations

The Oregon Forest Practices Act (ORS 527.610 to 527.770) requires the State Forester to approve plans for forestry operations within 100 feet of fish bearing or domestic use streams or that

involve resource sites needing protection, including threatened and endangered fish and wildlife as well as ecologically and scientifically significant wetlands and other biological sites. According to the State Forester, about 20 percent of operations require approval of a plan. Operators were submitting a written plan to the State Forester and in turn, after review and amendment, received written authority for the operation.

On February 28, 2002, several organizations, including the Pacific Rivers Council, filed suit in federal district court against the State Forester, seeking to halt state approval of certain forest operations, such as clearcutting on landslide-prone lands, based on allegations that the approvals violate the federal Endangered Species Act. HB 3264 relieves the State Forester of providing written approval of plans.

Effective Date: August 29, 2003

Senate Bill 595 – Legislation not Enacted

Relating to federal forest programs

The federal Forest Legacy program was originally established to limit conversion of environmentally important forestland to non-forest uses incompatible with the continued production of ecological, social and economic forest values, including but not limited to, commercial timber production. The program accomplishes this by compensating landowners for the forgone economic opportunity of converting the land to a non-forest use through the fair market acquisition of at least the non-forest conversion rights to the property. The fair market value is determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisition. A 25 percent match in non-federal funds is required for project approval. With respect to development rights, the minimum federal requirement is that private landowners who sell the development rights through a conservation easement must indicate how they will protect important resources such as water, soil, timber, fish and wildlife, cultural and recreation in a state-approved stewardship plan. Private forestland owners in Oregon simply reference the resource protection requirements of the Oregon Forest Practices Act. Willing sellers must apply to the program in order to be considered for funding. The timeframe for participating in the federal Forest Legacy program calls for state consent to apply for federal funds to be granted by a specified date. SB 595 would have authorized the Forestry Department to apply for, accept and utilize federal grants for the forest legacy program.

Fish and Wildlife

Senate Bill 597

Relating to licenses for taking shellfish

SB 597 requires a person to obtain a shellfish license in order to take shellfish. Shellfish are defined as abalone, clams, crabs, mussels, oysters, paddocks, scallops and shrimp (not including freshwater clams or crayfish). The Commission will grant shellfish licenses, without charge, for use by foster children and patients or residents of veterans' hospitals or homes. Three state agencies play a part in managing shellfish. The Fish and Wildlife Commission sets shellfish harvest limits and is charged with protecting and enhancing Oregon's fish and wildlife and their habitats. The Oregon State Police enforce harvest limits and related wildlife laws. Finally, the Oregon Department of Agriculture tests shellfish and issues health advisories or beach closures when necessary. Shellfish license fees will support these management activities.

Effective Date: January 1, 2004

Senate Bill 832

Relating to wildlife

Wildlife damage control statutes were first designed to deal with agricultural and livestock damage in rural areas or to control predatory animals. The law allows anyone to dispatch crippled or helpless wildlife inside or outside of city limits. The taking of wildlife is generally prohibited within city limits except when the local governing body passes an ordinance or resolution and the Fish and Wildlife Commission determines that activities authorized by the ordinance or resolution will not adversely affect public safety or reasonably interfere with other uses of the land. SB 832 allows landowners to respond to wildlife nuisance situations (loss or

harm to property or pets) in a timely manner by allowing problem wildlife to be legally captured and removed. The measure also creates a Task Force on Wildlife Control Activities to develop recommendations on a system for licensing and regulating businesses conducting nuisance, damage, or public health risk animal control activities.
Effective Date: June 6, 2003

House Bill 2138

Relating to the Oregon Plan

The 2001 Legislative Assembly created a Task Force on Salmon Recovery (HB 3002) for the purpose of defining "recovery" with respect to anadromous salmonid populations. HB 2138 defines the following terms for purposes of the Oregon Plan for Salmon and Watersheds: listed unit, native fish, naturally produced, population, recovery, and self-sustaining. In addition, the bill directs the Governor to negotiate with federal officials to ensure that the Oregon Plan satisfies the requirements of the federal Endangered Species Act (ESA); requires the Governor to direct the Fish and Wildlife Commission, once recovery has been achieved, to develop rules to remove the species from the state endangered species list and have adequate measures in place to avoid the species return to threatened or endangered status.
Effective Date: January 1, 2004

House Bill 3094

Relating to retail sale of fish

A Limited Fish Seller's License, a fisherman can sell their catch to the consumer directly from their fishing vessel, but may not leave the vessel in order to sell fish. Otherwise, all fish must be sold to a wholesale fish dealer that maintains records and reports taxes paid. HB 3094 allows the Oregon Fish and Wildlife Commission (OFWC) to establish a pilot project for the non-treaty Columbia River fisheries to allow individual fishermen to sell their fish. In addition, the measure allows for the sales at any location that meets Oregon Department of Agriculture (ODA) food safety and handling standards. The pilot program sunsets on January 2, 2008.
Effective Date June 24, 2003

House Bill 3108

Relating to commercial fishing

Commercial and sport harvest of nearshore ocean fish species (black and blue rockfish, lingcod, cabezon and greenling) has been increasing as other fisheries (salmon and coho) have been declining. There has been increasing concern that the nearshore fisheries may be depleted by the growing harvest but there is insufficient information on stock health to establish parameters for a sustainable harvest. The Pacific Fisheries Management Council adopted the Interim Nearshore Species Plan to begin addressing the issue; however the interim plan does not individually manage rockfish or set harvest guidelines or quotas. In November 2002, the Oregon Fish and Wildlife Commission (OFWC) adopted rules to put nearshore rockfish species, excluding black and blue rockfish or lingcod, into the developmental fish category and required qualified commercial vessels to obtain a developmental fisheries permit.

HB 3108 requires ODFW to establish an annual permit or endorsement to enter a nearshore fishery with a commercial fishing vessel and land black rockfish, blue rockfish and nearshore fish. This permit replaces the developmental fisheries permit beginning January 1, 2004. In addition, the bill increases the ad valorem landing fees, currently assessed on the market value of fish caught by commercial vessels, from 1.09% to 5 percent for rockfish. The landing and permit fee increases are to be placed in the Black Rockfish, Blue Rockfish and Nearshore Species Research Account.
Effective Date: September 24, 2003

House Bill 3616

Relating to land conservation

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. In 2001, the Legislative Assembly expanded the Oregon Department of Fish and Wildlife Habitat Conservation and Management program (HB 3564) to include forestland and allowed tribal governments to hold conservation easements.

The 2001 measure further established a Conservation Incentives Work Group to review state statutes, rules, policies and programs that affect landowner's decisions to implement conservation strategies.

HB 3616 establishes a new process for applying and criteria for approval of the wildlife habitat conservation plans based on work group recommendations. The farmland and forestland special assessments procedures are the model of choice for evaluating the new wildlife special assessment. In addition, the bill establishes a property tax special assessment program for wildlife habitat, allows the Oregon Fish and Wildlife Commission (OFWC) to designate certain land as eligible for wildlife habitat special assessment upon request by a county or city governing body and that the commission give significant weight to the demonstration of economic burden when the county or city requests the commission to remove the designation. Local governments maintain a level of ability to opt-out of these provisions if they are economically impacted.
Effective Date: January 1, 2004

Resource Extraction

Senate Bill 923

Relating to State interests in land

SB 923 prohibits the Division of State Lands (DSL), when selling property, from retaining mineral or geothermal resource rights, if the property is within an urban growth boundary; within an area zoned for residential, or has smaller than three acres tracts; or if any mineral or geothermal value is included in the sale price. Mineral is defined as oil, gas, sulfur, coal, gold, silver, copper, lead, cinnabar, iron, manganese and other metallic ore, and any other solid, liquid or gaseous material or substance excavated or otherwise developed for commercial, industrial, or construction use. Where the State of Oregon has reserved mineral or geothermal resource rights on property, the measure directs DSL to release and transfer rights on request of the property owner. SB 923 provides a process for determining the value of resource rights and option for the owner to purchase the rights. The Division of State Lands may charge a fee of up to $150 to process transfer of rights.
Effective Date: January 1, 2004

House Bill 2688

Relating to material removed from lands of navigable streams

At statehood, the State Land Board was entrusted with the management of certain lands dedicated for the benefit of schools through the Common School Fund. The Division of State Lands (DSL) charges royalty fees for removal of material from navigable streams owned by the State of Oregon when used for certain purposes. HB 2688 allows removal and use of materials, without payment of royalties, for the following public purposes: 1) channel or harbor improvement or flood control; 2) filling, diking or reclaiming land owned by the state or political subdivision and located not more than two miles from the stream bank; 3) used for the creation, maintenance or enhancement of fish or wildlife habitat; 4) used for the maintenance of public beaches, or 5) removal due to contamination with hazardous materials with 30-day prior written notice of disposal.
Effective Date: January 1, 2004

House Bill 2898

Relating to mining

The Federal Land Policy and Management Act of 1976 (P.L. 94-579) established financial guarantee requirements for small mining and exploration projects. Bonds are required to insure that reclamation obligations are fulfilled should a permittee be unable to perform the permitted work. Recent (post 9-11-01) cost for bonds, according to the Department of Geology and Mineral Industries, has escalated. HB 2898 allows the department to determine if a reclamation bond pooling program would be a cost effective alternative to insure site reclamation.
Effective Date: January 1, 2004

House Bill 2945

Relating to surface mining

Historically, the Water Resources Department (WRD) has not required water rights for certain types of surface mining activities (primarily sand

and gravel extraction) that result in moving groundwater from or within a site. This practice is known as "de-watering". Under state water law, a water right is generally required in order to make beneficial use of the water. The Water Resources Department has interpreted this language such that the mere act of draining water from a site does not result in a beneficial use and, therefore, a water right has not been required. HB 2945 codifies this interpretation in state law.

HB2945 also requires the Department of Geology and Mineral Industries (DOGAMI) to assess and address the potential impacts of de-watering activities on nearby groundwater resources. DOGAMI is directed to consult with the WRD in determining the potential impacts and is given authority to impose appropriate conditions to prevent or mitigate off-site impacts. A civil penalty of not more than $10,000 per day may be imposed by DOGAMI's governing board for violating permit conditions.
Effective Date: January 1, 2004

Utilities – Electric and Water

House Bill 2226

Relating to water utilities

During the 2001 Legislative Assembly, concerns were raised regarding the Public Utility Commission's (PUC) Water Program. In response, the PUC convened a steering committee to evaluate the scope and role of the program and to develop appropriate recommendations. HB 2226 and HB 2227 (below) codify these recommendations. HB 2226 eliminates the exemption for water utilities that serve 300 or fewer customers from utility regulation and allows the water utility to request to be placed under the PUC's rate regulation. The measure allows the association members, being supplied water, to petition the PUC to review and consider services and rates regulated by the PUC. HB 2226 applies to water suppliers and associations while municipals, cooperatives and public utility districts are exempt.
Effective Date: January 1, 2004

House Bill 2227

Relating to water utilities

HB 2227 allows water utilities serving fewer than 500 customers to elect to be subject to the Public Utility Commission's (PUC) financial regulations. The measure allows smaller water providers to use rates to generate funding to pay for required capital improvements when development capital is required but not available. HB 2227 also allows the PUC to levy fines or penalties up to $500 per violation of statute, rule or order and directs the PUC to establish an application process for water utilities to apply for exclusive service territories. HB 2227 applies only to water supplier public utilities.
Effective Date: January 1, 2004

House Bill 3376

Relating to direct access electricity

Each year the Public Utility Commission (PUC) initiates an open enrollment period in which electricity service providers and electric utilities are required to post their prices that will be charged for electricity in the subsequent year. Customers can then choose an energy plan to meet their needs, whether that be to purchase electricity from a public utility or through a direct access provider. The window of time allowed for customers to shop the process has typically been short, generally 24 to 48 hours. HB 3376 requires that the Pubic Utility Commission set a date for announcing all electricity prices. Electricity service suppliers and electric companies must announce estimated prices that they will charge for electricity in the subsequent year or contract period at least five days prior to the date set by the Commission, thus allowing consumers a minimum of three business days to choose their electricity provider.
Effective Date: June 24, 2003

Water

Senate Bill 82

Relating to use of State-owned lands

Water right applicants/holders need to obtain written authorization, obtain an easement or acquire ownership of land over which

conveyance structures are necessary to perfect a water right. Failure to secure these requirements is grounds for permit denial or forfeiture. The Division of State Lands holds State-owned lands in trust for the public and grants easements or licenses to use or occupy state lands including rights-of-way for water conveyance structures or works. SB 82 provides blanket state permission to occupy state-owned submersible lands for structures and works associated with water rights granted for irrigation or domestic use.
Effective Date January 1, 2004

Senate Bill 820

Relating to water

Transferring water from one type of use to another requires an application to the Water Resources Department and an assessment of potential injury to other water right holders. The Deschutes Basin is one of the fastest-growing areas of the state but has a limited water supply. SB 820 is aimed at providing flexible water management options for the Deschutes Basin only. The measure authorizes the transfer of a surface water diversion to a groundwater source and allows the party transferring the right to retain the original priority date. SB 820 further allows for a temporary change in the type of use, from irrigation to municipal use, for up to 25 years. Finally, the measure directs the Department of Environmental Quality to consult with interested parties and state agencies to examine barriers to wastewater reuse in urban areas and to report the findings to the Legislature.
Effective Date: August 22, 2003

House Bill 2268

Relating to water

Currently, approximately 75 percent of water right processing costs are funded by General Fund revenues. The last water right fee increase occurred in 1997 and since that time the cost for water right related service transactions has continued to increase while revenue projections have declined. HB 2268 increases the statutory fee for water right related transactions, which include water right transfers, permits, extensions, protests, applications for small ponds, and well construction start cards. The bill establishes fees for instream leases, allocations of conserved water, and review of Water Management Conservation Plans. In addition, the measure directs the Water Resources Department (WRD) to establish a Water Right Operating Fund and to convene an Administrative Fee Work Group.
Effective Date: July 21, 2003

House Bill 2551

Relating to the Water Resources Department

Applications to the Water Resources Department (WRD) for designation of water rights and permitted use of surface and groundwater have steadily increased as Oregon's population, housing and industry have grown. The department's budget resources have not kept pace with the applications resulting in an increasing backlog of requests for service. HB 2551 allows the WRD to enter into an agreement (referred to as "receipt authority agreements"), with any person, to establish fees to be paid to the department in order to expedite or enhance services voluntarily requested under an agreement and that the department review those responsibilities and determine what services are appropriate for completion by private parties. In addition, the measure precludes WRD from compelling a person to enter into a receipts authority agreement or to charge more for services than it costs the department to provide.
Effective Date: January 1, 2004

Senate Bill 590 – Legislation not Enacted

Relating to water rights

Water rights are appurtenant (legally attached) to land. Ownership of water rights is not always clear when the land is located within an irrigation district or another kind of water district because of the various ways irrigation districts are formed and water rights applied for. Ownership questions arise when individual property owners or the district desires to transfer, cancel, change use, or change diversions of water. A 2000 Attorney General's opinion determined that a landowner within a district owns the water right for the purposes of voluntary cancellation and may cancel an appurtenant water right independent of the district. SB 590 would have directed an interim study of the ownership issue

and would have created a presumption in legal proceedings that the property owner is the owner of the water right.

Senate Bill 928 – Legislation not Enacted

Relating to waterways for which a navigability study has not yet been completed

The State Land Board directed the Division of State Lands to initiate a navigability study on the John Day River from river mile 10 to river mile 184. That order was delayed to allow the Legislature time to consider the matter. Under current law, if a water body is declared navigable, citizens may use the bed and banks of the waterway up to the ordinary high water mark for recreational purposes and, with a lease, commercial purposes. Use of the bed and banks on navigable stream segments are subject to state laws, regulations, and local ordinances. Violations include, but are not limited to, littering in or within 100 yards of state waters, trespass, interference with property, damaging property, damaging livestock and reckless burning. The bill would have established Class A violation penalties for those violating authorized waterway uses.

SB 928 stated legislative findings declaring that it is in the public interest to continue the public discussion towards defining the limits of and managing pubic and private rights on waterways. To that end, the bill would have created a John Day River Advisory Committee charged with identifying issues and concerns of landowners and the public on the waterway and methods to resolve conflicts. SB 928 would have also created a Statewide Waterway Public Use Task Force to bring statewide resolution to the issue of the rights of the public to use and the rights of private property owners to control the use of the beds and banks of waterways.

SB 928 would have specified uses allowed on submerged lands (water), on banks up to the ordinary high water mark (dry bank), and emergency and portage use above the ordinary high water mark. Prohibited uses would have included open fires, disposal of human waste, overnight camping, or discharge of firearms except in hunting waterfowl without permission of the landowner. The bill would have relieved landowners of liability for environmental damage including habitat, fish, wildlife or water quality, caused by another person's use of the waterway or during portage or emergency use and provided for compensation for damages.

Ecosabotage

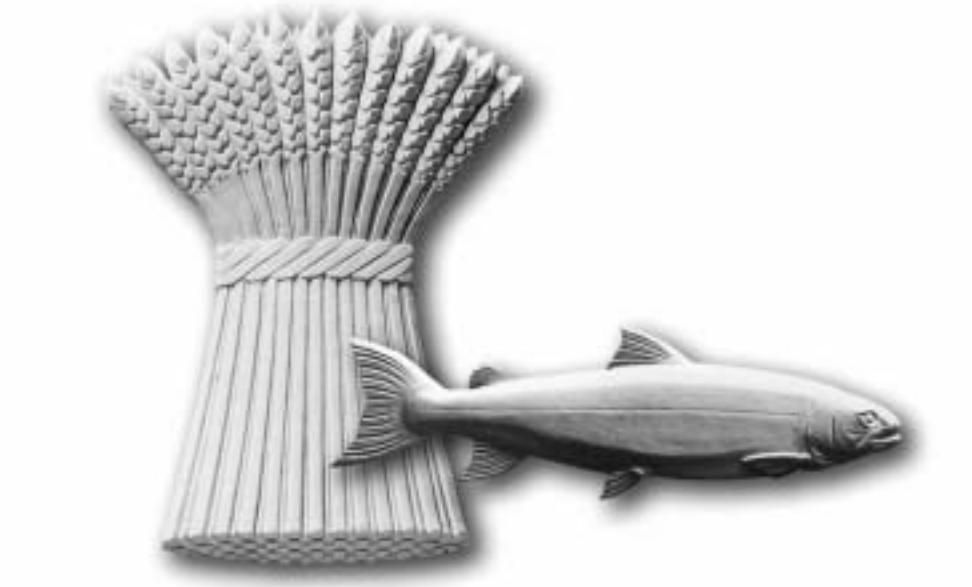
Senate Bill 385 - Legislation not Enacted

Relating to ecosabotage

Crimes that may be considered ecosabotage currently are not subject to criminal penalties or statute of limitations beyond those applying to the criminal act. SB 385 would have extended the time limitations by five years for the prosecution of felony offenses involving interference with agricultural production; surface or underground mining; protection, restoration or management of wildlife, habitats, waterways, coastlines, farmlands or forests; or the lawful work of persons engaged in research, education or advocacy of the listed activities. The measure would have established penalties of up to three times the actual damages sustained and punitive damages, as appropriate.

Natural Resource Issues

Land Use



2003 Summary of Legislation

Senate Bill 94

Relating to applications for action by city

Under current law, a governing body of a city or its designee must take final action on an application for a permit, limited land use decision or zone change inside an urban growth boundary, including resolution of all appeals, within 120 days after the application is deemed complete. The types of land use change applications include land divisions, utility facility siting, dwelling establishment or replacement, development on wetlands and transmission tower siting applications. The applicant may request a reasonable time extension for an application decision in order provide time for submission and consideration of pertinent information. Any person or entity adversely affected by any final action may appeal under ORS 227.180. Senate Bill 94 modifies criteria for determining when a permit or zone change application is complete and sets limits on time extensions. This modification provides that an application is void after 181 days if missing information or written notice that no additional information will be submitted is not provided by applicant. Limits the total of all extensions to 245 days

Effective Date: January 1, 2004

Senate Bill 251

Relating to applicability of needed housing requirements based on population of city

Senate Bill 251 applies provisions related to needed housing within an urban growth boundary to cities outside a metropolitan service district, with a population of fewer than 25,000. The 2001 Legislature adopted HB 2976, developed by a stakeholder work group, addressing buildable land supplies. The work group indicated their intention was to relieve smaller communities from prescribed factors in calculating the sufficiency of buildable lands. The measure's language, however, had the unintended effect of removing communities with populations of less than 25,000 from all statutory requirements related to "needed housing" in urban growth areas. Examples of needed housing concerns include the buildable land supply, government assisted housing, and manufactured dwelling parks. SB 251 changes current law by restoring applicability of needed housing requirements to cities outside a metropolitan service district with a population of fewer than 25,000 with the exception of the requirement to follow fixed factors in determining the sufficiency of buildable lands within an urban growth boundary.

Effective date: January 1, 2004

Senate Bill 310

Relating to land use regulation in Columbia River Gorge National Scenic Area

Senate Bill 310 requires a county to take action on a permit within the Columbia River Gorge National Scenic Area within specific time limitations. ORS 215.427 calls for final action on a permit, limited land use decision or zone change application within 120 days for activities within urban growth boundaries and for mineral aggregate extraction and within 150 days for all other permit, limited land use decision or zone change applications. Types of land use change applications include land divisions, exclusive farm use zoning, utility facility siting, dwelling establishment or replacement, development on wetlands and transmission tower siting applications. The applicant may request a reasonable time extension for an application decision in order provide time for submission and consideration of pertinent information. Any person or entity adversely affected by any final county action may appeal to the Columbia River Gorge Commission. Also, SB 310 requires counties within the Columbia River Gorge National Scenic Area to comply with the decision timelines specified under ORS 215.427.

Effective Date: January 1, 2004

Senate Bill 311

Relating to the administration of state lands

Senate Bill 311 renames Division of State Lands as Department of State Lands. It directs the Department of State Lands (DSL) to create a program under which the department enters into agreements with volunteers, businesses and agencies to assist in the operation and maintenance of State Lands. It also allows the department to enter into agreements for the provision of interpretive services for State Lands facilities and requires permission from

landowners for access to private property, if access is necessary to perform activities.
Effective Date: January 1, 2004

Senate Bill 516

Relating to land use planning requirements

Senate Bill 516 modifies notice requirements relating to changes in land use planning requirements. Current state law requires notification of certain proposed and adopted changes to land use planning requirements by the Land Conservation and Development Commission (ORS 197.047), county governments (ORS 215.503), city governments (ORS 227.186) and the Metropolitan Service District (ORS 268.393) as a result of Measure 56. These statutes also contain specific requirements with respect to notice language. SB 516 revises notice requirements by: 1) increasing the notification time to local governments and property owners for final public hearings on proposed rule/ordinance; 2) clarifying language required in the notice including notice that "other properties in the affected zone" may be impacted; 3) allowing Metro to notify landowners directly; and 4) clarifying eligible reimbursement from the State to local governments for costs associated with notices triggered by statute or Commission rule changes. Further, under current law Metro and the Land Conservation and Development Commission are not required to provide notice of pending zoning changes before they adopt a new rule or ordinance. SB 516 institutes such a requirement to be substantially equivalent to city and county notice requirements.
Effective Date: January 1, 2004

Senate Bill 911

Relating to destination resorts

Current law (ORS 197.445) requires a resort to provide a minimum of 150 overnight lodging units and maintain a 2:1 ratio between permanent residential units and overnight lodging units.

Senate Bill 911 modifies the definition of overnight lodgings included in the definition of destination resorts. It applies provisions to eastern Oregon destination resorts and modifies phase-in criteria for overnight lodging. It further increases the ratio of residential units to overnight lodging units to 2.5 : 1 and decreases the number of weeks individually owned units must be available for overnight rental use. Senate Bill 911 limits counties from amending comprehensive plans more frequently than once every 30 months. It requires counties to develop a process by which map amendments proposed within each 30-month period are collected and processed concurrently. Finally, Senate Bill 911directs local governing bodies to require a resort developer to provide an annual accounting documenting compliance with overnight lodging standards.
Effective Date: January 1, 2004

Senate Bill 920

Relating to periodic review

Senate Bill 920 updates and streamlines the periodic review process under Oregon's land use planning system. It provides the Land Conservation and Development Commission with enforcement authority and defines terms related to periodic review. Under this measure, financial assistance to local government is provided and timelines for mandatory periodic review are prescribed. Senate Bill 920 creates an advisory committee to advise the Commission on allocation of grants and technical assistance. It establishes an interim committee to evaluate the periodic review process. It allows the Portland-area Metropolitan Service District, with prior consent of the Commission, to submit an amendment to the Metro regional framework plan or component for periodic review under the Goal 5 process.
Effective Date: September 22, 2003

House Bill 2257

Relating to ocean shore improvement permits

Current law does not allow the State Parks and Recreation Department to waive or reduce ocean shore improvement application fees under any circumstances. Under administrative rules, the Department has been granting such waivers or reductions in fees to state, federal, local or tribal governments if the projects furthered the Department's goals of protecting the ocean beaches or affording public access. A recent review of the Department's administrative rules by Legislative Counsel found the discrepancy between statutory authority and administrative

rules. The Department has suspended the practice and is seeking proper statutory authority to waive or reduce fees as provided in HB 2257. Those affected by this legislation include public bodies and tribal governments, if the permit sought is for projects who's primary purpose is restoring, conserving or protecting specified values of the ocean shore.
Effective Date: January 1, 2004

House Bill 2614

Relating to Buildable Land Supply

In 1973, Oregon put in place a statewide program for land use planning. The program includes a set of 19 statewide planning goals. The goals reflect the state's policies on land use and related topics, such as citizen involvement, housing, and natural resources. Most of the goals are accompanied by "guidelines," which are suggestions about how a goal may be applied. Guidelines are not mandatory. The goals, however, have been adopted as administrative rules (Oregon Administrative Rules Chapter 660, Division 15). Oregon's statewide goals are implemented through local comprehensive planning. State law requires each city and county to have a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.

House Bill 2614 allows counties to approve building permits for industrial use without limitations on size of buildings and with on-site sewer systems. The measure does not apply to counties in the Willamette Valley, defined as Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill counties and portions of Benton and Lane counties lying east of the summit of the Coast Range.
Effective Date: January 1, 2004

House Bill 2674

Relating to Guest Ranch

The 1997 Legislative Assembly created a guest ranch pilot program allowing the siting of a structure to provide recreational activities in conjunction with a livestock operation's natural setting. Among other restrictions, a prohibition was placed on any guest ranch that was not at least 10 miles away from an urban growth boundary in order to avoid commercial motel and restaurant facilities locating outside urban growth boundaries under the pretext of being a guest ranch. The 1999 Legislative Assembly passed HB 2448 clarifying that a guest ranch (structure) may be located on a piece of land, even if a portion of that land is within 10 miles of an urban growth boundary, as long as the structure itself is more than ten miles from the boundary. Eight guest ranches have been approved for operation since the enabling legislation was adopted. The pilot program is scheduled to sunset December 31, 2005.

House Bill 2674 modifies siting criteria for guest ranches incidental and accessory to an existing livestock operation. This bill increases the population size of cities to 50,000 (from 5,000) from which a guest ranch may be sited if the property, or a portion thereof, is more than 10 air miles from the city's urban growth boundary.
Effective Date: January 1, 2004

House Bill 2688

Relating to Material Removed from Lands of Navigable Streams

At statehood, the State Land Board was entrusted with the management of certain lands dedicated for the benefit of schools through the Common School Fund. Currently, the Division of State Lands (DSL) must charge royalty fees for removal of material from navigable streams owned by the State of Oregon under specified conditions. HB 2688 allows removal and use of materials, without payment of royalties, for the following public purposes: 1) channel or harbor improvement or flood control; 2) filling, diking or reclaiming land owned by the state or political subdivision and located not more than two miles from the stream bank; 3) used for the creation, maintenance or enhancement of fish or wildlife habitat; 4) used for the maintenance of public beaches, or 5) removal due to contamination with hazardous materials with 30-day prior written notice of disposal.
Effective Date: January 1, 2004

House Bill 2691

Relating to industrial zoning of mill sites

Numerous private and public groups have determined that there is a significant need in Oregon for additional "shovel ready" industrial sites. Due to a decline in the timber industry, there are abandoned or diminished wood mill sites located in numerous locations around the state. Some of these sites are located near cities that could support the demand for workers and public facilities, such as water and sewer. The purpose of this legislation is to expedite the development of available industrial land that is not currently eligible to be served by public facilities without applying for an exception to existing DLCD Goals.

House Bill 2691 defines abandoned or diminished mill sites as a site that contains/contained permanent buildings used in the production or manufacturing of particular wood products and is outside Urban Growth Boundary (UGB). This Act only applies to those facilities that were closed after January 1, 1980, or operating at less than 25% capacity since January 1, 2003. This Act provides an exception to statewide land use planning goals regarding agricultural and forest lands, and goals relating to urbanization, in order to allow abandoned or diminished mill sites to be zoned for any level of industrial use. It also allows for the extension of sewer facilities to lands that, on effective day of Act, are already zoned industrial and contain an abandoned or diminished mill site. For sites rezoned under the Act, HB 2691 allows extension of sewer facilities to footprint of the mill structure. It allows on-site sewer facilities only for industrial uses authorized for the mill site and contiguous lands zoned for industrial use. Between the UGB (or unincorporated community border) and the mill site, HB 2691 prohibits connecting to sewer line laid pursuant to this Act. It limits sewer service on mill sites / industrial zones to industrial uses only. It also allows the appropriate governing body to determine the boundary of the mill site. For any site rezoned under this Act, the boundary is limited to an area of the mill site improved for processing or manufacturing wood products.
Effective Date: June 10, 2003

House Bill 3245

Relating to subdivisions

ORS 92.040 requires cities and counties to give tentative approval for a manufactured dwelling or mobile home park under certain conditions. HB 3245 continues an application of city or county comprehensive plans and land use regulations, in effect at the time a manufactured dwelling park or mobile home park was approved, to the land after conversion to a subdivision until specified conditions are met. HB 3245 enumerates requirements for placement of an original or replacement manufactured dwelling. It requires the county tax collector and county Real Estate Commissioner to provide prior approval for park declarations and specifies conditions for park approval. This change in current law applies to planned community subdivisions of manufactured dwellings.
Effective Date: June 24, 2003

House Bill 3375

Relating to regulation of construction in landslide areas

House Bill 3375 authorizes a local government to deny building permits for habitable structures in landslide areas if geotechnical reports indicate that the area is subject to rapidly moving landslides. It repeals the mitigation threshold requirements and transferable development rights program in landslide areas.

Oregon has a history of rapidly moving landslides, due to its topography and other factors such as precipitation. SB 12 (1999) was the product of the Joint Interim Task Force on Landslides and Public Safety. That Task Force was established by HB 1211 (1997) and was charged with developing a comprehensive, practicable, and equitable solution to the problems or risks associated with landslides using a problem assessment and risk analysis process. The landslide-public safety inquiry resulted in the identification of areas within Oregon law that required statutory amendments. HB 3375 adjusts statutory changes put in place by SB 12 (1999) that proved ineffective or unworkable.
Effective Date: January 1, 2004

House Bill 3645

Relating to Solid Waste Disposal Sites

This legislation has two distinct components. Extension of the sunset date for landfill expansion and authorization to place liquids, under specified criteria, into solid waste landfills operating under permits obtained from DEQ.

Sunset extension on landfill expansion: Non-putrescible solid waste is essentially dry waste including commercial, industrial, demolition, and construction materials. Current law allows landfills to be sited and expanded in exclusive farm use (EFU) zones. Waste Management, Inc. operates a landfill in Hillsboro that is located outside the urban growth boundary on land zoned Urban Residential 9. The company purchased 22 acres of EFU land intended for expansion of their existing landfill. This was prior to a change in Department of Land Conservation and Development rules limiting such expansions to properties entirely in farm zones. HB 3123 (2001) allowed the landfill to expand its facility on the property by January 2004. HB 3645 extends this sunset to January 1, 2006. This provision applies only to landfills in counties with marginal lands provisions. Lane and Washington County are currently the only Oregon counties that have adopted marginal lands provisions.

Addition of liquid waste: Solid waste landfills operate under permits obtained from DEQ. The addition of liquid wastes to landfills is generally not advisable, but at appropriately engineered landfills, especially in dry climates, the addition of liquids is environmentally acceptable and may speed decomposition of other wastes. HB 3645 allows DEQ to permit the addition of liquids and solid wastes that contain liquids, such as dredge sediments, to landfills so long as several stipulated conditions are met: the approval must be consistent with applicable federal law; the site must meet statutory criteria and administrative rules; and the liquid must be anticipated to enhance the decomposition of solid waste at the site. HB 3645 is intended to clarify that dredge sediments can be disposed of at an existing landfill site in Gilliam County if approved by DEQ. It would also allow DEQ to allow water or leachate to be added to landfills to speed decomposition. These provisions are unrelated to the landfill expansion provision (above) and are not intended to allow liquid waste to be disposed of at the Hillsboro dry waste landfill.

Effective Date: August 12, 2003

Senate Bill 915 – Legislation not Enacted

Relating to land uses in exclusive farm use zone

Senate Bill 915 authorized a law enforcement facility or parole or post-prison supervision facility used to provide primarily rural law enforcement services, existing on the effective date, as an outright permitted use in exclusive farm use zones. This use excluded adult correctional detention or juvenile detention facilities. Senate Bill 915 also allowed law enforcement facilities or parole and post-prison supervision facilities as a conditional use in exclusive farm use zones, excluding adult correctional detention or juvenile detention facilities and prohibited a county from approving the siting of a law enforcement facility within three miles of an urban growth boundary or unincorporated community.

Senate Bill 922 – Legislation not Enacted

Relating to division of land in exclusive farm use zone

ORS 215.263 permits the governing body of a county, or its designee, to approve a land division within an exclusive farm use zone, to create up to two new parcels, smaller than the minimum size established in statute, for one non-farm use dwelling each. The Department of Land Conservation and Development's legal interpretation of partitioning the parent parcel required the land divisions to occur at the same time. SB 922 would have allowed for the creation of the second parcel on a different date if criteria under current law were met. Senate Bill 922 provisions would have applied to lots or parcels divided on or after January 1, 2002 only.

House Bill 2909 – Legislation not Enacted

Relating to periodic review

House Bill 2909 would have updated and streamlined the periodic review process under Oregon's land use planning system as well as provide the Land Conservation and Development Commission with enforcement authority. This measure defined terms related to periodic review and provided for financial assistance to local government. House Bill 2909 also determined timelines for mandatory periodic review and provided appellate guidance.

House Bill 3247 – Legislation not Enacted

Relating to land use

ORS 215.213 and ORS 215.283 establish allowable uses in exclusive farm use zones. Although golf courses are an allowable use, structures for food and beverage service that are not part of the "club house" are not. This measure would have allowed for more than one structure providing food and beverage service on golf courses.

House Bill 3631 – Legislation not Enacted

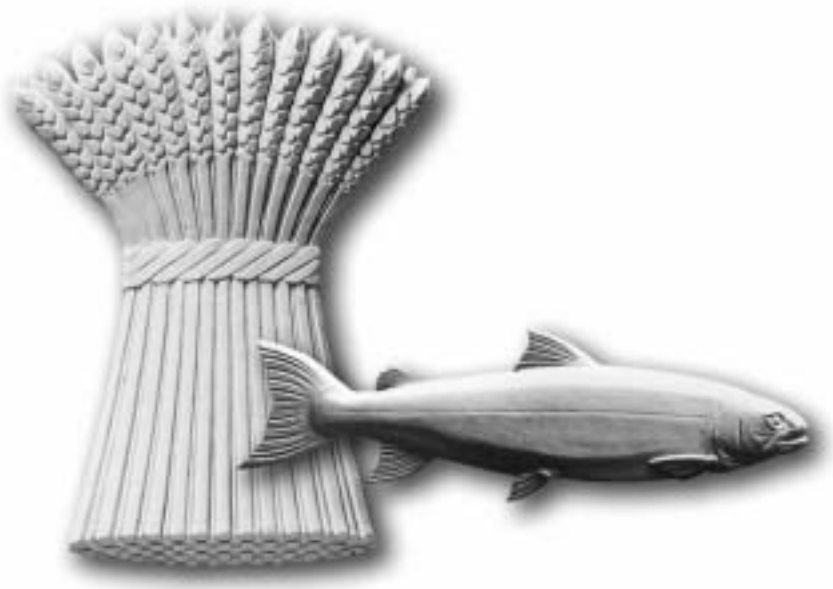
Relating to land use planning for urban areas, including Forest Park

House Bill 3631 enumerated legislative findings with respect to large urban parks. It defined "large urban park" and "area of influence" and required local governments who exercise land use planning authority for land within or adjoining a large urban park to: 1) determine the precise boundaries; 2) prepare a summary of local, regional or state programs that apply to the land; and 3) ensure that applicable comprehensive plan, regional framework plan and land use decisions preserve the natural and open space values. House Bill 3631 applied to comprehensive plans, regional framework plans, or land use regulations made on or after effective date of the Act. It required: 1)local governments to consult with appropriate entities in decision-making, including the public and affected state and local agencies; 2) designation of land for farm or forest use complies with requirements; 3) that modifications to land use designations must comply with provisions set forth in the law. House Bill 3631 directed Multnomah County's governing body to allow a current owner of property with specified characteristics to partition or subdivide the lot or parcel. It allowed affected property owners to: 1) partition or subdivide only one lot or parcel; 2) build one single-family dwelling on each lot or parcel created; and 3) create a maximum of six lots or parcels. Under this measure single-family dwellings built on the created lots or parcels were required to comply with reasonable siting standards for fire, health and safety. House Bill 3631 would have prohibited Multnomah County from applying siting standards in a manner that does not allow siting of a dwelling unless the county established, by clear and convincing evidence, that the lot or parcel did not have emergency access, potable water or an adequate capacity to dispose of sewage.

Judiciary Issues

Civil Law

Judgments Revision; Miscellaneous Changes to Civil Procedure; Statutes of Limitations; Pleading; Evidence; Attorney Fees; Appeals; Foreign Judgments; Oregon Rules of Civil Procedure; Uniform Trial Court Rules; Dispute Resolution; Child Support / Child Custody / Child Abuse Reporting; Domestic Relations



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I. INTRODUCTION

The 2003 Legislative Assembly enacted a comprehensive revision of the laws governing judgments and made numerous other legislative changes to the laws governing procedure in civil actions. These changes include adoption of the Revised Uniform Arbitration Act, substantial changes to statutes of limitations, and a provision allowing use of a declaration under penalty of perjury in lieu of a sworn affidavit. In addition to the legislative changes, the Council on Court Procedures substantially amended the ORCP governing subpoenas of medical records to comply with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA.)

II. HB 2646 JUDGMENTS REVISION

HB 2646 enacts a general revision of the laws governing judgments. The new law affects the practice of every lawyer who files pleadings of any sort in Oregon courts. The bill changes the rules for all civil actions and criminal actions. All lawyers will need to be acquainted with the principal provisions of the bill.

HB 2646 is a product of the Oregon Law Commission (ORS 173.315-173.357.) As with all legislative proposals of the commission, an extended report on the provisions of the bill is available at the commission's Web site, http://www.willamette.edu/wucl/oregonlawcommission/

A. Highlights

1) *Decrees no longer exist.* All documents that formerly were captioned as decrees must be captioned as judgments after January 1, 2004.

2) *The judgment docket no longer exists.* The practical significance of "docketing" a judgment was that the judgment acquired lien effect. HB 2646 eliminates "docketing" of a judgment, and instead directs the clerk to note in the register whether or not a judgment creates a lien. The clerk still must keep a separate record of information for these judgments for the purpose of title checks.

3) *All judgments are either general, limited, or supplemental judgments, and must be captioned as such.* This mandate is probably the single most significant change from a practicing lawyer's point of view. As discussed below, the consequences of mislabeling a limited judgment as a general judgment can be severe. The lawyer must know the difference between the three types of judgments and made sure that the lawyer's forms, and the forms prepared by other lawyers, are correctly labeled.

4) *If the caption of a judgment fails to indicate whether the judgment is a general, limited or supplemental judgment, or a document is labeled as a decree, the document will be treated as a general judgment.* HB 2646 as introduced did not contain this provision. Because of the limitations of the Judicial Department computer system, it was impossible to ensure that documents that were not properly labeled would not be entered in the register. The default rule was added by amendment.

5) *The entry of a general judgment will normally have the effect of dismissing with prejudice any claim in the action that is not decided by the general judgment or by a previous limited judgment.* This rule reverses the common-law rule requiring that a written judgment be entered for every claim in the action.

6) *Any document captioned as a judgment is appealable.* HB 2646 establishes a fixed rule that a document captioned as a judgment and signed by a judge can be appealed. The "magic words" requirement of ORCP 67 B is eliminated, although the court still must make a determination that there is no just reason for delay before entering a limited judgment. Limited judgments for support are the only exception to this rule.

7) *The portion of a judgment previously labeled as a "money judgment" must now be labeled as a "money award."* The requirements for the money-award portion are essentially the same as those previously established for money judgments.

8) *Instead of making a motion for renewal of a judgment, a judgment creditor must now file a certificate of extension.* The certificate of extension is effective on filing for the purposes of preventing expiration of judgment remedies.

B. Limited, General, and Supplemental Judgments

HB 2646 defines a *judgment* as "the concluding decision of a court on one or more claims in one or more actions, as reflected in a judgment document." HB 2646 divides judgments into three categories, as follows:

1) *Limited judgments.* Section 1 of the bill defines a *limited judgment* as a judgment rendered before entry of a general judgment in an action that disposes of at least one but fewer than all claims in the action and that is rendered pursuant to a statute or other source of law that specifically authorizes disposition of fewer than all claims in the action.

A judgment entered under ORCP 67 B is a limited judgment.

2) *General judgments.* Section 1 of the bill defines a *general judgment* as a "judgment entered by a court that decides all claims in the action except (a) A claim previously decided by a limited judgment; and (b) A claim that may be decided by a supplemental judgment." General judgments replace what was commonly referred to in the ORCP as "final judgments." General judgments are intended to be the judgment entered at the end of the case, resolving all claims not resolved by earlier limited judgments in the case.

3) *Supplemental judgments.* Section 1 of the bill defines a *supplemental judgment* as a "judgment that by law may be rendered after a general judgment has been entered in the action and that affects a substantial right of a party." Examples of such judgments are judgments for attorney fees under ORCP 68. Section 101 of the bill provides that modifications of judgments of divorce or separation are done by supplemental judgment.

C. Important Provisions

Section 1. Definitions. The OLC Report contains a lengthy section on the source of the definitions used in HB 2646. It is well worth reading, especially with respect to the significance of the definitions in determining the types of judicial decisions that are appealable.

Section 2. Application. The bill applies to circuit courts, justice courts, municipal courts, and county courts exercising judicial functions, unless otherwise specifically provided in the bill.

Section 4. Form of judgment document generally. Section 4 establishes general requirements for the form of judgments and applies to both civil and criminal judgments. Every judgment document must indicate whether the judgment is a limited judgment, a general judgment, or a supplemental judgment.

Section 5. Civil judgments with money awards. The existence of a separate money award in the judgment document determines whether a judgment creates a judgment lien. If a judgment document does not contain the separate money award section, the judgment can still be enforced by judgment remedies but the judgment does not create a judgment lien.

Section 6. Criminal judgments with money awards. The requirements for money awards in criminal judgments are similar to the requirements for civil judgments. Judgments entered on uniform citation forms are not subject to the requirements.

Section 7. Duties of the judge with respect to form of judgment. Subsection (1) of this section eliminates the requirement of ORCP 67 B that "magic words" appear in the judgment document to acquire an appealable judgment. Instead, the judge is charged with making the required determination (no just reason for delay) and, by the very act of signing a document captioned as a limited judgment, attests to having made that determination.

Section 8. Duty of the clerk with respect to form of judgment. Subsection (2) of this section prohibits the clerk from entering the judgment unless the judgment document is labeled as a limited, general, or supplemental judgment. The clerk is directed to return unlabeled judgment documents to the judge for insertion of the appropriate designation. The language also requires that the clerk return to the judge any document labeled as a "decree."

Section 9. *Entry of judgments.* The bill repeals the laws requiring that circuit courts maintain dockets, but requires that these courts maintain a separate record that allows title companies and other interested persons find the details of judgments that create judgment liens.

Section 9a. *Court records.* The Judicial Department had substantial concerns about being able to implement the many changes made by HB 2646 with their legacy computer system. This section allows the department to continue entry in the records using the old terminology until funding is available to update the system.

Section 10. *Notice to attorneys.* Once implemented, this section will require that the notice sent to attorneys must reflect whether the judgment was entered as a limited, general, or supplemental judgment. Instead of indicating whether the judgment was docketed, the notice will indicate whether a judgment lien was created.

Section 10a. *Temporary provision on notice to attorneys.* The notice of judgment currently being sent to attorneys is computer-generated. Section 10a allows the courts to use the old forms until funding is available to update the computer.

Section 11. *Effect of entry of judgment.* Subsection (1) of this section establishes general rules about the effect of entry of a judgment. The most important of these rules is that on entry, a judgment can be appealed and enforced.

Subsection (2) addresses the problem of incorporation in the general judgment of earlier written decisions of the court that did not constitute judgments. Examples of these types of decisions are orders granting ORCP 21 motions and motions for summary judgment for which a limited judgment is not entered. Under subsection (2), these earlier decisions are incorporated in the general judgment and become appealable when the general judgment is entered.

Subsection (3) constitutes a change in the law on the effect of the entry of a general judgment. This subsection reverses the long-standing judicial rule that any claim not resolved by a decision of the trial court is presumed not to have been decided. Any claim not mentioned in the judgment document is dismissed with prejudice unless (1) the claim was resolved by the entry of a limited judgment, (2) a decision on the claim is incorporated in the general judgment under the provisions of subsection (2), or (3) the claim can be decided by a supplemental judgment.

Subsection (6) establishes the default rule for documents that are not labeled as a limited, general, or supplemental judgment, or that are labeled as a decree. These documents are deemed to be general judgments.

Section 12. *Corrections to judgments.* The provisions of subsection (2) of this section (relating to the time for appeal of a corrected judgment) reflect existing case law insofar as the language conditions a new appeal period on whether the correction affects a substantial right of a party. Subsection (3) creates a new rule, however, with respect to corrections that occur after the appeal period on the original judgment expires. If the correction occurs *before* the original appeal period expires, the parties receive another full appeal period from the date of entry of the corrected judgment for any provision in the judgment. If the correction occurs *after* the original appeal period expires, the parties receive another full appeal period only for the corrected provisions of the judgment and other portions of the judgment affected by the correction.

Section 13. *Correction of designation of judgment as general judgment.* Subsection (1) of this section provides for a special motion for relief when a lawyer inadvertently designates a limited judgment as a general judgment. The moving party must show that the designation was made "under circumstances that indicate that the moving party did not reasonably understand that the claims that were not expressly decided by the judgment would be dismissed."

Subsection (3) provides for a special motion for relief when a judgment is deemed to be a general judgment under Section 11(6) (e.g., when the document submitted does not reflect whether the judgment is a limited, general, or supplemental judgment). No showing is required for granting a motion under this subsection.

Section 14. *Judgment liens.* Subsection (2) of this section restates the general rule about the lien effect of the money-award portion of a judgment. Subsection (3) establishes the lien effect of the

support-award portion of a judgment. Subsection (4) makes a clear statement about the ability of a judgment debtor under the support-award portion of a judgment to convey or encumber real property free of the judgment lien, but not free of individual support arrearage liens that have attached to the property.

Section 16. Elimination of judgment lien by appeals. Former ORS 18.350(2) provided that a judgment lien automatically expired if a supersedeas bond was filed as part of an appeal of the judgment. This statute resulted in cases in which a bond was filed and the lien eliminated, with a subsequent failure of the bond because of unpaid premiums. Section 16 eliminates the automatic expiration of the lien, and instead authorizes the appellant to make a motion for elimination of the lien on filing a supersedeas bond and on providing additional security as may be required by the court.

Section 18. Expiration of judgment remedies. Former ORS 18.360 provided that judgments expired after a specific period of time. Section 18 of HB 2646 makes clear that the ability to enforce judgments expires after a certain period of time, but the judgment lives forever. Subsection (6) of this section is new law that attempts to bring spousal support into conformity to the greatest extent possible with the 25-year period currently provided for child support.

Section 19. Extension of judgment remedies. Former law required that a motion for the renewal of a judgment be made to extend judgment remedies. An order of renewal had to be entered (i.e., signed by the judge and entered in the register) within the initial 10-year period. The requirement of an order of renewal created problems because judges sometimes were slow to sign the order and deliver it to the court administrator for entry.

Subsection (1) eliminates the requirement of an order and instead requires that a certificate of extension be *filed* before the judgment remedies expire. This change makes it easier for lawyers to be sure that the extension meets the deadlines of Section 18.

Section 23. Release of lien. Although it has been fairly common practice for lawyers to give lien releases, there was no specific statutory authorization for the practice. Section 23 provides that authorization, prescribes certain requirements for release of lien documents, and describes the effect of a release of lien.

Section 24. Assignment of judgment. Assignments must be acknowledged by a notary (compare release of liens and satisfactions, which need only to be witnessed by a notary).

Section 28. Motion to satisfy money award. This section is based on *former* ORS 18.405 and 18.410. The bill makes extensive changes in the manner in which a motion under this section must be served.

Section 31. Debtor examination. This section changes the requirements imposed on judgment debtors as a condition of requiring a debtor to appear for examination. *Former* ORS 23.710(1) required that there be an "unsatisfied execution" or service of a demand for payment. Section 31(1) sets forth three optional preconditions for a debtor examination.

Section 35. Issuance of writs of execution. This section substantially changes the existing law on the directions given to a sheriff in a writ of execution. Former law had contemplated that a sheriff would make an active search for property and make decisions about applying that property against the debt. Section 35 recognizes that this language no longer reflected reality, and requires that either the writ, or instructions to the sheriff prepared by the creditor, identify the property to be seized.

Under subsection (5), a creditor must file a certified copy of the writ or a lien record abstract for the writ in the County Clerk Lien Record if the writ requires the sale of real property. The subsection provides that the recording has the effect of a notice of pendency in counties where the judgment did not create a lien and in which a notice of pendency is not already filed.

Section 38. Return on writ of execution. The last sentence of this section allows a judgment creditor to give the sheriff additional time to make a return on the writ when the normal 60-day time period is inadequate to finish a sale.

Section 39. Notice to judgment debtor. Former law required the use of the challenge to garnishment form by debtors that wished to claim an exemption. This section requires that debtors use a challenge to execution form as set forth in Section 42 of the bill.

Section 40. *Challenge to writ of execution.* Former law had an antiquated and unused series of statutes that called for the creation of a "sheriff's jury" to decide third-party claims to property seized on execution. The bill allows use of the challenge to execution form to assert that interest.

Section 45. *Retroactive effect.* This lengthy section sets forth the extent to which the changes made by HB 2646 are retroactive. The general rule is that the changes apply only to judgments entered on or after January 1, 2004. However, specific provisions (e.g., the use of a certificate of extension in lieu of a motion for renewal) also apply to judgments entered before January 1, 2004.

Effective date: January 1, 2004

III. MISCELLANEOUS CHANGES TO CIVIL PROCEDURE

A. HB 2087 Council on Court Procedures

HB 2087 amends ORS 1.730 and 1.735 to change the procedures for promulgating, amending, or repealing an ORCP by the Council on Court Procedures (CCP.) Specifically, the bill directs the CCP to publish or distribute notification of changes to the ORCP within 60 days after the meeting at which the changes are made. The CCP already must provide members of the bar with 30 days' prior notice of any meeting at which it intends to take action on changes to the ORCP. By adding a requirement that the CCP thereafter provide 60 days' notice of any changes to the ORCP, this measure is intended to provide lawyers with an opportunity to comment.

Effective date: January 1, 2004

B. HB 2279 Revised Uniform Arbitration Act

HB 2279 amends the current Uniform Arbitration Act (UAA) to enact the revised version of the UAA. The existing UAA was adopted in 1955. Since that time, the National Conference of Commissioners on Uniform State Laws adopted revisions to the UAA, which have been approved by the American Bar Association and adopted by five states. This measure brings Oregon law into accord with the revised version of the UAA.

Section 54 of HB 2279 requires mandatory alternative dispute resolution (ADR) in medical malpractice cases within 270 days after the claim is filed unless the parties stipulate to opt out. It is hopes that this requirement will help to resolve many medical malpractice cases that currently proceed to trial without the parties having the benefit of participating in some fore of ADR.

Effective date: January 1, 2004

C. HB 2821 Sheriff Services Fees

HB 2821 increases fees for service by sheriffs of summons and a great number of other legal documents. In general, the new fee is $28. If service is requested for more than one person at the same address, the fee is $15 for each party.

Effective date: June 11, 2003

IV. STATUTES OF LIMITATIONS

A. HB 2080 Products Liability

HB 2080 was enacted in response to *Gladhart v. Oregon Vineyard Supply Co*., 332 Or 226, 26 P3d 817 (2001.) *Gladhart* held that there was no discovery rule for the purposes of the two-year statute of limitations in products liability cases. HB 2080 amends ORS 30.905 to require that a products liability civil action must be commenced not later than the earlier of (1) two years after the date on which the plaintiff discovers, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the product, or the causal relationship between the injury or damage and the conduct of the defendant, or (2) 10 years after the date on which the product was first purchased for use or consumption.

HB 2080 also addresses an issue raised by Kambury v. DaimlerChrysler Corp., 334 Or 367, 50 P3d 1163 (2002.) Kambury held that the two-year statute of limitations of ORS 30.905, not the three-year statute of limitations of ORS 30.020 (wrongful death), applied when death is caused by a defective product. (See also Kambury v. DaimlerChrysler Corp., 185 Or App 635, 60 P3d 1103 (2003), holding that ORS 30.905 applies to all claims arising out of death caused by a defective product, not just products liability claims under ORS 30.900-30.927.) HB 2080 amends ORS 30.905 to provide that in the event of death, a products liability civil action must be commenced not later than the earlier of (1) the limitation provided by ORS 30.020 or (2) 10 years after the date on which the product was first purchased for use or consumption.

HB 2080 generally applies only to deaths, personal injuries, and property damage that occur on or after the effective date of the act (January 1, 2004). An exception is made for actions that were adjudicated on or after June 8, 2001, and before January 1, 2004, based on the operation of ORS 30.905. Such actions may be refiled within one year after January 1, 2004.

Effective date: January 1, 2004

B. HB 2284 Recommencement of Dismissed Civil Actions

HB 2284 amends ORS 12.220 to allow refiling of any civil action that is involuntarily dismissed without prejudice on any ground not adjudicating the merits of the action if the action was filed within the applicable statutory period and the defendant had actual notice, within 60 days of the filing date, that the original action was filed. The measure reduces the time allowed for a refiling from one year to 180 days. The refiled action "relates back" to the originally filed action as long as the above requirements are met.

Effective date: January 1, 2004

C. SB 42 Statutes of Limitations Calculated in Calendar Years

SB 42 amends ORS 174.120 to provide that statutes of limitations and other procedural statutes governing civil and criminal proceedings that provide that an act be done within one or more years are to be computed in "calendar years," irrespective of whether there is an intervening leap year. This measure is intended to eliminate any uncertainty in calculating statutory periods when a leap year is involved.

Effective date: January 1, 2004

D. SB 397 Statute of Limitations for Shoplifting

SB 397 amends ORS 30.875 to create a three-year statute of limitations for civil actions based on shoplifting or the taking of agricultural produce. Previously, there was no statute of limitations for civil actions based on shoplifting. A circuit court recently ruled that a one-year statute of limitations applied to these actions. These types of cases most often settle without the need for civil action. However, the settlements often include restitution payments over an 18-month period. A three-year statute of limitations would ensure that restitution was made in those cases because of the threat of prosecution.

Effective date: January 1, 2004

V. PLEADING

A. HB 2049 Motion to Amend to Add Claim for Punitive Damages

HB 2049 amends ORS 18.535 to allow the court to consider whether the timing of a motion to amend a complaint to add a claim for punitive damages is prejudicial to the party opposing the motion, either because of the timing of the motion or for some other reason. This measure is intended to address the unfairness that may occur when a motion to amend to add a claim for punitive damages is made on the eve of or at trial. Previously, the court could not consider whether the timing of the motion prejudiced the opposing party. HB 2049 allows the court to take into consideration the issue of prejudice and either to deny the motion or to delay the proceedings to allow the opposing party to conduct discovery or otherwise defend against the claim.

Effective date: January 1, 2004

B. HB 2064 Declaration Under Penalty of Perjury

HB 2064 amends several ORCPs and various sections of Oregon law to create a "declaration under penalty of perjury." The declaration may be used as an alternative to a sworn affidavit. The declaration must be signed by the declarant and include the statement "I hereby declare that the above statement is true to the best of my knowledge and belief, and I understand it is made for use as evidence in court and is subject to penalty of perjury." HB 2064 brings Oregon law into accord with federal law and the laws of various states that allow use of declarations under penalty of perjury, and should be helpful when there is limited access to notaries.

Effective date: January 1, 2004

C. SB 611 Pleading Requirements for Civil Actions Against Architects and Engineers

SB 611 requires that a pleading asserting a claim against a licensed architect, engineer, landscape architect or land surveyor arising out of the professional's performance of services must be accompanied by an affidavit of the claimant's lawyer stating that the lawyer has consulted with an architect, an engineer, a landscape architect, or a land surveyor who is qualified, available, and willing to testify to admissible facts and opinions sufficient to create a question of fact regarding liability. The measure allows a delay in filing the affidavit when the statute of limitations is about to run. The affidavit requirement applies only to claims made by a plaintiff who:

1) Is a construction design professional, contractor, subcontractor, or other person providing labor, materials, or services for the real property improvement that is the subject of the claim;
2) Is the owner, lessor, lessee, renter, or occupier of the real property improvement that is the subject of the claim;
3) Is involved in operating or managing the real property improvement that is the subject of the claim;
4) Has contracted with or otherwise employed the construction design professional; or
5) Is a person for whose benefit the construction design professional performed services.

Effective date: January 1, 2004

VI. EVIDENCE

A. HB 2594 Expert Witnesses Need not be Licensed as Investigators

Section 14 of HB 2594 provides that the licensure requirements of the Oregon Board of Investigators, ORS 703.405, do not apply to a person testifying in court as an expert under ORS 40.410, nor to a person conducting an investigation in preparation for testifying in court as an expert under ORS 40.410.

Effective date: August 21, 2003

B. HB 3361 Apology by Physician

HB 3361 creates a new law that provides that, for the purposes of a civil action against a person licensed by the Board of Medical Examiners, an expression of regret or apology made by or on behalf of the person does not constitute an admission of liability and may not be examined in a civil or administrative proceeding. This measure is intended to allow doctors and nurses to make an apology or expression of regret to a victim of alleged medical malpractice without the risk of having the statement used against them in a later civil action.

Effective date: June 16, 2003

C. SB 67 Telephone Testimony in Juvenile Proceedings

SB 67 clarifies that telephone testimony may be used in juvenile dependency proceedings. *See* chapter 15, *infra*.

Effective date: January 1, 2004

VII. ATTORNEY FEES

SB 41 Attorney Fee Awards under Void or Unenforceable Contract

SB 41 allows the prevailing party in a civil action arising out of an express or implied contract to recover attorney fees pursuant to an attorney fees provision in the contract even though the party prevailed on a claim that the contract was void or unenforceable. This measure provides reciprocity for awards of attorney fees on contracts when the validity of a contract is at issue. The change makes Oregon law consistent with the law of many other jurisdictions, including Washington and California.
Effective date: January 1, 2004

VIII. APPEALS

HB 2761 Time Limit for Notice of Appeal after Motion for JNOV or New Trial

HB 2761 amends ORS 19.255 to clarify the timing for filing an appeal when a motion for a new trial or for JNOV is filed. Nothing in ORCP 63 (motion for JNOV) or 64 (motion for new trial) prevents the filing of one of these motions before the final judgment is entered. ORS 19.255 (2) requires that a notice of appeal must be filed within 30 days after the order is entered, or within 30 days after the motion is deemed to be denied under the provisions of ORCP 63 D or 64 F. This date could be earlier than 30 days after the judgment is entered (in fact, it could be before the judgment is entered.) The amendments to ORS 19.255 make clear that the 30-day time period for filing a notice of appeal runs from the late of (1) entry of the final judgment or (2) a decision on the motion for a new trial or for JNOV, whether by entry of an order or under the provisions of ORCP 63 D or 64 F.
Effective date: January 1, 2004

IX. FOREIGN JUDGMENTS

HB 2761 Reciprocity of Enforceability of Foreign Judgments

HB 2761 amends ORS 24.220 to require that a party seeking to enforce a foreign judgment in an Oregon court must show that the country or territory where the judgment originated recognizes and enforces judgments from Oregon courts. This provision was intended to bring reciprocity to enforcement of foreign judgments to avoid situations in which an Oregon resident against whom a foreign judgment is being enforced has no recourse against the enforcing party because the country from which the judgment originated does not recognize Oregon judgments.
Effective date: January 1, 2004

X. OREGON RULES OF CIVIL PROCEDURE

A. Substitution of Parties (ORCP 34)

Former ORCP 34 provided that the plaintiff in an action had to move the court to substitute the person al representative or successor in interest of a deceased defendant no later than on year after the defendant's death. The amendments to the rule cuts off the right to substitute the personal representative or successor in interest only if the notice is given to the plaintiff under ORS 115.003(3) and the plaintiff fails to move the court for substitution of the personal representative or successor in interest within 30 days after the notice is mailed or delivered.

B. Continuing Duty to Supplement Discovery Response (ORCP 43 B)

The amendments to ORCP 43 B impose a duty on parties to supplement responses made to discovery requests. The duty lasts while the proceeding is pending. The CCP report indicates that the purpose of the change is to obviate the need for multiple document requests.

C. Deadline for Motions for Summary Judgment (ORCP 47 C)

Former ORCP 47 C required that motions for summary judgment be served and filed at least 45 days before the date set for trial. The amended rule requires that the motion be served and filed at least 60 days before the date set for trial. The CCP report indicates that trial judges believed that the 45-day time period was not adequate to allow review of the motions and responses.

D. Discovery of Medical Records (ORCP 41 E, 55 H, and 55 I)

ORCP 41 E and 55 H are extensively modified to comply with federal regulations recently adopted to implement the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA.) The rules are amended to reflect the new requirements for compelling disclosure of "individually identifiable health information," and to incorporate the new terminology used by the federal regulations. ORCP 55 I is repealed, reflecting the elimination of differences between "medical records" and "hospital records" in the federal regulations. The amendments to ORCP 41 E and 55 H, and the repeal of ORCP 55 I, became effective on May 24, 2003, under the provisions of HB 2305 (ch 86, §16.)

E. Jury Instructions (ORCP 59 B)

Former ORCP 59 B required that jury instructions would be reduced to writing or an electronic recording and be provided to the jury on the motion of a party or if the court determines that it was "desirable." The rule as amended requires that the jury instructions be provided to juries in a written or electronic record. The CCP report indicates that this change is intended to reduce the occasions when juries feel constrained to ask the court to reconvene for clarification of the instructions.

XI. UNIFORM TRIAL COURT RULES

A. Sanctions for Noncompliance with Court Rules (UTCR 1.090)

The amendments to UTCR 1.090 make clear that the court can assess attorney fees and other costs against a lawyer who fails to comply with the UTCR or with supplemental local rules.

B. Accommodation under Americans with Disabilities Act (ADA) (UTCR 7.060)

Former UTCR 7.060 required that an accommodation request under the ADA had to be made at least two days before a proceeding. The amendment requires that the request be made at lease four days before the proceeding. The amendments add requirements for the content of the request.

C. Interpreters (UTCR 7.070 and 7.080)

Former UTCR 7.070 required that a request for a foreign language interpreter had to be made at least two days before a proceeding. The amendment requires that the request be made at least four days before the proceeding. The amendment establishes requirements for the content of the request. New UTCR 7.080 allows an interpreter to request that the parties provide a list of specialized terminology that is expected to be used in a proceeding.

D. Small Claims Forms (UTCR 15.010)

New UTCR 15.010 requires the use of uniform forms in the small claims departments of circuit courts.

XII. DISPUTE RESOLUTION

SB 904 Dispute Resolution Commission

SB 904 abolishes the Dispute Resolution Commission and transfers its duties, functions, and powers to the Mark O. Hatfield School of Government. The commission effectively ceased operations on July 1, 2003, based on lack of funding.

Effective date: September 22, 2003

XIII. CHILD SUPPORT/CHILD CUSTODY/CHILD ABUSE REPORTING

A. HB 2095 Child Support Orders

HB 2095 modifies current state law that requires child support orders include health care coverage for the child in order to comply with federal child support laws. The bill requires the court or agency issuing the order or modification to issue a qualified medical support order directing the obligor's employer or union to enroll the child in the health care plan. This order is binding on the administrator of the plan to the extent that the child is eligible to be under the plan. HB 2095 makes it an unlawful employment practice if the employer discharges or refuses to hire a person because the person is subject to a medical support order.

Effective date: October 1, 2003

B. HB 2113 Child Support Enforcement Information

HB 2113 restricts disclosure of child support enforcement information in order to comply with federal law. The bill clarifies that the Support Enforcement Division is not prohibited from reporting child abuse by the provisions of this nondisclosure law with the rules adopted by the division.
Effective date: January 1, 2004

C. HB 3250 Child Custody

HB 3250 allows a court to require a parent under a custody order to post a bond or other security if the parent is traveling to another country or may travel to another country with a minor child subject to a custody order if the court finds there is a risk of international abduction. In determining the amount of security, the court should consider whether the parent who is subject to the custody order has strong familial, emotional or cultural ties with another country that: (a) Is not in compliance with the Hague Convention on the Civil Aspects of International Child Abduction; (b) Does not provide for the extradition to the United States of a parental abductor and child; (c) Has local laws or practices that would restrict the minor from freely leaving the country; or (d) Poses a significant risk that the physical health or safety of the minor child would be endangered in the country because of war, human rights violations or specific circumstances related to the needs of the child.
Effective date: January 1, 2004

D. HB 2050 Mandatory Child Abuse Reporting

HB 2050 expands the definition of child abuse for the purposes of the mandatory child abuse reporting requirements under ORS 419B.005-419B.050. Mandatory reporters (including all lawyers) must report if they are aware that a child is being allowed to enter or remain in a place where methamphetamines are being manufactured. HB 2050 also adds legislators to the list of mandatory reporters in ORS 419B.005 (3).
Effective date: January 1, 2004

E. SB 628 Disclosure of Child Abuse Reports

SB 628 allows a law enforcement agency to disclose child abuse reports in its possession to the following when the agency determines that disclosure is necessary for the investigation or enforcement of laws relating to child abuse: (a) other law enforcement agencies; (b) district attorneys; (c) city attorneys with prosecutorial functions; and (d) the Attorney General.

The bill requires a law enforcement agency, upon completion of a child abuse or neglect investigation, to make any reports or records available to the following when the records are needed for the management and supervision of offenders:

- ∉ Law enforcement agency
- ∉ Community corrections agency
- ∉ The Department of Corrections
- ∉ State Board of Parole and Post-Prison Supervision

Effective date: January 1, 2004

XIV. DOMESTIC RELATIONS

SB 801 Restraint after Filing for Divorce, Separation or Annulment

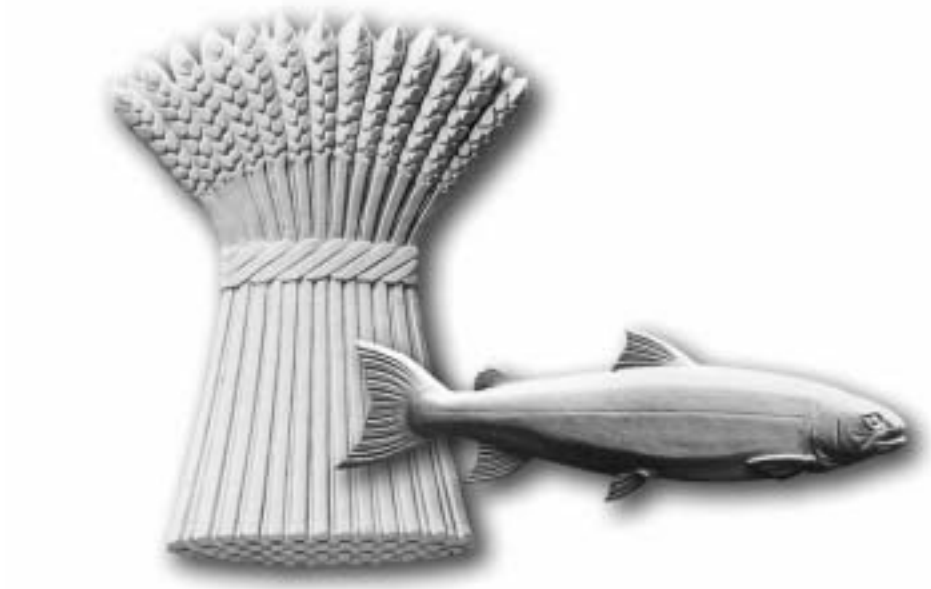
SB 801 provides that service of a petition to divorce, separate, or have marriage annulled on respondent constitutes a restraining order upon both parties. The bill prohibits parties from changing insurance policies, ownership of property or from making extraordinary expenditures without written notice and

accounting to other party. The bill provides that when a petitioner files for dissolution, annulment or separation, he or she acknowledges that by so filing he or she is bound by the restraining order.
Effective date: January 1, 2004

Judiciary Issues

Criminal Law

Crimes Against Persons; DUII; Miscellaneous Crimes; Sentencing, Probation, and Parole; Forfeiture; Procedure and Evidence; Miscellaneous



2003 Summary of Legislation

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I. INTRODUCTION

The 2003 Legislature did not enact new crime bills so much as amend existing law regarding sentencing and evidence. Two new crimes are strangulation and being bounced from sports events for inappropriate behavior. The legislature also raised fees and fines for felonies, violations, and other crimes.

II. CRIMES AGAINST PERSONS

HB 2770 Strangulation; Possession of Burglar's Tools

HB 2770 creates a new crime of strangulation. Some domestic violence abusers strangle or smother their victims to control them and to instill fear in them. These abusers stop short of killing their victims of leaving visible injuries sufficient to satisfy the definition of physical injury in ORS 161.015. The measure creates a new crime that is violated if a person knowingly impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of another person or blocking the nose or mouth of the other person. Prosecutors and proponents believe this measure will be applied when the crime of menacing or harassment would have been charged, but this new measure will more clearly cover the behavior.

Section 9 of HB 2770 amends the definition of possession of burglar's tools in ORS 164.235 to clarify that this is the criminal statute that ought to be applied to a person who uses a "theft device" in a theft by taking. Retailers have found that an increasing number of thieves use simple devices made of aluminum foil to avoid electronic detection devices. ORS 164.235 prohibits the possession of such a device with the intent to use it for a theft, but the language is clarified in the amendment.
Effective date: January 1, 2004

III. DUII

A. HB 2900 Refusal to Take a Breath Test

HB 2900 makes refusal to take a breath test a violation. Under this measure, a person who refuses to take a breath test is subject to a fine of between $500 and $1,000. Oregon joins 10 other states that impose fines against a person who fails to take a breath test. Fines collected from citations issued by Oregon State Police troopers go to the State Police Account for DUII enforcement. Historically, more than 3,000 drivers each year who are stopped for DUII in Oregon refuse a breathalyzer test. The new law applies to a person who is arrested on or after January 1, 2004.
Effective date: January 1, 2004

B. HB 2885 Revocation after Third Conviction

HB 2885 amends several statutes to provide that the Oregon Department of Transportation (ODOT) must revoke the driving privileges of a person on notice of the person's third conviction for misdemeanor DUII. In 2001, SB 492 set revocation for a felony DUII, which is the equivalent of a fourth DUII conviction. Revocation differs from suspension in that under this type of revocation, the convicted DUII driver is not eligible for a hardship driving permit of any kind, and would not be eligible to ask the court to reinstate his or her driving privileges for 10 years. Driving with a license revoked under this measure is a Class A misdemeanor.
Effective date: January 1, 2004

C. SB 302 DUII Diversion

Section 1 of SB 302 amends ORS 813.200 to require a person who is entering diversion to enter a plea of guilty or no contest. If the person fails diversion, a judgment of conviction is entered. This amendment changes the current practice in which a person who fails diversion then has the right to go to trial and litigate the case. Proponents of this measure argued that because a person in diversion is often allowed extensions on the one-year deadline for completing diversion, the state's case often becomes stale by the time the defendant has failed diversion and wishes to take the case to trial. Local district attorneys and

police officers believe this measure will save a great amount of court time, lawyer time, and officer time that was required to litigate cases after a person ahs failed diversion.

One issue discussed during the hearings on this bill is the need for defense counsel to advise defendants before a defendant's plea of guilty, and how the costs of supplying court-appointed counsel would be paid. Section 2 of SB 302 amends ORS 813.210 to require a person to pay any court-appointed attorney fees before the judge terminates diversion. The measure retains the judge's ability to waive all or part of the court-appointed lawyer's costs. These amendments apply only to diversion petitions or petitions to extend diversion filed after the effective date of the act.

SB 302 also amends ORS 813.225 to clarify the bases for a 30-day extension during which the defendant must decide whether to enter diversion. §3. Some judges have allowed the defendant to delay this decision and then litigate motions to suppress portions of the evidence on which the DUII charge is based. Proponents of SB 302 believed this policy contravened the intent of the diversion program, which is to expeditiously resolve DUII litigation and assure that DUII defendants are enrolled in alcohol treatment.
Effective date: January 1, 2004

IV. MISCELLANEOUS CRIMES

A. HB 2086 Cockfighting

HB 2086 creates the crime of cockfighting and classifies it as a Class C felony. A person commits the crime of cockfighting if that person knowingly:

- Owns, possesses, keeps, breeds, trains, buys, sells or advertises to sell a fighting bird
- Promotes or participates in cockfights
- Keeps, manages or accepts payment of admission to a place where cockfights take place or allow one's property to be used for cockfights
- Manufactures, buys, sells, barters, exchanges, possesses, or advertises for sale a gaff or slasher (a steel spur or curved blade respectively that goes on the bird's leg.)

HB 2086 also creates the crime of participating in a cockfight if a person knowingly:

- Attends a cockfight or pays admission to view or bet on a cockfight
- Manufactures, buys, sells, exchanges, or advertises equipment for training of handling fighting birds

The bill defines a "fighting bird" as a bird that is intentionally reared or trained for, or that is actually used in a cockfight and includes the crime of cockfighting within ORS 166.715, Oregon's anti-racketeering provisions.
Effective date: January 1, 2004

B. HB 2725 Giving False Information to Police Officer

HB 2725 expands the crime of giving false information to a police officer, ORS 162.385. The bill makes it a crime to provide a false name, address, or date of birth to a police officer who is attempting to serve an arrest warrant. Before the amendment, giving a false name, address, or date of birth was a crime only when it was given to an officer who was issuing a citation.
Effective date: January 1, 2004

C. SB 306 Failure to Appear

SB 306 amends ORS 162.195 and 162.205, the statutes that detail the crime of failure to appear. The bill lowers the mental state required to prove the crime of failure to appear from intentionally to knowingly. The state needs to prove only that a defendant was aware of the required court appearance and failed to

appear. This amendment is a significant change from the pre-amendment requirement that the state prove that the defendant intended to miss the court appearance.
Effective date: January 1, 2004

D. SB 613 Trespass at a Sports Event

SB 613 creates new provisions. The bill provides that a sports official may order a coach, team player, or spectator to leave the premises of a sports event if the person is engaging in "inappropriate behavior." §§2-3. The term inappropriate behavior is defined as follows:

- Engaging in fighting or in violent, tumultuous, or threatening behavior,
- Violating the rules of conduct governing coaches, team players, and spectators at a sports event,
- Publicly insulting another person by abusive words or gestures in a manner intended to provoke a violent response, or
- Intentionally subjecting another person to offensive physical contact. §1.

The measure creates a Class C misdemeanor crime of criminal trespass at a sports event if a person is ordered to leave an fails to do so, or returns when reentry has been prohibited. Under current law, any person who owns property may designate a "person in charge" of that property. That person has the power to exclude persons from the premises in which he or she is in control. Under SB 613, the legislature, rather than the property owner, is designating a sports official as a person who may exclude a coach, team player, or spectator that engages in inappropriate behavior.
Effective date: January 1, 2004

E. SB 46 Trespass

In *State v. Collins*, 179 Or App 384, 39 P3d 925 (2002), the court interpreted the criminal trespass laws to mean that a person who has been excluded from a premises open to the public cannot be arrested on returning. Instead, the person in charge of the premises open to the public must first direct the person to leave. A trespasser who leaves cannot be prosecuted for criminal trespass. Proponents of this measure asserted that the *Collins* case required a legislative fix, because the decision would allow persons to reenter a premises from which they have been repeatedly excluded without committing a crime for which they may be arrested. SB 46 accomplishes this goal by amending ORS 164.205.
Effective date: June 24, 2004

F. SB 122 Robbery in the Third Degree

SB 122 amends the definition of *robbery in the third degree* in ORS 164.395 to include "unauthorized use of a vehicle." The *Christine* case, which occurred in Josephine and Douglas counties, highlighted the issue that SB 122 addresses. In that case, the father of children who were in the custody of the state stopped the car that was driven by a DHS employee and took the children from the worker at gunpoint. The father took the worker's car but left it a short distance from the location. One of the many charges against the father was robbery in the third degree. Carjacking may be prosecuted as robbery if the use of force or the threatened use of force is used in the course of committing or attempting to commit "theft." However, the crime of theft requires "intent to deprive another of property or to appropriate property to the person or to a third person." ORS 164.015. This intent may be difficult to establish if the perpetrator abandons the vehicle soon after taking it. SB 122 allows the state to sustain the robbery conviction with a showing that the defendant took the car without authorization. The need to prove the defendant had the intent to withhold the property permanently or for an extended period no longer exists.
Effective date: January 1, 2004

V. SENTENCING, PROBATION, AND PAROLE

A. HB 2647 Alternative Incarceration Addiction Program

HB 2647 amends ORS Chapter 421 to require the Department of Corrections (DOC) to establish an intensive alternative incarceration addiction program. DOC's comparable alternative incarceration program is the Summit Boot Camp Program.

The new intensive addiction program must:
1) Be based on intensive interventions, rigorous personal responsibility and accountability, physical labor, and service to the community;
2) Require strict discipline and compliance with the program rules;
3) Provide 14 hours of highly structured and regimented routine every day;
4) Provide cognitive restructuring designed to alter criminal thinking;
5) Provide addiction treatment that is research-based; and
6) Be at least 270 days in instruction.

DOC plans to locate the new intensive addiction program at the Powder River Correctional Institution.
Effective date: January 1, 2004

B. HB 2756 Sex-Offender Reporting Requirements

HB 2756 expands the procedure by which a person can seek relief from sex-offender reporting requirements if the requirement to report is based on a juvenile court adjudication. The 2001 Legislature established the procedure by which a person required to report as a result of a juvenile court adjudication occurring on or after January 1, 2001, can apply to the court for relief from the reporting requirement. This bill expands the availability of that process to a person whose juvenile adjudication occurred before January 1, 2001, and to persons now living in Oregon whose adjudication occurred in another state.

The bill clarifies that these provisions are not available to a person who must register for life in the state where the offense took place, or to a person whose out-of-state juvenile adjudication is comparable to an offense that carries a mandatory prison sentence pursuant to ORS 137.707.
Effective date: January 1, 2004

C. HB 2759 Increased Fees and Maximum Fines

HB 2759 raises revenue for the courts by increasing and surcharging certain filing fees, some on a temporary basis. HB 2759 affects criminal law as follows:
1) Sections 86-89 increase the maximum fines on crimes and violations, effective September 1, 2003:
   - Class A felony from $300,000 to $375,000
   - Class B felony from $200,000 to $250,000
   - Class C felony from $100,000 to $125,000
   - Class A misdemeanor from $5,000 to $6,250
   - Class B misdemeanor from $2,000 to $2,500
   - Class C misdemeanor from $1,000 to $1,250
   - Class A violation from $600 to $720
   - Class B violation from $300 to $360
   - Class C violation from $150 to $180
   - Class D violation from $75 to $90.
2) Section 103 increases the base fine on violations and reduces the court's discretion to waive the base fine.
3) Section 112 increases the unitary assessment by $2 for all offenses.
4) Section 63 adds a $64 surcharge to the $212 filing fee for a petition for a possession of marijuana diversion agreement under ORS 135.909, effective July 1, 2005.
5) Section 65 adds an $8 surcharge to the filing fee for a petition for post-conviction relief, effective July 1, 2005.

6) Section 71 adds a $71 surcharge to the filing fee for a petition for a DUII diversion agreement that is allowed, effective between September 1, 2003, and June 30, 2005.
7) Section 72 increases the filing fee for a petition for DUII diversion from $237 to $261, effective July 1, 2005.

HB 2759 also sets the maximum fine and unitary assessment that a court may impose on a violation that was reduced by a district attorney or the court from a misdemeanor at the misdemeanor level. Under current law, once a misdemeanor is reduced to a violation, the maximum fine and unitary assessment are imposed at the Class A violation level.

Section 101 of HB 2759 amends ORS 138.053 to require that a defendant show a colorable claim of error before the defendant can appeal a trial court ruling imposing, extending, or modifying probation.

Similarly, Section 102 amends ORS 138.222 to further expand the colorable claim of error requirement to certain appeals.
Effective date: August 29, 2003

D. HB 2865 Misdemeanors; Hearsay Testimony; Release
Section 2 of HB 2865 amends ORS Chapter 161 to allow a district attorney to treat Class C non-person felonies and violations of ORS 475.992(4)(a) (possession of a controlled substance, Schedule I – usually possession of more than an ounce of marijuana) as Class A misdemeanors. The district attorney may make the election to treat the felony as a misdemeanor when the defendant makes his or her first appearance or anytime thereafter, on agreement of the parties. The district attorney must adopt written guidelines for determining when and under what circumstances the district attorney will allow misdemeanor treatment of a felony.

Section 3 of HB 2865 amends ORS 132.320 to allow a peace officer involved in a criminal investigation under grand jury inquiry to present to the grand jury information regarding the investigation contained in another peace officer's official report. Before this amendment to the statute, this type of testimony constituted hearsay and was not lawfully allowed before the grand jury. The bill contains some procedural safeguards. First, the defendant's statements and inadmissible hearsay of persons other then the peace officer who compiled the official report may not be presented in this manner. Second, if the report contains evidence other than chain-of-custody, venue, or the name of the suspect, the district attorney must notify the grand jury that they can request the testimony of the officer rather than accept it through the report. Third, when the grand jury request the testimony of the officer, the officer may present sworn testimony by telephone if requiring the officer's presence before the grand jury presents an undue hardship on the officer or the agency that employs the officer.

Section 8 requires that the indictment indicate the manner in which information was presented to the grand jury, including by report or by telephone.

Sections 4-7 require that a criminal defendant provide the defendant's true name at arraignment to be eligible for any form of release other than security release. The acknowledgment of a true name at arraignment may not be used against the defendant at trial on the underlying charge. Section 5 provides a procedure by which the court determines a person's true name and amends the charging instrument to reflect the true name. Section 7 provides that a defendant currently on a form of release other than full security release is subject to the requirements of this bill if the district attorney files a motion supported by probable cause that the defendant has not provided the court with a true name.
Effective date: August 12, 2003

E. SB 304 Youth Waived to Adult Court

SB 304 amends ORS 419C.349 to expand the list of crimes for which waiver of a youth who is 15 year of age or older to adult court is allowed. Waiver is allowed for any felony or misdemeanor if the youth and the state stipulate to the waiver. This bill allows more flexibility in negotiating and settling Measure 11 cases. (Before this amendment, if the state and the defendant agreed to a resolution of a Measure 11 case by agreeing to reduce it to an offense outside of ORS 137.707, they were limited in which offenses the youth could be treated as an adult.)
Effective date: January 1, 2004

F. SB 617 Full Restitution
SB 617 amends ORS 137.106 to require that the court order the defendant to pay restitution in the entire amount of the victim's pecuniary loss. This bill removes from the court the authority to consider the defendant's ability to pay when determining the amount of restitution to order. The bill also expands the period of time to determine the amount of restitution to 90 days, which the court can extend for good cause.
Section 3 of SB 617 amends ORS 153. 090. On a finding that the defendant is unable to pay the full amount of restitution at the time of sentencing, the court, or the agency supervising the defendant, can institute a payment schedule based on the defendant's ability to pay.
Section 4 amends ORS 419C.450, the juvenile delinquency restitution statute, similarly requiring that full restitution be ordered. This section contains a provision allowing a youth to request a reduction in the amount of restitution under certain circumstances, if the victim does not object.
Effective date: January 1, 2004

VI. FORFEITURE

SB 59 Property Protection Act
Ballot Measure 3, known as the Property Protection Act of 2000, placed restrictions on civil forfeiture. This measure was declared unconstitutional in July 2003. In 2001, because of the restrictions placed on civil forfeiture by Ballot Measure 3, criminal forfeiture became a more attractive way to deter criminal activity. In 2001, HB 3642 (2001 Or Laws Ch 666) was enacted to create procedures for criminal forfeitures, with the realization that criminal forfeitures would likely be used more often than civil forfeitures after Ballot Measure 3 passed. Ballot Measure 3's unconstitutionality does not bear on the constitutionality of 2001 Or Laws Ch 666. SB 59 extends from 15 to 30 days after seizure the time in which notice of seizure and an indictment must be filed. §1. This bill makes changes to the deadlines for filing in criminal forfeiture cases that were enacted in HB 3642 (2001.) The bill also allows certain deadly weapons related to criminal offense to be forfeited without a prosecutor navigating the process enacted with HB 3642 (2001.) Proponents argue that since 1925, ORS 166.280 allowed for forfeiture of weapons that were used to commit crimes, and this measure allows this forfeiture to continue.
Effective date: July 28, 2003

VII. PROCEDURE AND EVIDENCE

A. HB 2115 Defense of Extreme Emotional Disturbance
HB 2115 allows the state to use a psychologist rather than a psychiatrist to examine a person who has raised the defense of extreme emotional disturbance. Before this amendment, when a defendant raised the defense of mental disease or defect pursuant to ORS 161.295 or 161.300, the state had the right to obtain a mental examination of the defendant. The state could use either a psychiatrist or a licensed psychologist. However, when the defendant raised the defense of extreme emotional disturbance pursuant to ORS 163.135 (an affirmative defense only to the charge of murder,) the state had to have a psychiatrist examine the defendant. *See* ORS 136.295, 161.309, 163.135. It is often difficult to find a psychiatrist in many less-populated areas of the state.
Effective date: January 1, 2004

B. HB 3389 Identity of Controlled Substance

HB 3389 amends ORS 475.235 to provide that the result of a "presumptive test," or field test, is prima facie evidence of the identity of a controlled substance for the following purposes: grand jury proceedings, preliminary hearings, proceedings on a district attorney information, or for purposes of an early disposition program. The defendant has the right to requires that a state police forensic laboratory test the substance.

The bill defines the term presumptive test to include, but not limited to, chemical tests using Marquis reagent, Duquenois-Levine reagent, Scott reagent system, or modified Chen's reagent. The test must be performed by either a police officer trained to use the test or a forensic scientist. Section 2 of the bill amends OEC 803 to exclude from the hearsay rule a report prepared by a forensic scientist that contains the results of a presumptive test. OEC 902 is amended in Section 3 to provide that such reports are self-authenticating.

The proceedings for which the field test constitutes prima facie evidence were limited by committee amendment. The bill in intended to allow a district attorney, rather than waiting for the results of crime laboratory testing, to submit the result of a presumptive test as prima facie evidence. This will allow district attorneys to make early resolution pretrial offers or drug court agreements without having the controlled substance tested by the crime laboratory.

Effective date: July 3, 2003

C. SB 42 *Year* Defined

According to the Oregon State Bar, Oregon law appears to define *year* as 365 days irrespective of whether the year in question is a leap year containing 366 days, although the matter my be unsettled. Although federal law is not binding on Oregon, there appears to be authority to the contrary on the issue of the definition of a *year*. According to the bar, a statute defining a *year* as a *calendar year* would eliminate any uncertainty in calculating statutory periods when a leap year is involved, and SB 42 accomplishes this change for both civil and criminal time computations.

Effective date: January 1, 2004

VIII. MISCELLANEOUS

A. HB 2047 Vienna Convention on Consular Relations

HB 2047 requires the Board of Public Safety Standards and Training to educate police officers on the requirements of the Vienna Convention, to which the United States is a party. The Vienna Convention requires that when a foreign national is detained, the detaining national, state, or local authority must inform the foreign national that he or she has a right to contact his or her respective consulate. The bill requires a peace officer to inform a foreign national whom the peace officer is taking into custody on mental illness grounds of the person's right to communicate with the person's consular official. The bill also requires a physician, nurse, or qualified mental health professional to inform a foreign national of the person's right to communicate with the person's consular official if the person is subject to civil commitment proceedings. The bill clarifies that failure to comply does not create civil or criminal liability.

Effective date: January 1, 2004

B. HB 2091 Vienna Convention on Consular Relations

HB 2091 requires that when a petition is filed under the physiological parenting statute seeking guardianship of a child who is a foreign national, a copy of the petition be filed with the consulate of the child's country. The bill requires that when a petition is filed pursuant to the probate code seeking guardianship of a minor who is a foreign national, a copy of the petition be filed with the consulate of the child's country. It also requires that in a dependency matter where the plan is not to keep a child who is a foreign national with his or her parent, that the consulate have a right to see the plan. Finally, the bill requires that when a petition is filed in a dependency matter alleging that a child who is a foreign national is within the jurisdiction of the court or when a motion is filed requesting a plan other than return the child to the child's parent, that a copy of the petition be served on the consulate for that child's country.

Effective date: January 1, 2004

C. HB 2089 Criminal Violation of Immigration Laws

HB 2089 amends ORS 181.850, the meaning of which came into question after the events of September 11, 2001. The statute prohibits law enforcement agencies from using resources for the purpose of detecting or apprehending foreign persons whose only violation of law is that they are present in the United States in violation of the immigration laws. This bill allows law enforcement to arrest a person pursuant to a federal criminal arrest warrant for violation of the immigration laws.
Effective date: January 1, 2004

D. HB 2733 Venue for Violation Proceeding

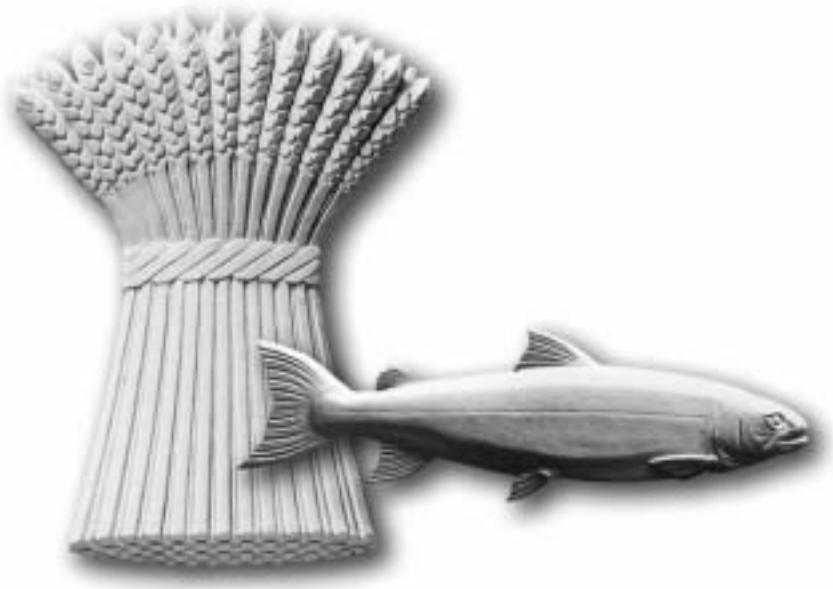
HB 2733 clarifies that a violation proceeding may not be commenced in a municipal court unless the violation occurred within the city limits. Also the bill prohibits a defendant from requesting that the place of trial be moved if the violation was committed within a city and the proceeding is commenced in the city's municipal court.
Effective date: January 1 ,2004

E. SB 267 Evidence-based Programs

SB 267 requires for the biennium beginning July 1, 2005, that a certain percentage of moneys received by the Department of Corrections, Oregon Youth Authority, State Commission on Children and Families, part of the Department of Human Services and the Oregon Criminal Justice Commission be spent on evidence-based programs. Defines evidence-based programs. Increases percentages for biennia beginning July 1, 2007, and July 1, 2009. Declares emergency, effective on passage.

The bill also creates a position on the Board on Public Safety Standards and Training (BPSST) for a representative of the largest collective bargaining unit of the Department of Corrections. Creates a position on the Corrections Policy Committee for a female employee of the Department of Corrections employed at a women's correctional facility.
Effective date: August 18, 2003

Legislative Referrals and Citizen Referendum



2003 Summary of Legislation

September 16, 2003 – Special Election

Legislative Referral of House Joint Resolution 18 – Ballot Measure 29

Amends Constitution: Authorizes State Of Oregon To Incur General Obligation Debt For Savings On Pension Liabilities.

Filed with the Secretary of State: July 17, 2003

In September 2003, voters approved Ballot Measure 29 which the legislature approved as House Joint Resolution 18. Upon approval, the measure amended the Oregon Constitution to allow the State of Oregon to incur general obligation bond debt to finance the state's pension liabilities. However, there is a limit to the amount of debt authorized and outstanding to one percent of the real market value of all property in the state. When the resolution was referred to the voters, interest rates on general obligation bonds were low, allowing the state the opportunity to "refinance" higher-cost obligations. Prior to voter approval, Article XI, Section 7 of the Oregon Constitution prohibited the state from incurring debt, except under specified circumstances. This Constitutional amendment allows for the creation of bonded indebtedness notwithstanding those limitations.

VOTE: Yes - 360,209 No - 291,778

February 3, 2004 – Special Election

Citizen Referendum – Repeal of HB 2152, Sections 1 to 43(a), Relating to Taxation – Ballot Measure 30

Enacts Temporary Personal Income Tax Surcharge; Increases, Changes Corporate, Other Taxes; Avoids Specific Budget Cuts

Filed with the Secretary of State: August 29, 2003

Upon approval by voters, Ballot Measure 30 would have enacted several temporary and permanent tax increases and other changes in order to maintain certain levels of service in public education, senior services, public safety and other areas, and to avoid budget cuts.

The temporary tax increases and changes would have included the following:

- Extending the 10 cents per pack tax on cigarettes until January 1, 2006
- Adding a graduated income tax assessment to an individual's income tax liability for 2003-2004. This tax would have continued into 2005 unless the projected ending balance of Oregon's General Fund is greater than 4% of the General Fund appropriations for the 2003-05 biennium.
- Deferment of 20% of certain existing corporate tax credits until 2006.
- Deductions for dividends received by corporations from subsidiaries would have been reduced from 70% to 35%, January 1, 2003-December 31, 2005

The permanent tax increases and changes would have included the following:

- Changes in the age allowed for medical expense deductions and reduction in the percentage to be claimed
- Eliminated the deduction for certain business vehicles weighing 6,000-14,000 pounds.
- Extraterritorial corporate income would have been required to be added back to a corporation's Oregon taxable income.
- The minimum tax for Oregon C corporations would have increased from $10 to $250-$5,000 depending on sales

- The minimum tax for Oregon S corporations would have increased from $10 to $250-$500 depending on sales.
- The discount a taxpayer may take on property tax payments made by November 15th of each year would have been reduced from 3% to 1.5% for full payment and the 2% discount for two-thirds payment would have been eliminated.

Existing law required $544.6 million in budget cuts for the 2003-2005 budget period when Ballot Measure 30 was not approved by voters.

VOTE: Yes – 481,315 No – 691,462

November 2, 2004 – General Election

Legislative Referral - Senate Joint Resolution 19

Amends Constitution: Authorizes Law Permitting Postponement Of Election For Particular Public Office When Nominee For Office Dies

Filed with the Secretary of State: June 26, 2003

Oregon does not have a procedure in place to postpone an election for any public office when a vacancy occurs in the nomination of a candidate for that office due to the candidate's death. The proposed Constitutional amendment in SJR 19 authorizes the Legislative Assembly to approve legislation providing for the postponement of the election. Senate Bill 552, also approved in 2003, outlines the statutory criteria and procedures for postponing a regular election and holding the subsequent special election if the Constitutional amendment proposed in SJR 19 is approved by voters.

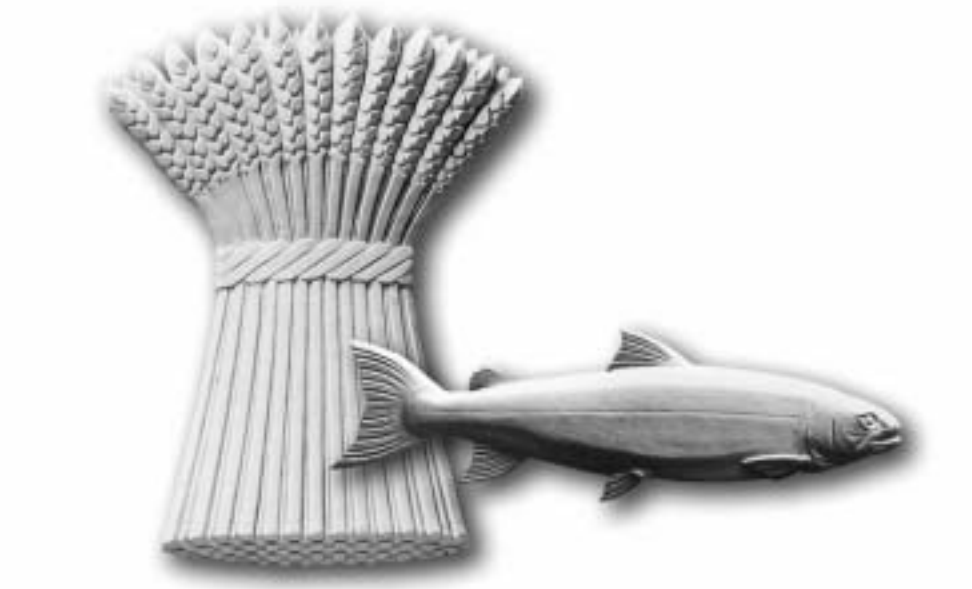
Legislative Referral - Senate Joint Resolution 14

Amends Constitution: Deletes Reference To Mobile Homes From Provision Dealing With Taxes And Fees On Motor Vehicles

Filed with the Secretary of State: August 8, 2003

Currently, manufactured structures are treated as motor vehicles and are titled and registered by the Oregon Department of Transportation. Under Article IX, Section 3a of the Oregon Constitution, taxes of excises levied on the ownership, operation or use of motor vehicles are dedicated to the construction, repair, maintenance, and operation of public highways, roads, streets and roadside rest areas. An exception from that dedicated funding exists for taxes or excises collected on campers, mobile homes, motor homes, travel trailers and snowmobiles. Those funds may be used for the acquisition, maintenance, or care of parks or recreation areas. The proposed Constitutional amendment in SJR 14 deletes the reference to mobile homes for the purposes of taxation of ownership, operation or use of motor vehicles. Senate Bill 468, also approved in 2003, transfers the duties and functions relative to titling and registration of manufactured structures to the Department of Consumer and Business Services.

Measures Vetoed by the Governor



2003 Summary of Legislation

House Bill 2021

Relating to health care service contractors

HB 2021 would have clarified that capital and surplus requirements for health care services contractors could be phased-in through 2006. Insurance companies are regularly examined to determine their financial soundness. The 2001 Legislative Assembly approved SB 267, which increased the minimum capital requirements for insurers and health care service contractors from $500,000 to $1 million.

Insurance companies are often reinsured by other companies to cover specific provisions in policies or to cover claims should the insurer become insolvent and not be able to pay claims. The Department of Consumer and Business Services (DCBS), Insurance Division reported that SB 267 was introduced because the statutory minimum capital requirements were inadequate to establish solvency for an insurance company or health care service contractor.

House Bill 2021 would have allowed existing health care services contractors and new applicants to phase-in the required capital and surplus over a specific length of time.

Governor's Veto Message

I am returning Enrolled House Bill 2021 unsigned and disapproved, for the reasons below.

HB 2021 would decrease minimum capital requirements for new limited health care service providers (e.g., dentists, optometrists and providers of alternative medical care). The current limits were just established in 2001. These requirements were put in place in order to ensure the solvency of insurers and health care providers and, in the event of insolvency, to provide for the payment of claims against such insurers and health care providers.

The minimum capital requirements established in 2001 are important consumer protection requirements. These requirements are particularly important in light of SB 353. Enacted earlier this session, SB 353 expanded the category of limited health care providers to include chiropractors, naturopaths, massage therapists and acupuncturists.

I believe that HB 2021 would set a bad precedent in an area with important public policy implications. Minimum capital requirements for insurers and health care providers are important safeguards for the people of Oregon. I do not believe that these protections should be weakened.

House Bill 2828

Relating to authority of nurse practitioners in workers' compensation claims

HB 2828 would have authorized certified nurse practitioners to provide compensable medical services and authorize temporary disability benefits for 90 days for workers' compensation claims. Certified nurse practitioners would have also been allowed to authorize release of a worker to return to regular employment.

After the Governor's veto of HB 2828, HB 3669 was ultimately approved which contained provisions addressing concerns of stakeholder groups identified in the Governor's veto letter. Therefore, nurse practitioners are currently allowed, under HB 3669, to provide medical services to injured workers for 90 days from the date of their first visit and nurse practitioners are allowed to authorize temporary disability for injured workers for 60 days from the date of the first visit. Nurse practitioners are also authorized to manage the return-to-work status of the injured worker during the time period they are caring for the worker.

Governor's Veto Message

I am returning Enrolled House bill 2828 unsigned and disapproved, for the reasons below.

House Bill 2828 would expand the role of nurse practitioners in the treatment

of injured workers within the workers' compensation system.

Various reforms to the workers' compensation system grew out of my work with the "Mahonia Hall Group" in the 1990s. Those reforms addressed various important substantive and procedural issues within the system. Under legislation that grew out of that effort, nurse practitioners may treat injured workers for up to 30 days from the date of the workers' injury or for 12 visits, whichever occurs first. In addition, nurse practitioners in certain rural areas may authorize benefit payments to injured workers for up to 30 days from the date of the first visit. House Bill 2828 makes substantial changes to these provisions by allowing nurse practitioners to treat injured workers and to authorize temporary disability benefits for up to 90 days from the date of the first visit. The limits in current law help to assure that seriously injured workers receive necessary medical attention from doctors trained in occupational medicine; House Bill 2828 weakens that assurance.

Another important reform adopted during the 1990s was the creation of the Management-Labor Advisory Committee (MLAC). MLAC is made up of an equal number of management and labor representatives and is charged with making fair and balanced recommendations regarding changes to the workers' compensation system. Previous legislatures and governors recognized the importance of MLAC's role by working with MLAC to develop legislation acceptable to all of the primary stakeholders in the workers' compensation system. In this case, however, MLAC's offer to reach a compromise on the terms of House Bill 2828 was rejected and MLAC remains opposed to the bill.

I have vetoed House Bill 2828 because I do not believe that it is wise policy on its merits and because I respect and value MLAC's role in reviewing and reaching consensus on proposed legislation regarding the workers' compensation system.

House Bill 3328

Relating to activities regulated by the Oregon Government Standards and Practices Commission

HB 3328 would have revised many laws administered by the Government Standards and Practices Commission (GSPC). The measure would have required the GSPC to adopt by administrative rule any standard or statement of general applicability that implements or interprets provisions of the GSPC laws. The measure removed the status of certain GSPC advisory opinions as "having precedential effect." The measure would have required a governing body of a public body to provide for electronic recording of all executive sessions, and allowed the GSPC to review electronic recordings of executive sessions while investigating complaints. The measure would have also expanded the type of items that a public official or the official's relative could accept without violating government ethics laws. The measure also made changes to the lobbyist registration process and clarified reporting requirements of certain lobbyist expenses.

Governor's Veto Message

I am returning Enrolled House Bill 3328 unsigned and disapproved for the reasons below.

House Bill 3328 was intended to clarify Oregon ethics laws by expressly allowing public officials to accept nonremunerative benefits if approved by certain employers (local governments, the Oregon University System and the Oregon Health Sciences University), by providing a defense to alleged violation of the ethics laws based on advice of legal counsel and by expanding disclosure requirements for family members of public officials and lobbyists. It also would allow the Government Standards and Practices Commission to review electronic recordings of executive sessions when investigating complaints and to use the Commission's

enforcement discretion to send letters of reprimand to public officials charged with violations after investigation and review, in lieu of civil penalties.

The ethics laws are certainly in need of revision and clarification and this bill accomplishes several important objectives. And, I commend the sponsors and proponents for their efforts in addressing some needed changes in the law as I have noted. But, I nonetheless veto House bill 3328 because it does not achieve its primary goal: clarification of the ethics laws.

Indeed, I believe it may have further confused this critical area of Oregon law. House Bill 3328 also attempted to allow relatives of a public official to receive food, lodging or travel in excess of the current statutory limit of $100 cumulative per year. While I am troubled by the expansion of this ability to accept food, lodging and travel to all relatives of a public official, additional changes under the bill prohibit public officials and relative from using the office fore personal gain and may in fact restrict their range of activity well beyond current law and certainly beyond the intent of the drafters. In this way, I believe House Bill 3328 confuses Oregon ethics laws rather than brings clarity to the law that all public officials desire.

Our ethics laws cannot be a matter of public confusion. The public and its public officials must have a clear legislative directive about acceptable behavior and a consistent and predictable legal standard to apply to their conduct. Government must be accountable to the public, but to be accountable public officials must have a clear understanding as tot the public's expectations. Moreover, public officials must have a legal standard that is fair and when applied to their behavior the outcome must be predictable. Only then will public officials be able to meet the public's expectations. While I look for legislative reform to Oregon's ethics laws, this subject deserves careful attention, expert resources and time. To that end, I will request the Oregon Law Commission to address the subject during the interim and to develop recommendations for a comprehensive, consistent and predictable legal standard for Oregon. Those changes should take into account the desires of the Legislative Assembly as expressed in House Bill 3328. It is my desire that the Oregon Law Commission provide recommendations to be submitted in the next legislative session.

House Bill 3508

Relating to X-ray machine operators

HB 3508 would have directed the Oregon Board of Dentistry to adopt rules regulating qualifications, training, education and supervision of persons who operate X-ray machines within the practice of dentistry. Regulation of the X-ray machine operators within the practice of dentistry would have been discontinued by the Department of Human Services (DHS).

The Office of Public Health is the regulatory office responsible for the training requirements of all X-ray equipment operators, to ensure adequate training in radiation safety and the ability to demonstrate competency in the safe use of X-ray equipment. In May 1994, administrative rule (OAR) 333-106-055 was revised and increased the radiation safety training from 20 hours to 40 hours for all X-ray operators (except veterinary, which remained at 20 hours). The Oregon Dental Association opposed this requirement and DHS lowered the required hours of safety training for dental assistants from 40 to 30 hours in its 2003 OAR revisions.

Proponents of HB 3508 asserted that the additional educational requirement for dental assistants is unnecessary and burdensome, primarily because Oregon requires that dental assistants pass the Dental Assistant's National Board Exam (DANB) on radiation safety for certification and that this additional requirement has been cited as a barrier for dental assistants to enter the workforce.

Governor's Veto Message

I am returning Enrolled House Bill 3508 unsigned and disapproved, for the reasons below.

Under current law, the Department of Human Services is required to promulgate standards and to made reasonable regulations regarding the registration of X-ray machines, the proper use of X-ray machines and the training necessary for operators of X-ray machines. These standards and regulations apply across the spectrum of X-ray usage, including use in hospitals and universities and by medical doctors, dentists, osteopaths, veterinarians, podiatrists, chiropractors, naturopaths, radiologists and industrial users. Oregon's public health authority has been responsible for assuring radiation safety since the 1940s.

House Bill 3508 would remove the practice of dentistry from DHS's regulatory authority in the area of X-ray technology and would shift this oversight responsibility to the Oregon Board of Dentistry. I have vetoed House Bill 3508 because I believe that this would be an unwise policy shift.

Radiation safety, including the proper use and maintenance of X-ray technology, depends upon the proper functioning of machines and on the proper training of operators. DHS has considerable experience in both areas and possesses the training and experience necessary to perform this important function. Since 1977, when dental operator training was formalized within the Oregon Administrative Rules, radiation exposure has dropped 75%. I do not believe that DHS's responsibility in this important area should be diminished.

In addition to my public health and worker safety concerns with House Bill 3508, this bill is also contrary to my regulatory streamlining initiatives. House Bill 3508 would sever a longstanding policy of centralized oversight in this area and singles out the practice of dentistry for preferential treatment. The current statutory framework provides fair, comprehensive and integrated oversight of all operators of X-ray equipment. This framework should be retained.

House Bill 3631

Relating to land use planning for urban areas, including Forest Park

HB 3631 stated legislative findings with respect to large urban parks. The measure defined "large urban park" and "area of influence". Under the measure, local governments who exercise land use planning authority for land within or adjoining a large urban park were required to: 1) determine the precise boundaries; 2) prepare a summary of local, regional or state programs that apply to the land; and 3) ensure that applicable comprehensive plan, regional framework plan and land use decisions preserve the natural and open space values. Provisions applied to comprehensive plans, regional framework plans, or land use regulations made on or after effective date. Local governments were required to consult with appropriate entities in decision-making including the public and affected state and local agencies. The measure provided that designation of land for farm or forest use comply with requirements. Modifications to land use designations were required to comply with provisions of the measure.

HB 3631 directed Multnomah County to allow current owner of property with specified characteristics to partition or subdivide the lot or parcel. The affected property owners would have been allowed to: 1) partition or subdivide only one lot or parcel; 2) build one single-family dwelling on each lot or parcel created; and 3) create a maximum of six lots or parcels. The measure required single-family dwellings built on the created lots or parcels to comply with reasonable siting standards for fire, health and safety. Multnomah County was prohibited from applying siting standards in a manner that would not allow siting of a dwelling unless the county established by clear and convincing evidence that the lot or

parcel does not have emergency access, potable water or an adequate capacity to dispose of sewage. Multnomah County would have been prohibited from amending its comprehensive plan or adopting or amending a land use regulation to implement or interpret partitioning provisions of the measure.

Governor's Veto Message

I am returning Enrolled House bill 3631 unsigned and disapproved for the reasons below.

The primary purpose of House Bill 3631 is to carve out a legislative exception to existing land use rules for the benefit of a single Multnomah County landowner whose property is zoned for commercial forest use. On Friday, I had the opportunity to meet with that landowner and I sympathize with her dilemma.

However, I have nonetheless vetoed House Bill 3631 because I believe it would undermine Oregon's land use system by interjecting the Legislative Assembly into individual county land use decisions. The legislative process should not be used to trump general land use laws or regulations for the benefit of an individual landowner. Approval of such legislation would set an unwise precedent for similar legislative attempts in the future. Individual land use decisions should be made at the county level. I believe that all counties-including Multnomah County-should allow exceptions to general land use rules when appropriate on a case-by-case basis. This may indeed be an appropriate case for such an exception. However, I firmly believe that such individual decisions must be left to the counties' processes. I stated these concerns to the Members of the Senate in my floor letter dated July 23, 2003. I hope that Multnomah County will be able to work with this landowner in order to reach a mutually agreeable resolution.

I would support a comprehensive attempt by all stakeholders to address longstanding land use issues. For instance, House Bill 2912, if adequately staffed and funded, would authorize a comprehensive four-year study of Oregon's land use system to assess the strengths and weaknesses of the system. Whether there should be more flexibility in the zoning process would be an issue best addressed in such a forum.

Senate Bill 761

Relating to students who are not taught in public schools

SB 761 would have repealed examination requirements that apply to children who are taught by private teachers, parents, or legal guardians. The measure allowed for exemption from compulsory school attendance laws for children taught at the direction of the parents or legal guardian.

Oregon law requires all children between the ages of 7-18 years, who have not completed the 12th grade, to attend public school. Exceptions include those children attending a private school or are being schooled at home. The law requires the parent or legal guardian to notify the local education service district of their intention to home school their child. Children who are home schooled are required to take tests in grades 3, 5, 8, and 10. If the child tests below the 15th percentile, it could ultimately result in sending the child to public school.

Governor's Veto Message

I am returning Enrolled Senate Bill 761 unsigned and disapproved, for the reasons below.

First, I want to express my support for the rights of parents to raise and educate their children according to the dictates of their beliefs and conscience. The decision to veto Senate bill 761 is not a statement about home-schooling or about parental rights. I agree with this principle and I salute parents who choose to undertake themselves the very serious responsibility for educating their children. But I also believe that society is responsible to our children. Particularly, society must ensure that a

child's basic needs are met, including the need for a basic education. To fulfill that responsibility, society must require a minimal level of accountability from parents who provide for their children's education. I know that the vast majority of parents who home-school their children are motivated by a sincere desire to provide the best and most appropriate education for their children and that they do an admirable job of providing the education. However, I am deeply concerned that a system with no monitoring or accountability will allow a small number of children to fall through the cracks and to reach adulthood without receiving the minimal education that is the right of every child to receive and the responsibility of society to ensure is provided.

In 1999, supporters of home-schooling and the Legislature reached a compromise between restrictive home-schooling regulation and complete deregulation. The compromise is embodied in current law, which requires that parents of home-schooled children notify the local public school district in writing when a child is being home-schooled or is withdrawn from the public school system. The law also requires that home-schooled children be tested in grades 3, 5, 8 and 10. Parents choose the test to be administered to their home-schooled child from a list of tests adopted by the State Board of Education. If the child's test score is within the bottom fifteen percent according to national norms, then another test must be administered within a year. If the subsequent test reveals a declining score, then the superintendent of the local school district can require that the child be taught by a private teacher with a teaching license or, at the parents' option, be returned to the public schools. If test scores continue to decline, even with a private teacher, the superintendent can require the child be returned to the public schools.

Senate Bill 761 would eliminate these testing requirements entirely. Under Senate Bill 761, the state would have no ability to determine that children were receiving even a minimal education. If Senate Bill 761 became law, Oregon would be one of just a handful of states with no oversight of home-schooling.

I do not believe that the requirements imposed by current law are unduly burdensome on parents of home-schooled children. In fact, these testing requirements are considerable less stringent that the requirements of the No Child Left Behind Act, which requires testing in public schools in grades 3 through 8 in addition to annual statewide progress objectives to ensure that public school students attain proficiency within 12 years.

I also recognize that current law does not impose the same requirements on private school students in Oregon as it imposes on home-schooled students. While it is true that we do not regulate private schools in this way under the current legal structure, I believe that market forces do regulate private schools in ways that it does not regulate home-schooling. Private schools are not merely opting out of public education; they are competing with public education. To be a competitive alternative to public education, private schools must meet or exceed the scope of instruction, quality in instruction and curriculum found in the public schools. Most importantly, private schools must utilize performance measures and standards to demonstrate their success and competitiveness- all with a corresponding cost. Indeed, if a private school does not produce students that can successfully compete with students from a public school, it seems likely that the private school will not remain in the education market as a costly but viable option to parents. Given market forces, I believe private schools voluntarily submit to national and standardized testing or other performance measures in order to ensure and demonstrate that privately schooled students receive not only basic education instruction but education that is intended to give such students a competitive edge. As I have stated, I respectfully disagree with the removal of all testing requirement for home-schooled children.

Since taking office I have stated many times, "Putting Children First" is a cornerstone of my administration. I have vetoed Senate Bill 761 because I do not believe that it is consistent with that principle.

Senate Bill 880

Relating to stay of judgment

SB 880 would have set a ceiling of $100 million on the size of a supersedeas undertaking required to stay enforcement of a private plaintiff's judgment against a tobacco manufacturer that is subject to the Master Settlement Agreement. The measure would have allowed the court to end the stay if the tobacco company is dissipating or diverting funds. The measure would have been applicable to tobacco product manufacturers, affiliates or successors. Provisions of the measure would have been applicable to civil action commenced before, on or after effective date of measure.

A "supersedeas undertaking" is when an appellant posts a bond or other security during the appeal of a judgment. This stays enforcement of the judgment during the pending appeal, and if the appellant loses the appeal, the plaintiff may first enforce the judgment against the bond and then attack appellant's other assets if the bond does not fully satisfy the judgment. In Oregon, a plaintiff may enforce a judgment, if the judgment is not stayed, from a trial court by seizure of defendant's assets, during the defendant's appeal. A supersedeas undertaking is a bond that stops the plaintiff's ability to seize defendant's assets during the appeal. Under current law, the trial judge has discretion regarding how large the bond must be (ORS 19.310(2)). Rather than allow a judge to determine the size of the bond, this measure places a ceiling on the bond of $100 million. Proponents argue that the integrity of the Master Settlement Agreement will be jeopardized if the size of the bond is not limited, because the companies would otherwise file bankruptcy on the grounds that they could not obtain bonds as large as some of the judgments that have been seen in tobacco litigation.

The 2003 Legislative Assembly ultimately approved HB 2368 which, among other provisions, set a ceiling of $150 million on the size of a supersedeas undertaking required to stay enforcement of a private plaintiff's judgment against a tobacco manufacturer that is subject to the Master Settlement Agreement.

Governor's Veto Message

I have returned Enrolled Senate Bill 880 unsigned and disapproved for the reasons below.

Senate Bill 880 would create a $100 million cap on the amount of an appeal bond that could be required from a tobacco company in any litigation against a tobacco company that is a party to the Master Settlement Agreement with the states. Proponents of Senate Bill 880 assert that such legislation is necessary to protect the tobacco companies from large verdicts before such verdicts can be appealed. The proponents assert that a firm limit on appeal bonds would help protect the Master Settlement Agreement payments owed to the State by the tobacco companies.

I have vetoed Senate Bill 880 because I agree with Attorney General Hardy Myer's position that Senate bill 880 is a flawed response to this issue. The Attorney General, together with the Department of Human Services and numerous public health organizations, has urged me to veto this bill. The Attorney General supported the Minority Report, which was also supported by 24 members of the House of Representatives. Rather than establish a firm cap on the bond amount that can be required from a tobacco company, the Minority Report would have created a presumptive cap. A presumptive cap is a better solution and would address the desire to provide greater stability to the Master Settlement Agreement. Such an approach

would allow the trial judge discretion to require a larger bond only if all of the circumstances-including the financial condition of the tobacco company and the company's ability to make scheduled payments under the Master Settlement Agreement – warranted such a bond. I would support the Minority Report if it were adopted by the Legislative Assembly.

In addition, I would like to mention the public health concerns that I have with Senate Bill 880 or any legislation so clearly intended to benefit selected tobacco companies. By establishing a firm cap on appeal bonds, legislation such as Senate Bill 880 would provide tobacco companies with greater financial security and greater ability to market their products in Oregon and elsewhere. According to a report recently released by the Federal Trade Commission, in 2001 the major tobacco companies increased their advertising budgets by 17% from the previous year. The tobacco companies now spend over $11 billion annually on advertising and promotions. These figures belie the argument that tobacco companies are in need of financial protection in the form of a firm cap on appeal bonds.

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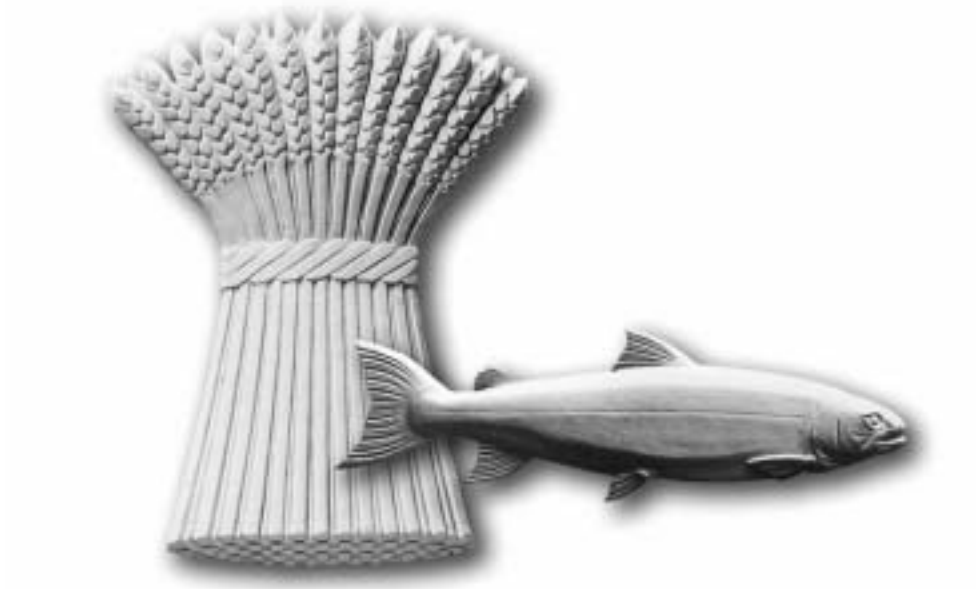

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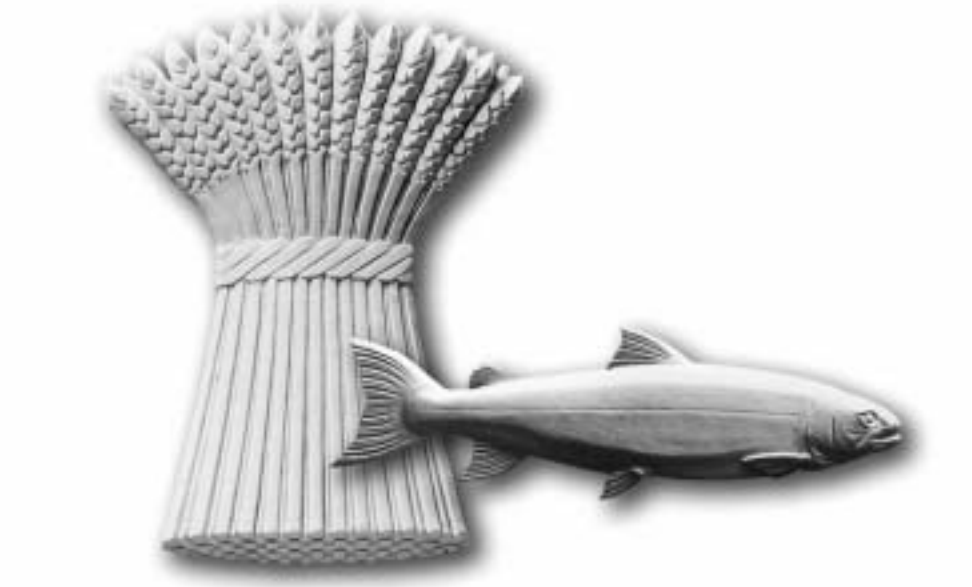

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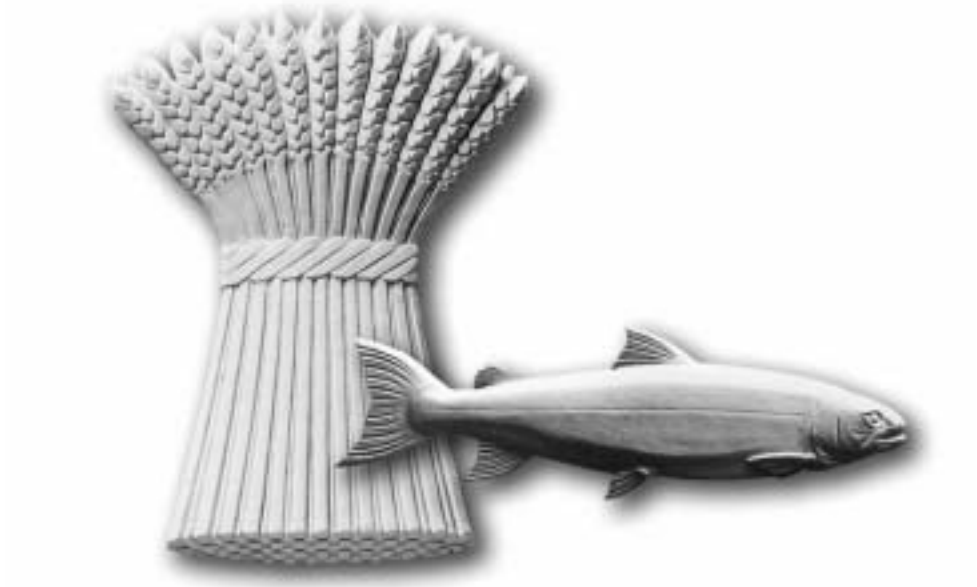

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