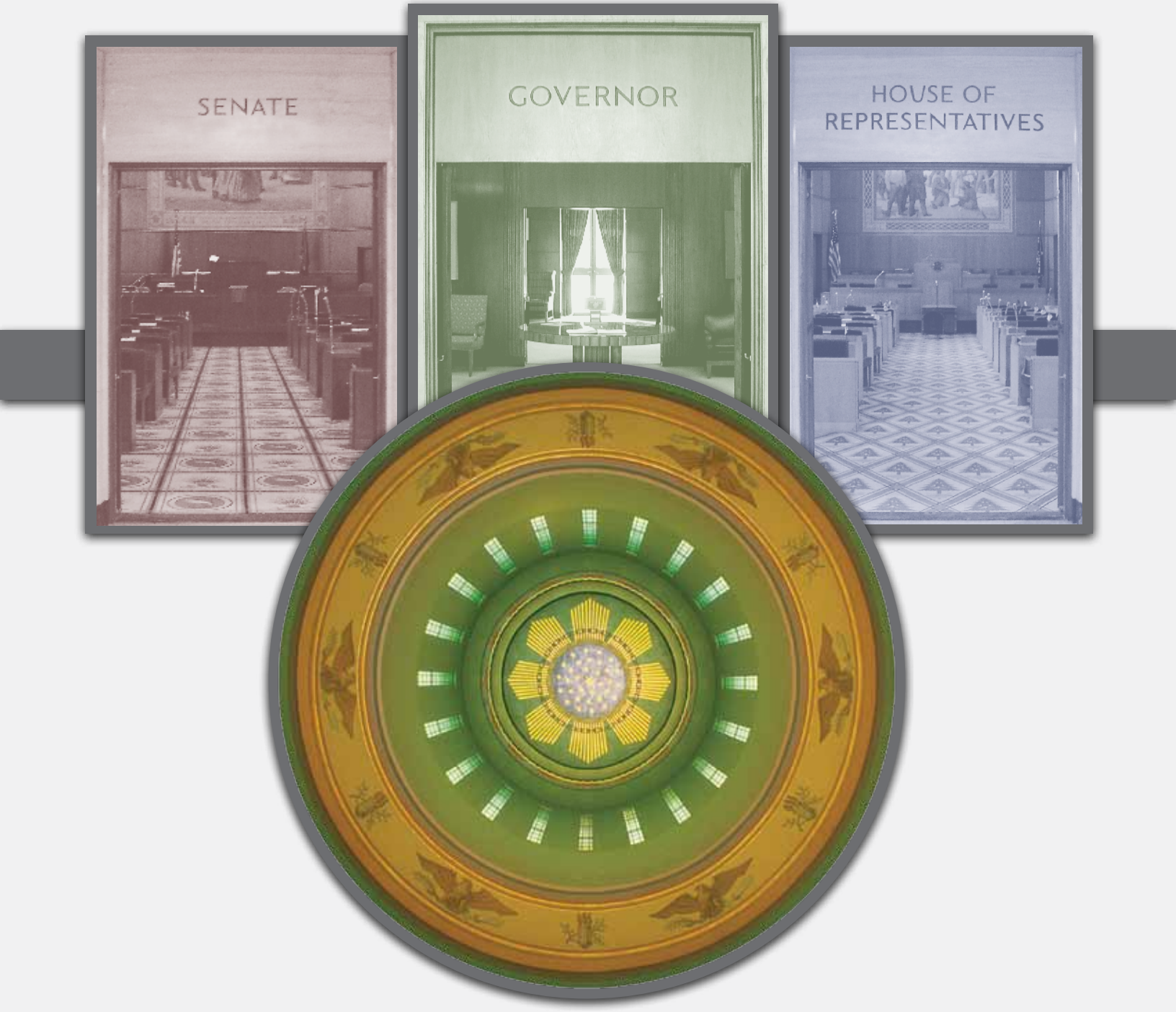
Oregon Legislative Assembly

SUMMARY OF LEGISLATION

2009



A Publication of Legislative Administration Committee Services

75th Oregon Legislative Assembly

2009 Summary of Legislation

A publication of
Legislative Administration
COMMITTEE SERVICES

October 2009

The **2009 Summary of Legislation** is a compilation of selected bills, memorials and resolutions considered by the Seventh-fourth Oregon Legislative Assembly. Summaries contain background information, effects of enacted measures and measures not enacted and dates when enacted measures become effective. Included are summaries of vetoed bills and text of the Governor's veto messages. For ease of use, a subject keyword index and a chapter number conversion table for the 2009 Oregon Laws is found at the end of this publication.

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Complete measure history and final vote tallies may be obtained by consulting the Final Legislative Status Report, Regular Session 2009. Copies of bills, resolutions, memorials, amendments, and the Status Reports are available from Legislative Publications and Distribution. This information, and information about the Legislative Assembly, is also available at: http://www.leg.state.or.us.

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Special thanks to Bill Sweeney, Publications Coordinator, for the laout of this publication and assistance with formatting. Thanks also to Cindy Hupp and Patsy Wood of Committee Services for their assistance in reviewing information for this publication.

For information on legislative revenue and legislative fiscal measures, see:

Revenue Measures Passed by the 2009 Legislature (Research Report #5-09) summarizes legislation related to revenue. For a copy of this document, please contact:

Legislative Revenue Office
900 Court Street NE, Room 143
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You can also view and download a copy of this document at http://www.leg.state.or.us/comm/lro/2009_revenue_measures_passed.pdf

Budget Highlights: 2009-11 Legislatively Adopted Budget summarizes state budget and selected legislation that impacts state agencies. For a copy of this document, please contact:

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Agriculture and Natural Resources

2009 SUMMARY OF LEGISLATION

House Bill 2020

Establishes the Invasive Species Control Account

House Bill 2020 establishes the Invasive Species Control Account. The measure authorizes the Invasive Species Council to spend money from the account to provide funding for efforts by agencies, organizations and individuals to eradicate or control new infestations and infections of invasive species. The State Treasurer is authorized to issue lottery bonds at the Council's request in the amount of $10 million and limits expenditures to $5 million.

Oregon is increasingly at-risk from aquatic species infestations. While other states attempting to address infestations after-the-fact are spending billions on eradication efforts, Oregon is trying to stay ahead of a potentially devastating problem by focusing on prevention, educating the public, and training law enforcement. House Bill 2020 establishes a fund to support rapid response and eradication efforts.

Effective date: July 28, 2009

House Bill 2212

Control of noxious weeds

House Bill 2212 broadens state laws currently applicable to tansy ragwort to all noxious weeds. The measure also revises the Department of Agriculture's quarantine authority, requires the use of a rulemaking process for the adoption of plant quarantines, and generally reorganizes and updates the state's noxious weed and plant quarantine laws.

The state's noxious weed control program protects Oregon's agricultural industry and natural resources by preventing and limiting the spread and impact of invasive exotic plant species, commonly referred to as noxious weeds, that displace and compete with native and desirable domestic plant species. Invasive plants affect all Oregonians directly or indirectly through impacts on agricultural and forest economies and on other resources such as fish, wildlife, recreation and overall watershed health.

Effective date: January 1, 2010

House Bill 2213

Changes to Invasive Species Council

House Bill 2213 places the Oregon Invasive Species Council within the Department of Agriculture and adds two seats to Council, one representative from Department of Environmental Quality and one additional at-large member, bringing the total membership of the Council to 16.

The Legislative Assembly established the Oregon Invasive Species Council in 2001. The Council has four primary functions: to create and publicize a system for reporting sightings of invasive species and referring those reports to the appropriate agencies; to undertake educational activities to increase awareness of invasive species issues; to develop a statewide invasive species plan; and to administer a trust account for funding eradication and education projects.

Effective date: May 21, 2009

House Bill 2214

Extension of Forest Products Harvest Tax

House Bill 2214 extends the period during which forest products harvest taxes are imposed and establishes rates for the extended period. The measure maintains the current $0.625 per thousand board feet rate that generates funds for payments of benefits related to fire suppression; institutes a temporary forest products harvest tax, at a rate of $0.77 per thousand board feet, to forest products harvested in calendar years 2010 and 2011 to maintain the current cost share between the general public (60 percent) and forest landowners (40 percent); and adds a provision for an additional $0.37 per thousand board feet rate to raise additional revenues for field program expenses during the 2009-11 biennium.

The forest products harvest tax rates per thousand board feet of harvested timber are typically set for one biennium. The tax funds 40 percent of the Department of Forestry's Forest Practices program, approximately 50 percent of the Department of Forestry's Service Forestry program, and provides revenue for the Forest Research Laboratory at Oregon State University. Harvest tax revenues are also used to support the Department of Forestry's fire protection program and the Oregon Forest Research Institute.

Effective date: January 1, 2010

House Bill 2216

Establishes the State Forest Acquisition Fund

House Bill 2216 updates the Board of Forestry's land acquisition statutes. The measure also creates a Forest Development Revenue Bond Fund and renames an existing sinking fund established in ORS 530.280 the State Forest General Obligation Fund. The measure authorizes the use of lottery bond proceeds for land purchases in the Gilchrist area of Klamath County for use as state forestland.

The Board of Forestry has an opportunity to acquire about 95,000 acres of forestland near the town of Gilchrist in Klamath County. The current landowner has indicated that unless there is a single buyer for the tract, the land is likely to be divided and sold in many separate pieces. When forestland is fragmented, particularly into low-density home sites, forest values and habitat are lost or diminished, firefighting grows more costly and complex, and vulnerability to invasive species increases. The Board's bonding authorities, currently decades old, require updating to make acquisitions such as the Gilchrist property feasible. The last purchase of a state forest was Sun Pass State Forest, located 40 miles north of Klamath Falls, in 1943.

Effective date: July 28, 2009

House Bill 2220

Check stations and invasive species prevention permits

House Bill 2220 authorizes the Department of Fish and Wildlife (ODFW), the State Marine Board, and the Department of Agriculture to operate check stations for the purpose of inspecting watercraft for aquatic invasive species. The measure authorizes the agencies to decontaminate or to recommend decontamination of watercraft inspected at check stations. The Marine Board is directed to charge fees for aquatic invasive species prevention permits, including: $5 for motorboats; $5 for manually propelled boats over ten feet in length; $20 for nonresidents; and annual fees for operators of boat liveries. The fee revenues are to be used for invasive species mitigation, including staffing for five mobile units with two technicians per unit in each of the five ODFW regions. These units will travel to boating sites and fishing tournaments to inspect and decontaminate vessels. Any person who knowingly transports aquatic invasive species on or in a boat is subject to civil penalties. The agencies are required to report biennially to the Legislative Assembly on efforts to prevent aquatic invasive species from entering Oregon, with the first report due by March 1, 2011.

Oregon is increasingly at-risk from aquatic species infestations. While other states attempting to address infestations after-the-fact are spending billions on eradication efforts, Oregon is trying to stay ahead of a potentially devastating problem by focusing on prevention, educating the public, and training law enforcement.

Effective date: July 22, 2009

House Bill 2221

Feral swine control measures

House Bill 2221 prohibits selling or offering to sell a hunt for feral swine on public or private lands. The measure authorizes the Oregon Fish and Wildlife Commission to impose a civil penalty of $1,000 and directs the Commission, in addition to any criminal or civil penalty, to revoke all hunting licenses, tags and permits issued to the violator. Violators are prohibited from applying for any hunting license, tag or permit for a period of 24 months. A person or employee who acts as land manager is required to take action in a manner consistent with rules adopted by the Commission to remove any feral swine that roams on land owned or controlled by that person if they know feral swine are present, and to notify the Oregon Department of Fish and Wildlife within 10 days of discovering feral swine.

Feral swine – free-ranging wild pigs – exist in at least 39 states, according to the United States Department of Agriculture. Some experts estimate their numbers at over four million, with the largest populations located in California, Florida, Hawaii, and Texas. Feral swine can cause extensive damage to property and livestock, and their rooting and wallowing activities cause serious erosion to river banks and areas along streams. House Bill 2221 prohibits the sale of hunts for feral swine to discourage the intentional introduction of a population.

Effective date: January 1, 2010

House Bill 2424

Adopt-a-Highway Program – noxious weed removal

The Oregon Adopt-a-Highway program offers citizens an opportunity to control litter and improve the appearance of the state highway system. Individuals, corporations, associations, firms, partnerships and joint stock companies may enter into an agreement with the

Oregon Department of Transportation to pick up and remove trash and litter from the right of way.

House Bill 2424 adds removal of noxious weeds to Oregon's Adopt-a-Highway Program. The measure requires that volunteer groups participating in removal of noxious weeds along a designated section of highway do so at least twice a year using a method other than pesticides in accordance with rules adopted by Oregon Department of Agriculture.

Effective date: January 1, 2010

House Bill 2470

Regulating dog breeding operations

House Bill 2470 limits the number of sexually intact dogs that may be kept for the primary purpose of reproduction to 50. Dogs under two years of age do not count toward the limit. The measure also creates standards of care and record keeping requirements for individuals keeping more than 10 sexually intact dogs over two years of age.

Several recent cases of animal neglect involving dog breeding operations have received extensive media coverage. In many of these cases, animal control officers were aware of the conditions, but could not intervene as long as the dogs were provided with food, water and shelter. Some animal control officers have expressed the belief that a cap on the number of sexually intact dogs allowed at a single breeding operation would provide them with the necessary enforcement tool to step in before conditions deteriorate.

Additionally, House Bill 2470 requires pet dealers to provide documentation to puppy purchasers and specifies conditions under which a refund or replacement must occur when a veterinarian determines the presence of an infirmity.

Effective date: January 1, 2010

House Bill 2583

Control of invasive species at boat launching

House Bill 2583 prohibits launching a boat into waters of the state if the boat has any visible aquatic species on its exterior hull, or aquatic invasive species within interior parts of boat (including the bilge). The measure authorizes the Oregon Fish and Wildlife Commission, in consultation with the Oregon Department of Agriculture, to adopt rules to allow presence of certain aquatic species on or within a boat. A violation of the launch prohibition is designated a Class B violation, punishable by maximum fine of $360.

Oregon is increasingly at-risk from aquatic species infestations. While other states attempting to address infestations after-the-fact are spending billions on eradication efforts, Oregon is trying to stay ahead of a potentially devastating problem by focusing on prevention, educating the public, and training law enforcement.

Effective date: January 1, 2010

House Bill 2625

Control of invasive species in ballast water

House Bill 2625 authorizes the Oregon Department of Environmental Quality to board and inspect vessels regulated under ballast water statutes (ORS 783.620 – 783.640) and to collect samples of ballast water to verify compliance.

An unintentional consequence of commercial shipping is the transport and introduction of species to ecosystems outside their historic ranges. These aquatic invasive species, freed of the natural controls of their native range, can proliferate in Oregon's waterways, displace native species, and degrade ecosystem services critical to human economies and health. Ballast water management regulations for transoceanic and coast-wide vessel traffic into Oregon waters were established in 2002 to reduce the risk of invasive species introduction. The primary ballast water management practice in widespread use is mid-ocean ballast water exchange. Such exchanges replace high-risk water from distant ports with lower-risk waters from open ocean environments.

Effective date: January 1, 2010

House Bill 2630

Abolishes the Oregon Fryer Commission

House Bill 2630 abolishes the Oregon Fryer Commission and provides for the equitable disbursal of commission account balance to commission members. The Oregon Fryer Commission has existed for more than fifty years to promote Oregon-grown frying chickens. Commission members and the industry requested abolishment because of market consolidation and economy changes since the Commission's inception.

Effective date: June 18, 2009

House Bill 2714

Establishes the Shipping Transport of Aquatic Invasive Species Task Force

House Bill 2714 establishes in statute the Shipping Transport of Aquatic Invasive Species Task Force. The measure authorizes the Director of Department of Environmental Quality (DEQ) to appoint members who represent interests of this state and federal, State of Washington, maritime, environmental and academic interests. The Senate President and House Speaker are to each appoint two members to serve in an advisory capacity. The measure directs the Task Force, in consultation with Invasive Species Council, to submit a report to an interim legislative committee related to natural resources no later than June 1, 2010. The Task Force is scheduled to sunset on January 2, 2012.

Ships can inadvertently transport non-native aquatic species between ports of call. These non-native species can establish themselves in their new environment and, due to lack of predators and other factors, can eventually overwhelm and transform their new ecosystem, displacing native species and harming agriculture, industry, wildlife and health of state waters.

Effective date: May 26, 2009

House Bill 2763

Preferences for Oregon agricultural products

House Bill 2763 allows contracting agencies to pay up to 10 percent more than the lowest bidder for agricultural products produced and transported entirely within Oregon. The measure allows a higher percentage to be paid if the agency finds and explains good cause in a written determination.

According to Oregon State University, Oregon agricultural production totaled nearly $5 billion in 2008. Oregon agriculture is export-dependent; according to the Oregon Department of Agriculture, approximately 80 percent of the state's agricultural production leaves the state, with approximately 40 percent of Oregon's agricultural production exported outside the United States. House Bill 2763 authorizes contracting agencies to pay a preference premium for Oregon products.

Effective date: January 1, 2010

House Bill 2893

Standards for olive oil

House Bill 2893 requires the Oregon Department of Agriculture to adopt rules establishing standards for the identity, quality, and labeling of olive oil. Current federal olive oil standards do not reflect modern health and safety concerns. Olive oils may currently contain other oils, including soy and peanut oils, without informing consumers, placing persons with serious food allergies at risk.

An early version of the measure contained detailed standards to be placed in administrative rule; the final version leaves detailed standards out of statute. The state of Connecticut recently adopted similar provisions.

Effective date: January 1, 2010

House Bill 2999

Extension of the Pesticide Use Reporting System

The Pesticide Use Reporting System was originally established by the Legislative Assembly in 1999. The program requires all persons applying pesticides in the course of business, for a government agency or in a public place to report that use online. No other reporting method is allowed under the law. The information to be reported includes: date of application; site; specific site; product and amount; and purpose. This information is then converted to pounds-active ingredient and provided to the Legislative Assembly and the public in the form of an annual report.

House Bill 2999 reduces the size of the pesticide use reporting area by changing the requirement for information on the location of pesticide use from the identification of the third-level hydrologic unit to the fourth-level hydrologic unit. This change applies to pesticide use that occurs on or after January 1, 2013. The program sunset is extended to June 30, 2019. The measure also suspends the reporting requirement until June 30, 2011, and prohibits the Oregon Department of Agriculture from expending moneys or department resources for purposes of operating or maintaining a pesticide use reporting system until that date.

Effective date: June 25, 2009

House Bill 3013

Development of a work plan for marine reserves

House Bill 3013 requires the Oregon Department of Fish and Wildlife (ODFW) to implement recommendations of the Ocean Policy Advisory Council (OPAC) by directing the Department to adopt rules, study, provide support, and develop a work plan related to marine reserves. ODFW is to make recommendations regarding marine reserve designations based on the work plan and to make a report, on or before November 30, 2010, to the appropriate interim legislative committee.

The Oregon Ocean Policy Advisory Council is a legislatively created marine policy advisory body to the Governor of Oregon. It was tasked with undertaking a lengthy, in-depth public process in order to recommend marine reserves that are both ecologically and scientifically meaningful and, at the same time, minimize negative economic and social impacts. House Bill 3013 directs implementation of OPAC's recommendations concerning six such sites with the establishment of a pilot marine reserve at Otter Rock and a pilot marine reserve and a marine protected area at Redfish Rocks; further evaluation of potential marine reserves at Cape Falcon, Cascade Head and Cape Perpetua; and development of a marine reserve proposal at Cape Arago-Seven Devils.

Effective date: July 28, 2009

House Bill 3089

Penalties for Unlawful Taking of Wildlife; Easement Acquisition; Designation of Gray Wolf as "Special Status" Game Mammal; Resident Pioneer Hunting Preference Points

House Bill 3089 sets the amounts of civil penalties for unlawful taking of certain wildlife, including raptors, and provides for criminal penalties under certain circumstances. The measure authorizes expenditure of funds from Access and Habitat Program on projects that promote access to public and private lands through acquisition of easements. The measure allows the Commission to consider giving additional hunting permit preference points to those issued a resident pioneer hunting license. Finally, the measure expands the definition of game mammal to include gray wolf as a special status mammal defined by Commission rule.

Effective date: January 1, 2010

House Bill 3106

Creates the Task Force on Nearshore Research

House Bill 3106 creates a 14-member Task Force on Nearshore Research and directs the Task Force to make recommendations to ensure protection and utilization of Oregon's nearshore resources. Recommendations for legislation are to be submitted to the Governor and Emergency Board no later than August 1, 2010. The Task Force sunsets on January 2, 2012.

"Nearshore resources" are generally understood to mean ocean natural resources within the state's three-mile Territorial Sea.

Effective date: August 4, 2009

House Joint Resolution 37

Designates Dungeness crab as official crustacean of State of Oregon

House Joint Resolution 37 designates the Dungeness crab as the official crustacean of the State of Oregon. Oregon's harvest of the crustacean has fluctuated from a low of 3.2 million pounds to a high of over 33 million pounds in recent years, with an average annual landing of about 10.3 million pounds. The total "to-the-boat" value of the fishery has ranged between $5 million and $44 million during the past 10 years, making the Dungeness crab fishery the most valuable single species fishery in Oregon.

The Dungeness crab joins numerous other state symbols selected during the state's history. During the 2005 Session, the Legislative Assembly designated the Metasequoia, or dawn redwood, as the state fossil, and the European pear as the state fruit. Other notable state symbols include the Chinook Salmon as the state fish (1961), the Douglas fir as the state tree (1939), and the American Beaver as the state animal (1969).

Filed with the Secretary of State June 19, 2009

Senate Bill 188

Authorizes penalties for violations of food safety laws

Senate Bill 188 authorizes the Oregon Department of Agriculture (ODA) to impose civil penalties for food safety violations. Under current law, food safety violations are subject to potential criminal misdemeanor sanction and fines ranging from a minimum of $10

to a maximum of $200 per offense. Enforcement of food safety laws was perceived to be complex and expensive for the Department and for licensees and often inadequate and inconsistent in protecting the public. Senate Bill 188 grants ODA rulemaking authority to implement a civil penalty schedule, allowing the department to impose civil penalties not to exceed $10,000 for each violation. Under the measure, each day of a violation, after the period established for compliance, is considered a separate violation. The measure also revises certain provisions related to criminal sanction for food safety violations, designating the penalty for a first offense a Class B misdemeanor and raising the criminal penalty for any subsequent offense to a Class A misdemeanor.

Effective date: January 1, 2010

Senate Bill 391

Phase-out of the state exotic pet permitting program

Senate Bill 391 adds members of the order of Crocodylia to the definition of an exotic animal and removes from the definition the category "any wolf." The measure prohibits the breeding of exotic animals, but provides an exemption for persons breeding small exotic cats if the persons are exempt from permit requirements, have a permit to keep the animals and document that offspring are for retail sale, or they breed small exotic cats with domestic cats. The measure allows the Oregon Department of Agriculture (ODA) to issue permits to keep exotic animals if an application is made before the measure's effective date, within 90 days of the effective date of the measure, or within one year if the applicant possessed an animal prior to the measure's effective date. The measure allows the ODA to issue exotic animal permits to persons who operate a facility under a valid license or research facility registration issued by the United States Department of Agriculture.

Currently, state law defines the term "exotic animal" to include any member of the family Felidae (felines), except the domestic cat; non-human primates; wolves; non-wolf members of the family Canidae (canines) not indigenous to Oregon, except the domestic dog; and any bear, except the black bear. In order to own one of these exotic animals, people are required to apply for and be issued a permit from ODA unless they qualify for an exemption. Senate Bill 391 begins a phase-out of the state permitting program. The measure also allows ODA to issue permits to persons who have been licensed or registered by the USDA but do not renew such license or registration.

Effective date: January 1, 2010

Senate Bill 409

Anti-trust Immunity for Blackberry Cooperatives

Oregon is the nation's leading producer of commercially grown blackberries. Senate Bill 409 establishes antitrust immunity for Oregon blackberry cooperatives that are supervised by the Director of the Department of Agriculture. The measure authorizes such cooperatives to participate in price negotiations.

The exemption to federal antitrust laws for actions taken by states to stabilize commodity markets is called the Parker v. Brown immunity, based on a 1943 court case that upheld the right of California to create regulatory programs that allocated market share among raisin growers to stabilize raisin prices. The court found that a state may forbid competition among its citizens.

Oregon has taken legislative action in the past to regulate competition in the state's ryegrass, fescue, crab, and other commodity markets. The Legislative Assembly's policy statement on cooperative action to encourage the efficient production and distribution of agricultural products is codified in ORS 62.845.

Effective date: June 11, 2009

Senate Bill 571

Increases the penalties for releasing live fish without a permit

Senate Bill 571 criminalizes the release or attempted release of any live fish into a body of water, without a permit, if the fish was not taken from that body of water. The measure stipulates that such action is either a Class C felony, if the violation is committed intentionally or knowingly, or a Class A misdemeanor if the violation is committed recklessly or with criminal negligence. The measure requires the Oregon Fish and Wildlife Commission to revoke a convicted person's angling license and tags and prohibits a convicted person from applying for, obtaining, or possessing an angling license or tag for five years. The measure also allows the Commission to institute a suit for the recovery of damages and requires that damages be awarded in an amount necessary to return the body of water to its condition prior to the violation as well as attorney fees.

Illegal transportation and introduction of fish can reduce angling opportunities, cause environmental harm, and have a devastating economic impact. The Oregon Fish and Wildlife Commission has a statutory responsibility for managing the release of live fish into waters of the state. Existing administrative rules provide that anyone convicted of transporting live fish without a permit may be charged with a misdemeanor and that "the person or company who import fish illegally shall be held liable for incidental kill of any species due to or during destruction of illegally imported fish."

Effective date: January 1, 2010

Senate Bill 639

Changes to membership of the Oregon Wheat Commission

In 1947, the Oregon Wheat Commission was created to promote Pacific Northwest wheat in overseas markets and to support research laboratories to develop varieties and enhance qualities and production and to increase yields. The Commission's work is supported by a tax deducted at the first point of sale; the 2007-2009 budget amounts to over $1 million. The Commission invests the assessment funds in international market development programs to provide market maintenance, advocacy of food aid programs and crisis management efforts in partnership with U.S. Wheat Associates, the Wheat Marketing Center and trade policy organizations. Also, the Commission evaluates and funds research proposals from all qualified organizations, including Oregon State University. The Commission, with offices in Portland, continues to operate under the Oregon Department of Agriculture, funded by wheat growers and guided by five wheat farmers and one public member.

Senate Bill 639 authorizes the Oregon Wheat Commission to create up to two additional voting member slots for representatives of the wheat industry and to eliminate the public member position in association with refunds of assessments. The Commission restructuring under Senate Bill 639 represents agreement between the Oregon Department of Agriculture and the Oregon Wheat Growers League.

Effective date: January 1, 2010

Senate Bill 676

Permits production and possession of industrial hemp and trade in industrial hemp commodities and products

Senate Bill 676 authorizes the production, possession and commerce in industrial hemp commodities and products. The measure identifies industrial hemp as an agricultural product that is subject to regulation by the Oregon Department of Agriculture (ODA) and requires that all growers and handlers of industrial hemp have a license issued by ODA. In addition, growers and handlers engaged in the production of agricultural hemp seed must have a production permit in addition to the license. The measure establishes permit application requirements and a three-year, nontransferable permit length, and authorizes ODA to make an inspection or to audit records in order to ensure compliance. ODA is authorized to inspect and take composite samples of any industrial hemp crop during the growth phase and detain, seize, or embargo a crop if it contains an average concentration exceeding 0.3 percent of tetrahydrocannabinol on a dry weight basis. A grower is authorized to retain seeds from each hemp crop to ensure a sufficient supply of seeds the following year. Senate Bill 676 excludes industrial hemp or commodities derived from industrial hemp from the definition of marijuana in the Uniform Controlled Substances Act.

The terms "hemp" and "industrial hemp" refer specifically to varieties of Cannabis sativa characterized by low levels of tetrahydrocannabinol (THC), which is marijuana's primary psychoactive chemical, in their leaves and flowers. Hemp fiber is amenable to use in a wide range of products including carpeting, home furnishings, construction materials, auto parts, textiles, and paper. Hemp seed, an oilseed, likewise has many uses, including industrial oils, cosmetics, pharmaceuticals, and food. Currently, more than 30 nations grow industrial hemp as an established agricultural commodity. The U.S. Drug Enforcement Administration currently determines whether any industrial hemp production authorized under state statute will be permitted. Over 25 states have passed laws calling for hemp economic or production studies.

Effective date: January 1, 2010

Senate Bill 691

Compensation for Land Use Regulations that Restrict Forest Practices

Senate Bill 691 modifies the provisions for claiming compensation for land use regulations that restrict forest practices on private real property. The measure allows a claim by an owner based on a land use regulation under the Oregon Forest Practices Act; an administrative rule of the State Board of Forestry; or any other rule or law enacted solely for the purpose of regulating a forest practice. The measure authorizes an owner to file separate claims for different lawfully established units of land at the same or different times. In addition, the measure establishes that the claims of reduction of fair market value on land may be shown by an appraisal of the land value and harvestable timber value with and without the application of the subject regulation. Senate Bill 691 allows certain authorizations granted to claimants to be used by the subsequent owner of the property.

Oregon's land use planning system was created by the Legislative Assembly with the passage of Senate Bill 100 in 1973. In 2004, voters passed Ballot Measure 37, which required compensation to landowners whose property values were negatively affected by land use laws or regulations and who filed claims with the appropriate governmental unit. Measure 37 gave the governmental unit the choice to either pay the claimant an amount equal to the loss in value due to the land use law, or to not apply the restricting law, referred to as the "waiver system." Ballot Measure 49, approved by the voters in 2007, modified the process for compensation of landowners for lost value due to land use regulations created in Ballot Measure 37.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2215

Adjustments to Forest Land Protection Fund

House Bill 2215 would have modified the system under which forest landowners and the state share the cost of fighting large wildfires on lands protected by the Department of Forestry. The measure directed that beginning July 1, 2009, annual expenditures from the Oregon Forest Land Protection Fund (OFLPF) are not to exceed the lesser of $15 million or an amount equal to one-half the annual emergency fire suppression costs and one-half the annual premium costs for emergency fire suppression insurance. The measure further directed that annual expenditures from the OFLPF, effective July 1, 2011, are not to exceed the lesser of $10 million or an amount equal to one-half the annual emergency fire suppression costs and one-half the annual premium costs for emergency fire suppression insurance.

The Oregon Forest Land Protection Fund was created by the Legislative Assembly in 1960 to help landowners pay for the costs of fighting wildfires beyond the capability of the local district protection efforts. The revenue sources for the fund are an assessment on forestland ownership, a surcharge on improved lots, and a forest products harvest tax.

House Bill 2579

Establishes the Task Force on Lower Columbia River Salmon Harvest Allocation

House Bill 2579 would have created the Task Force on Lower Columbia River Salmon Harvest Allocation to study and make recommendations for legislation to maximize the long-term viability, predictability, resilience and diversity of all sectors of the state's fishing economy. The measure established representation on the task force and its duties, including the development of recommendations for legislation relating to commercial and recreational fishing opportunities and types of fishing gear that may enhance commercial fisheries and provide additional access to hatchery salmon. The measure required a consensus report to the Legislative Assembly by January 1, 2011, and delineated penalties if the deadline was not met.

The Oregon Fish and Wildlife Commission, along with

its Washington State counterpart, is responsible for the rules to ensure both the maintenance of optimum food fish levels as well as the harvest management of food fish in the Columbia River.

House Bill 2800

Reimbursement for serving Oregon farm products in schools

House Bill 2800 would have directed the Oregon Department of Education (ODE) to provide reimbursement to school districts that serve Oregon food products as part of the U.S. Department of Agriculture's National School Lunch Program or School Breakfast Program. The measure directed ODE to award grants for development of food-, garden- and agriculture-based educational activities and allocated money for such reimbursements and grants.

"Farm-to-school" programs enable schools to offer fresh, locally sourced products in their cafeterias, and to design corresponding hands-on curricula that may include farm visits, gardening, cooking, composting, and recycling. These programs aim to promote mutually beneficial educational and economic development by focusing on children's long-term health habits and academic achievement while supporting local farmers and food processors, both big and small. In 2007, the Legislative Assembly provided funding to support one farm-to-school coordinator position at the Department of Agriculture and one position at the Department of Education.

House Bill 3072

Greatest permanent value in state forest management

House Bill 3072 would have defined "secure the greatest permanent value" as ensuring that lands acquired under ORS 530.010 to 530.040 are forests managed primarily for timber production in order to produce revenue for counties, schools and local taxing districts that receive revenues from those lands. The measure would have required the Oregon Board of Forestry to modify forest management plans to achieve policy and goals reflected in the new definition no later than July 1, 2010. It also authorized the Board to designate areas on state forestlands acquired under ORS 530.010 to 530.040 as exempt from requirement that lands be managed to "secure the greatest permanent value."

Oregon's state forests have been acquired in different ways, and two types are owned by different entities – the Board of Forestry and the State Land Board (for the Common School Fund). Board of Forestry lands (657,000 acres) comprise 84 percent of state forestland, and Common School Lands (124,000) total 16 percent. Board of Forestry lands are mostly in the Tillamook, Clatsop and Santiam State Forests; the state acquired these lands primarily in the 1940s from counties that had received the cut-over or burned lands from private owners in lieu of back taxes. The counties transferred deeds to the state to manage, rehabilitate and reforest the lands. In return, counties receive a share of the revenues from the harvest of forest products. The revenue distribution formula is fixed in statute (63.75 percent to counties; 36.25 percent to state for management of the lands).

Business and Commerce

2009 SUMMARY OF LEGISLATION

House Bill 2136

Prohibits sale of tobacco products in vending machines

The Centers for Disease Control and Prevention (CDC) reports that 23 percent of high school students in the United States smoke cigarettes. The CDC concluded that restricting youth and adult access to tobacco is a deterrent to smoking, and that communities that have adopted tighter restrictions have achieved greater success in preventing the purchase of tobacco by minors.

According to the Oregon Department of Human Services, tobacco use is the number one preventable cause of death in Oregon, with 22 percent of all deaths in Oregon in 2005 attributable to tobacco. Tobacco-related chronic illnesses cost Oregon over $1.1 billion annually in lost wages and productivity, and over $1 billion in direct medical expenditures.

House Bill 2136 prohibits the sale of tobacco products in vending machines, except on premises that are not accessible to minors. Approximately seven percent of eighth graders who smoked in 2005 reported purchasing cigarettes from vending machines.

Effective date: January 1, 2010

House Bill 2152

Oregon Business Development Department

At the conclusion of the 2007 Legislative Session, Governor Kulongoski and the Oregon Economic and Community Development Commission initiated a third-party assessment of the Oregon Economic and Community Development Department (OECDD) to evaluate the agency's structure and programs. After a five-month study, the Governor signed Executive Order 08-11, which directed the Department and the Commission to separate the operation and administration of OECDD's community development and business development functions, while undertaking a project to study each program of the Department and provide recommendations on how best to organize the agency.

House Bill 2152 provides the statutory mechanisms for the Executive Order to come to fruition. The measure changes the name of OECDD to the Oregon Business Development Department and the Oregon Economic and Community Development Commission to the Oregon Business Development Commission; and establishes the Oregon Infrastructure Finance Authority and a governing board within the department, comprised of individuals with experience in public finance and infrastructure and charged with overseeing the department's developmental activities. The measure also establishes the Oregon Infrastructure Finance Fund and transfers the statutory responsibilities of the Oregon Economic and Community Development Commission and the OECDD to and among the Oregon Business Development Commission, the Oregon Business Development Department and the Oregon Infrastructure Finance Authority.

House Bill 2152 also transfers the Office of Minority, Women and Emerging Small Business from the Department of Consumer and Business Services to the Oregon Business Development Department.

Effective date July 28, 2009

House Bill 2200

Streamlines statutes related to boiler and pressure vessel safety

House Bill 2200 streamlines statutory language between provisions in ORS chapter 460 relating to elevator safety standard statutes and boiler and pressure vessel safety statutes. One example is modifying the method for elevator contractors to install and altering an elevator from having plans and pertinent data approved by the Department of Consumer and Business Services to obtaining an installation permit, which is the current process for boiler and pressure vessels.

House Bill 2200 also changes a number of the fees the department charges for boiler and pressure vessel inspection, re-inspection, and permits. The measure changes the methodology for charging fees, which will provide building owners with a more consistent process for determining elevator and boiler fees. The measure increases the permit fee by 35 percent. The last fee increase was in 2001, when the fees were increased by 10 percent. House Bill 2200 also aligns the fees between the elevator and boiler programs by increasing the elevator re-inspection fee by $75 and eliminates periodic inspections of CO2 tanks used by beverage service businesses.

Effective date: July 14, 2009

House Bill 2726

Requires nutritional information be provided by restaurants

House Bill 2726 requires that restaurant chains operating 15 or more restaurants in the United States make nutritional information for menu items available, upon request, in written format. The requirement applies to restaurant chains that sell standardized menu items and that operate under a trade name or service mark. The information required to be made available includes caloric value, transfats, saturated fats, carbohydrates and sodium, as well as typical minimum and maximum values of same for combination meals. Chain restaurants must maintain a menu, menu tag or menu board at the point of sale for all standard, non-self serve items and conspicuous statements of recommended daily intake of calories, saturated fat and sodium. The nutritional information disclosure requirements in the measure supersede those of local government, and local governments are prohibited from adopting or enforcing similar requirements.

Exemptions are provided for movie theaters, health care facilities and cafeterias. In addition, menu items and alcoholic beverages that are offered for fewer than 90 days per year are excluded from the measure's requirements.

House Bill 2726 directs the Department of Human Services (DHS) to adopt rules for the following: establishing conditions under which menu boards in drive-through areas qualify or are exempted; administration and enforcement of the measure; and establishing a policy for provision of caloric counts for alcoholic beverages. DHS is authorized to inspect restaurants for compliance and to impose fines of up to $1,000 after allowing for a 60-day grace period.

According to the Weight Control Information Network, approximately 134 million Americans are overweight; nearly 100 million of those are obese, which is a condition of carrying excessive body fat. A study by the National Institute for Health Statistics showed that childhood obesity has tripled during the past 20 years, and that 14 percent of teens are now at risk for heart disease, high cholesterol and high blood pressure, and that Type 2 diabetes has seen a dramatic increase. The American Heart Association estimates that in 2004 approximately 46 percent of the aggregate American food budget was spent on consumption outside the home, primarily at restaurants.

Effective date: June 17, 2009

House Bill 2739

Modifications to vehicle dealer franchise provisions

House Bill 2739 modifies motor vehicle dealership franchise provisions in Oregon law.

Current statute outlines how "fair and reasonable compensation" is determined for a vehicle dealer when a franchise relationship is dissolved. Previously, compensation included new current-model-year motor vehicles with gross vehicle weights of less than 8,500 pounds purchased from the manufacturer that have not been materially altered, substantially damaged, or driven for more than 300 miles. House Bill 2739 removes the weight limitation. House Bill 2739 also increases the threshold amount of repaired damages from $500 to $1000 that is required to be disclosed to a purchaser of a new motor vehicle prior to sale.

House Bill 2739 also provides additional rights to automobile dealerships where the dealership agreements have been terminated as part of a bankruptcy, restructuring, or any other reason other than for good cause (as provided within the franchise agreement) by an automobile manufacturer. House Bill 2739 requires vehicle manufacturers to provide, within 30 days, to a dealer whose franchise has been cancelled, specific reasons for the cancellation when another franchise in same market area was not cancelled; and requires that cancelled franchisees be offered a franchise if a new franchise is to be established or an existing franchise is to be expanded into the previous franchisee's market area. House Bill 2739 also encourages state contracting agencies to procure automobiles from dealers whose dealership agreements have been terminated by manufacturers for reasons other than good cause.

On April 30, 2009, Chrysler became the first major American automaker to seek bankruptcy protection since Studebaker in 1933, cancelling six Oregon dealer franchises. General Motors filed for Chapter 11 bankruptcy protection on June 1, 2009.

Effective date: June 26, 2009

House Bill 2815

Establishes the Interagency Compliance Network

In the construction industry, as well as in other sectors, many employers operate as part of an "underground economy" where employees are paid cash wages, allowing the employer to avoid paying unemployment

insurance, payroll taxes or state and federal income taxes. Employees paid under the table typically lack workplace protections such as overtime and safety. In addition, contractors who comply with the law find themselves at a competitive disadvantage when submitting bids for projects. The Washington State Legislature created a Joint Task Force on the Underground Economy in the Construction Industry in 2007, which found that their state was losing at least $110 million annually in unpaid workers' compensation premiums and unpaid sales taxes on construction labor. Washington's efforts to ensure compliance have brought in an estimated $9 per $1 expended for the fiscal years between 2004 and 2008.

House Bill 2815 establishes an Interagency Compliance Network, consisting of the Department of Justice, Department of Revenue, Employment Department, Department of Consumer and Business Services, Bureau of Labor and Industries, Construction Contractors Board, Landscape Contractors Board, and other state agencies participating by intergovernmental agreement. The network's purposes include: to work toward a better system of classification for workers and to prevent misclassification; improve compliance with laws relating to taxation and employment; create a coordinated enforcement process for laws related to worker classification to aid with regulatory functions; and engage in public outreach to educate the public on the distinctions between independent contractors and employees and on the laws governing both classifications. The measure requires the member agencies to submit a biennial report to the Governor and Legislative Assembly regarding expenditure of the network's budget.

Effective date July 28, 2009

House Bill 2910

Licenses for real estate brokers

Senate Bill 446 (2001) required real estate professionals to upgrade to a broker license within three years through the completion of additional educational requirements and created the categories of "broker" and "principal broker," who holds authority over other brokers. House Bill 2910 completes the transaction to all-broker licensing by eliminating the category of a "sole practitioner" and grandfathering current sole practitioners to principal broker status. The measure also grants rulemaking authority to the Real Estate Agency for developing guidelines for a real estate broker to temporarily supervise the professional real estate activity of another real estate licensee due to unforeseen circumstances or temporary absence of a sole principal real estate broker.

Effective date: January 1, 2010

House Bill 2950

Establishes the Construction Industry Energy Board

The Building Codes Division of the Department of Consumer and Business Services is assisted by six boards appointed by the Governor and one board established by the department. House Bill 2950 merges the Manufactured Structures and Parks Advisory Board and the Residential Structures Board into the Residential and Manufactured Structures Board, and establishes the Construction Industry Energy Board.

House Bill 2950 establishes that the eleven Residential and Manufactured Structures Board members are to be appointed by the Governor and confirmed by the Senate, and specifies Board representation and membership terms. House Bill 2950 abolishes the Manufactured Structures and Parks Advisory Board and the Residential Structures Board, transferring their duties, functions, and powers to the Residential and Manufactured Structures Board.

The duties of the Residential and Manufactured Structures Board include advising on the administration of building codes governing low-rise residential dwellings and manufactured structures. The Board consists of eleven members: a residential construction contractor; a residential remodeling contractor; a multi-family residential construction contractor; an architect or home designer; a building official; a structural engineer; a public member; and representatives of residential building trade subcontractors, utility or energy suppliers, manufactured structures, and low-income housing.

House Bill 2950 also establishes a new, seven-member Construction Industry Energy Board and specifies Board membership representation and appointment authority. The Board consists of seven members: two members from the division's Electrical and Elevator Board who have practical experience in the electrical industry; two members from the Residential and Manufactured Structures Board who have practical experience in the residential structure or manufactured structure industries; two members from the Building Codes Structures Board who have practical experience in construction; and one member who is either an employee

or officer of the Department of Energy. The focus of the Construction Industry Energy Board is energy efficiency and energy conservation in the building codes. The measure authorizes the new board to recommend statewide standards for the efficient use of energy in electrical, structural, prefabricated structure, and low-rise residential building codes.

Effective date: July 1, 2009

House Bill 3127

Requires regulation of locksmiths by Construction Contractors Board

Currently, there is no state-level regulation on locksmiths. House Bill 3127 prohibits a business from providing locksmith services unless they are licensed with the Construction Contractors Board (CCB) and has an owner or employee who is certified as a locksmith.

The measure requires the CCB to adopt rules that establish a minimum standard of practice for locksmiths and businesses that provide locksmith services; procedures and requirements for issuing, renewing, and revoking the two-year locksmith certificate; the acceptance of competency testing results by a nationally recognized certification program; standards of professional conduct; and fees for maintaining the locksmith regulation program. The Board also has the authority to suspend or revoke a certificate for failing to comply with a continuing education requirement or violating a standard of professional conduct.

House Bill 3127 also outlines licensure exemptions such as: Class A and Class B limited energy technicians; tow truck operators; construction contractors when acting under the scope of their license; work performed by a manufacturer on either a manufactured structure, modular building or structure or prefabricated structure; property owners; property management companies; real estate property managers; landlords; lock manufacturers; and representatives of a lock manufacturer, wholesaler, distributor, or retailer.

Effective date: July 22, 2009

House Bill 3483

Economically distressed worker training; extension of unemployment insurance benefits

House Bill 3483 establishes "economically distressed worker training" for individuals that are eligible for unemployment and who have been working at less than 110 percent of Oregon's minimum wage. "Economically distressed worker training" is either training and education that provide occupation-specific skills required in growth and demand occupations, as determined by the Employment Department; or retraining and basic education, including literacy skills, designed to prepare an individual, within a reasonable period not to exceed three years, for gainful employment or self-employment that will pay more than 110 percent of the state's minimum wage. Participants can also receive unemployment insurance benefits, and cannot be in training for more than three years. Benefits may not be denied to participants for refusing to accept work offered that is part-time or temporary and interferes with the training, provided that the work pays less than 110 percent of minimum wage.

The Employment Department is required to submit a report to the Legislative Assembly by January 1, 2011 on the operation of economically distressed worker training.

The measure also allows eligible individuals to receive Oregon emergency unemployment insurance benefits once they have exhausted regular benefits and are not eligible for any other unemployment benefits, if they otherwise continue to meet eligibility requirements for regular benefits and their benefit year expired on or after May 1, 2007. Emergency benefit provisions apply only for weeks beginning on October 4, 2009 and ending January 2, 2010. House Bill 3483 directs the Employment department to stop the payment of emergency benefits once the total payments exceed $30 million.

Effective date: July 28, 2009

House Joint Resolution 43

Recognizing importance of Oregon small businesses to Oregon economy

Approximately 51 percent of Oregon employees come from small businesses that represent 98 percent of the state's approximately 112,200 employers. House Joint Resolution 43 recognizes the importance of small businesses and the right of small business owners to access to a culture that encourages and sustains their growth, as well as consideration when the economic impact of statewide policies and legislation are being deliberated.

The resolution establishes that because small businesses are stakeholders and key stakeholders of Oregon's

economy, they should be taken into account when considering and enacting legislation.

Filed with Secretary of State June 11, 2009

Senate Bill 50

Extends deadline for notice of claim filing against construction bonds

One of the provisions in Oregon's Public Contracting Code requires public improvement general contractors to provide payment bonds equal to the full contract price for the protection of persons providing labor or furnishing materials on such contracts. Contractors and subcontractors are also required to file $30,000 public works bonds with the Construction Contractors Board (CCB) for the purpose of paying unpaid prevailing wages as determined by the Bureau of Labor and Industries (BOLI).

The deadline for filing a notice of claim against construction bonds was previously tied to the last day of work for each individual worker on a project. Because construction workers rarely participate on a project for identical periods of time, BOLI frequently received complaints on projects where the 120-day filing deadline is imminent for some workers, but not for others. Senate Bill 50 extends the notice of claim filing deadline from 120 to 180 days, providing additional time for resolving complaints without filing claim notices on contractors' bonds, and filing more accurate claim notices when necessary.

The measure also extends the notice of claim deadline for an employee benefit plan from 150 to 200 days after the last worker performed work on a project.

Effective date: May 26, 2009

Senate Bill 109

Eliminates voluntary certification program for travel industry

Oregon has regulated the travel industry in a variety of ways since the late 1980s, beginning with statutory authority for the Attorney General to monitor "travel tours" and a mandatory registration system for most sellers of travel. In 1999, the mandatory system was replaced by a voluntary certification program, which was intended to reduce the regulatory burden of individual registration for travel agents and agencies while providing oversight of the travel industry. The Oregon chapter of the American Society of Travel Agents (ASTA) requested and was granted certification, which it subsequently relinquished in May 2008. ASTA was the only association to seek the voluntary certification; there are currently no participants in the program.

Senate Bill 109 eliminates the voluntary certification program for the travel industry and transfers the accumulated funds, approximately $65,000, to the General Fund.

Effective date: January 1, 2010

Senate Bill 141

Establishes an escrow agent licensing system

Senate Bill 141 requires the Real Estate Agency to establish an escrow agent licensing system by rule and specifies the criteria for its content. The measure makes escrow background checks consistent by requiring fingerprint and background checks for an initial escrow applicant, upon a change in ownership interest in an escrow agent, and for corporate officers or individuals in charge of escrow operations.

Discretionary powers are granted to the Real Estate Commissioner for implementing the escrow agent licensing system, and allows the commissioner to impose disciplinary action for demonstrated incompetence, for failure to maintain a required surety bond, and for an act of fraud or dishonest conduct substantially related to an applicant or licensee's fitness, even if the conduct did not occur in the course of escrow activity. Senate Bill 141 also clarifies that escrow agents not only must have a written escrow agreement, but that agents must follow the written instructions of the principals to the escrow transaction.

Effective date: January 1, 2010

Senate Bill 170

Economic development at rural airports

Many of Oregon's public airports have adjacent private properties which are allowed access to airport taxiways and runways. These properties may be developed just as any private industrial or commercial property is developed, with the additional condition that to remain functional, they must maintain access to the public airport runway. In Federal Aviation Administration terminology, these are called "through the fence" properties, as their aviation access must cross the airport property

line – figuratively referred to as the "fence."

Senate Bill 170 increases, from three to six, the number of rural airports eligible for Oregon Department of Aviation pilot projects encouraging "through the fence" economic development within airport boundaries. Although the Aurora Airport is one of three current pilot projects, other land within the Willamette Valley is not eligible for industrial development under Senate Bill 170, and, consequently, other Willamette Valley airports are not eligible. County concurrence is also required for participation as a pilot project.

Rural airports outside the Willamette Valley that do not have control towers are eligible for participation in the pilot projects. According to the Department of Aviation, five Oregon airports outside the Willamette Valley have control towers. They are: Coos County Airport (Coos County Airport District), Rogue Valley International Airport (Medford), Klamath Falls Airport (Klamath Falls), Roberts Field/Redmond Airport (Redmond), and Eastern Oregon Regional Airport (Pendleton).

Effective date: January 1, 2010

Senate Bill 464

Use of name of recording groups in advertising

Senate Bill 464 prohibits the practice of imposter bands presenting themselves as though they have members who are or were in a well-known band, either in advertising or in presenting a live musical performance or production. The measure allows the recording group's name to be used if a member of the recording group is a member of the performing band and the member has a legal right to use that name, the performing band owns a federally registered trademark to the recording group's name, the performance or production is authorized by the recording group, the performance or production is identified in all advertising and promotion as a salute or tribute to the recording group, or the performance or production is not taking place in Oregon.

Violations are considered as an unlawful practice, enforceable by the Attorney General and private right of action for actual damages or $200, whichever is greater.

Effective date: January 1, 2010

Senate Bill 640

Changes to licensing requirements for real estate professionals

Senate Bill 640 makes various changes to the educational and licensing requirements for real estate professionals. The measure requires that applicants for a real estate broker's license have a high school diploma, General Educational Development (GED) certificate or the international equivalent, and also requires that an applicant complete educational courses required by the state Real Estate Agency.

Senate Bill 640 increases the number of years of experience a real estate professional must have to reach the principal broker level and requires that an applicant for a principal broker's license pass an examination to attain principal broker status and establishes additional continuing education criteria for renewing an active license and creates a new form for licensee self-certification of compliance with the continuing education requirements. While the measure allows a person certified or in good standing as an instructor in another state or jurisdiction to provide real estate continuing education instruction in Oregon, it prohibits a real estate continuing education course to be taught by a person who has had a professional license related to the topic of instruction revoked or suspended for disciplinary reasons.

Effective date: January 1, 2010

Senate Bill 915

Penalties for building code violations

The Building Codes Division (BCD) of the Department of Consumer and Business Services provides building code development, administration, inspection, plan review, and building permit services. The division also conducts building construction inspections and enforcement where local entities do not. After a 2003 statute change, the BCD required all building code enforcement jurisdictions to use standard, statewide-approved citation forms and filing procedures when issuing citations for violations.

Senate Bill 915 establishes procedures for local jurisdictions to follow in regards to issuing penalties for building code violations. The measure requires that only civil penalties can be assessed, but does not prohibit a violator to be charged with an increased permit or investigative fee, or seeking injunctive relief or taking any enforcement action that does not include a monetary

penalty. Furthermore, the civil penalty can be issued only after the municipality provides notice to the violator that contains information such as a description of the alleged violation, the intent and the amount of the civil penalty, and the administrative process available to challenge the penalty assessment. Civil penalties for violations may not exceed the maximum civil penalty amount authorized for an equivalent specialty code violation.

Effective date: January 1, 2010

Senate Bill 928

Employment practices for victims of domestic violence

Senate Bill 946 (2007) requires employers with six or more employees to grant unpaid leave to victims of domestic or sexual violence or stalking for purposes of obtaining legal or law enforcement help, medical attention, services of a domestic violence shelter or rape crisis center, psychological counseling, or relocation. Also, in 2007, Governor Kulongoski issued Executive Order 07-17, which requires state agencies to prohibit discrimination against employees because they are victims and requires accommodations to address safety concerns.

Senate Bill 928 further clarifies employment practices for domestic violence, sexual assault or stalking victims by requiring employers to make reasonable safety accommodations under the Unlawful Employment Practices Act. Examples of reasonable accommodations include changing work-shift times, changing the work telephone number and/or work station, or unpaid leave from employment.

The measure allows employers to require certification that the employee is a victim, in which the employee is required to provide documentation within a reasonable time, such as a copy of a police report, protective order, or specific documents related to the result of domestic violence, sexual assault or stalking. All records kept by an employer regarding a reasonable safety accommodation are confidential and, unless otherwise required by law, cannot be released without the individual's express consent.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2358

Prohibits distribution of free samples of tobacco products

As smoking bans become more prevalent across Oregon and the United States, tobacco companies are developing new tobacco products. These new products include tobacco pouches placed in the mouth and dissolvable orbs, strips and sticks. Some of these products come in flavors, such as "frost," "arctic chill" and "shiver mint," which can disguise the fact that they are tobacco products.

A 2007 Federal Trade Commission report indicated that in 2005, major tobacco companies spent more than $13 billion to promote tobacco products, including $250 million to promote smokeless products, and that many of those marketing efforts directly reach children. The report indicated that $28 million was spent providing free samples. Providing free samples not only brings tobacco products to potential new consumers, but also offers an opportunity to tobacco companies to gather information on those consumers for later marketing efforts.

House Bill 2358 would have prohibited the distribution of free samples of noncigarette tobacco products. Violators could have been assessed a penalty by the Director of the Department of Human Services of up to $1,250 for each violation, with moneys to be paid into the General Fund for general governmental expenses.

The City of Pendleton passed a similar ordinance in 2004 banning the free distribution of tobacco products.

House Bill 2622

Requires retailers to offer tobacco cessation products when selling tobacco

House Bill 2622 would have required that retailers offering tobacco products for sale must also offer over-the-counter tobacco cessation products during the same hours that the tobacco products are offered for sale. The most typical types of tobacco cessation available at retail are nicotine replacement therapies which, when used, help with nicotine withdrawal symptoms. These products include transdermal nicotine patches, nicotine gum, lozenges, sprays and inhalers. Such products are not as widely available as the tobacco products they are

meant to replace, meaning that individuals seeking relief from nicotine withdrawal may have access to the drug, but not to the preventative.

House Bill 2720

Allocation of moneys into the Oregon Innovation Fund

The Administrative Services Economic Development Fund is located in the General Fund of the State Treasury. The Fund receives its allocations from the State Lottery Fund and was established for creating jobs, furthering economic development in Oregon, and financing public education.

The Oregon Innovation Council was created by the Governor and the State Legislature in 2005 with a mission to expand markets for Oregon companies, create jobs across the state and leverage Oregon's strengths to compete in the global economy through targeted investments. The Oregon Innovation Fund is the mechanism that funds those targeted investments.

House Bill 2720 would have allocated moneys from the Administrative Services Economic Development Fund to the Oregon Innovation Council for deposit in the Oregon Innovation Fund (OIF), delineating specific organizations and the amounts that are to be allocated for the OIF. Further, the measure would have limited the biennial expenditures of lottery funds allocated to the Council for the OIF.

House Bill 3122

Standardizes 16 ounces for pint beer glasses at bars and restaurants

When bars and restaurants sell beer and other malt beverages by the glass, they are very often sold by the pint (16 ounces). However, it has been discovered that due to the types of glasses used (known as a "shaker pint") the actual amount provided to the customer is often 14 ounces or less.

House Bill 3122 would have established a voluntary program for bars and restaurants to formally verify that 16 ounces of malt beverage can be poured into the establishment's glasses. The verification takes place upon the licensee's health inspection/re-inspection. Upon the valid measurement verification, they would be authorized to display an "honest pint" decal, designed and issued by the Oregon Liquor Control Commission (OLCC) at their licensed premises. The decal would expire two years after the verification, unless additional valid measurement verification took place.

House Bill 3201

Restrictions on Oregon Liquor Control Commission licenses

Prior to issuance of a liquor license by the Oregon Liquor Control Commission (OLCC), public notices are posted on the building or property that is to be licensed as well as delivered to neighborhood associations, schools, and other entities located within either 500 feet or 1,500 feet of the proposed location (depending on whether the location is in an urban or rural area). The local governing body also makes a recommendation to the OLCC regarding licensure. The applicant(s) and the proposed location are also investigated by an OLCC investigator who in turn makes a recommendation based on law, case history, and commission policy.

The OLCC executive director has the authority to grant or deny most liquor licenses, but the OLCC commissioners must review and deny or approve an application under circumstances such as a negative local government recommendation, significant public opposition, recent record of an applicant's alcohol or drug abuse, or a determination by the commission's executive director of the potential for future law violations. A license can be suspended or revoked for actions such as knowingly selling alcohol to minors or visibly intoxicated patrons; or for a history of serious and persistent problems involving disturbances, lewd behavior, unlawful activities, or noise either in the premises or involving patrons in the immediate vicinity of the premises (and the problems are related to the sale or service of alcohol by the licensee).

House Bill 3201 would have allowed the OLCC to place restrictions on on-premise sales licensees that are experiencing serious or persistent problems. The measure explicitly stated that the restrictions are placed "for the purpose of preventing the continuation of the problems," but did not define "restrictions." House Bill 3201 did not apply to off-premises sales licensees, such as grocery stores and convenience stores.

Children and Families

2009 SUMMARY OF LEGISLATION

House Bill 2207

Changes the Criminal History Registry to the Central Background Registry

House Bill 2207 changes the name of the Criminal History Registry to the Central Background Registry. The registry, which became operational in October of 1998 and is administered by the Child Care Division (CCD) of the Oregon Employment Department, requires individuals who live in or frequently visit child care facilities or who apply to work in child care centers, child care homes, or other early childhood care and education programs to undergo and pass both a criminal history and child protective services record check before being allowed to have unsupervised contact with children. The registry applies to: operators and employees of regulated child care programs; operators or employees of Oregon pre-kindergarten or parent-as-teacher programs; operators or employees of federal Head Start programs; individuals in child care facilities who may have unsupervised contact with children; and contractors or employees of contractors who provide early childhood special education or early intervention services.

Individuals who have been convicted of certain crimes or who have a founded case of child abuse are subject to a suitability determination to ensure that criminal history and child protective services records are checked prior to assuming one of the jobs listed above and are included in the registry. Employers seeking to hire an individual to work, live in or frequently visit one of these types of businesses must verify with CCD that the individual is enrolled in the registry. Enrollment requires completion of an application, payment of processing fees, and determination of suitability for the registry.

House Bill 2207 also authorizes metropolitan service districts to enter into an agreement with CCD to require district employees to participate in the Central Background Registry. Many Metro employees, including employees and volunteers at the Oregon Zoo, have significant interaction with children. While Metro currently conducts background checks on employees, authority to utilize the Central Background Registry will provide greater legal protection to employees and to Metro not available under other screening options.

Effective date: January 1, 2010

House Bill 2272

Requires child support orders to include medical support clauses

House Bill 2272 requires that every child support order include a medical support clause. The measure prohibits requiring a parent to provide health care coverage if the parent's disposable income is less than 150 percent of the federal poverty guidelines; requires the Department of Justice to develop a medical support notice form; and clarifies that a last-issued child support judgment does not supersede an earlier support order unless it specifically states that it does. Finally, House Bill 2272 allows a party to appeal a support order if the party's income is equal to or less than Oregon minimum wage for full-time employment.

Effective date: January 1, 2010

Senate Bill 10

Intercountry adoptions

The Hague Convention on Intercountry Adoption is an international agreement between participating countries on best adoption procedures. Concluded on May 29, 1993 in The Hague, The Netherlands, the Convention establishes international standards of practices for intercountry adoptions. The United States signed the Convention in 1994, and the Convention entered into force for the United States in April 2008. These procedures have basically two goals: the best interests of children are considered with each intercountry adoption; and the prevention of abduction, exploitation, sale, or trafficking of children.

Intercountry adoptions became an issue of note in Oregon due to an article published in the Oregonian highlighting a tragic case of an adoption in Mexico.

Senate Bill 10 authorizes the Department of Human Services to make rules and establish policies and procedures implementing adoptions governed by the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

Effective date: June 23, 2009

LEGISLATION NOT ENACTED

House Bill 2450 and House Bill 2451

Tax credits for medical assessments in child abuse investigations

Karly's Law, which the Legislative Assembly enacted as House Bill 3328 in 2007, requires children deemed by Department of Human Services (DHS) law enforcement personnel as having suspicious physical injuries to receive a medical examination by a designated medical professional or another medical provider within 48 hours of identification of the injuries. The measure was named for Karly Sheehan, a 3-year old from Corvallis who was murdered by her mother's boyfriend; prior to the murder, DHS had received at least two prior reports of potential abuse, but both reports were ruled "unfounded" by the agency.

In 2004, DHS investigated more than 46,000 child abuse or neglect reports; of those, only 7,407 were declared "founded," meaning that there was reasonable cause for authorities to believe that the reported abuse or neglect actually occurred. Karly Sheehan was one of 18 children who died of abuse or neglect in 2005.

Under current law, county child abuse multidisciplinary teams (MDTs), consisting of law enforcement, DHS personnel, prosecutors, school officials and others, identify a designated medical professional trained and available to conduct medical assessments in cases of suspicious physical injury. If such an injury is observed, a medical assessment must be conducted by a designated medical professional within 48 hours by specially trained professionals able to find abuse that may be missed by others. Assessments and photographs are used to support findings and prosecutions of abuse.

Some counties, especially in rural Oregon, lack access to medical professionals capable of completing child medical examinations. House Bill 2450 would have established a tax credit for physicians, physician assistants and nurse practitioners who agree to perform assessments required by Karly's Law. The measure set a maximum limit for such tax credits and for the number of individuals statewide eligible for the credit.

A related measure, House Bill 2451, would have created two designated medical professional positions within the Department of Justice to provide child abuse medical assessments. These individuals would have been required to travel the state to provide support to clinics, assessment centers, and to other medical professionals.

Consumer Protection

2009 SUMMARY OF LEGISLATION

House Bill 2188

Prohibits negative amortization loans to borrowers unable to repay

A negative amortization loan occurs when the loan payment for any period is less than the interest charged over the same period, so that the outstanding balance of the loan increases as the unpaid amount is added to the outstanding principal balance. The purpose of such loans is typically to allow for advanced cash management or to provide for payment flexibility, but not to increase overall affordability; they generally only allow for negative amortization for part of the repayment period (for five years, for example) then are recast to a fully amortizing schedule where the borrower's payments increase to allow for repayment of the loan. While negative amortization loans have been used to allow borrowers to purchase properties that they would otherwise be unable to afford, these types of loans can be particularly high risk to inexperienced investors.

Federal standards recently adopted have addressed many problems related to "subprime mortgage" loans, including enhanced disclosures by lenders of maximum interest rates for adjustable-rate mortgages, restrictions on misleading advertising, and restrictions on loan servicing abuses. However, gaps still exist. Governor Kulongoski asked the Department of Consumer and Business Services to form a Mortgage Lending Work Group to develop short-term and long-term solutions to concerns about the mortgage lending industry, guided by four principles: 1) Oregonians facing foreclosure should be armed with the facts; 2) no Oregonian should be tricked into a refinance loan that does more harm than good; 3) no Oregonian should be victimized by fraudulent or unfair "mortgage rescue" schemes; and 4) mortgage loans should be designed for success, not failure.

House Bill 2188, developed with input from the Mortgage Lending Work Group, prohibits mortgage bankers, mortgage brokers and loan originators from making negative amortization loans without first evaluating and verifying the ability of the borrower to repay the loan. The measure also requires that lenders who advertise, solicit or conduct business in a language other than English also provide specific disclosures in the language used in the communication.

Effective date: January 1, 2010

House Bill 2189

Implementation of federal Nationwide Mortgage Licensing System

The federal Housing and Economic Recovery Act of 2008 (HERA) is designed to assist with the recovery and revitalization of America's residential housing market by modernizing the Federal Housing Administration, preventing foreclosures, and enhancing consumer protections. The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE), which is part of HERA, is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry to provide: uniform license applications; a comprehensive licensing and supervisory database; improved flow of information to and between regulators; increased accountability and tracking of loan originators; a streamlined licensing process and reduced regulatory burden; enhanced consumer protections and anti-fraud measures; accessible information for consumers; require loan originators to act in the best interest of consumers; facilitate responsible behavior in the subprime mortgage market; and facilitate collection and disbursement of consumer complaints on behalf of state mortgage regulators.

The federal SAFE Act requires states to adopt legislation implementing the Nationwide Mortgage Licensing System (NMLS); if states fail to do so, or if the law fails to meet federal requirements for licensing and registration of loan originators, the federal Department of Housing and Urban Development will implement a loan originator licensing system for the state. House Bill 2189 is based on model legislation developed by the Conference of State Bank Supervisors to bring Oregon into compliance with the SAFE Act.

Effective date: July 30, 2009

House Bill 2191

Regulation of debt settlers

The recent recession has fueled the proliferation of debt settlement companies. The standard business model for such companies is to advise consumers to divert payments from creditors into a war chest. When sufficient

funds have been amassed (usually after several years), the settler negotiates reduced payments to creditors. While debt settlement representatives claimed in committee hearings that 55 percent of debtors who enter a settlement agreement complete their program, other witnesses testified that the 45 percent who do not, end up in much worse condition, often without the resources to declare bankruptcy.

House Bill 2191 brings previously unregulated debt settlers under the authority of the Department of Consumer and Business Services (DCBS), along with other debt management service providers, including debt consolidation services, credit service providers, mortgage modifiers and those who broker, facilitate and create leads for such services. All these entities are now required to register with DCBS, with the exception of attorneys licensed to practice in Oregon and nonprofit organizations providing educational services for a minimal fee.

In addition to registration, the measure requires written contracts and specifies contract provisions, disclosures and rights of cancellation and establishes maximum fees that may be charged for debt management services. It prohibits misleading advertising and entering into a debt management contract without establishing the benefit to the consumer. Violations of this measure constitute unlawful trade practices. The cap on fees was the single issue on which a work group was not able to reach consensus.

Effective date: June 26, 2009

House Bill 2199

Regulation of Oregon financial institutions and consumer finance licensees

House Bill 2199 was pre-session filed by the Department of Consumer and Business Services (DCBS) to streamline regulation, provide improved consumer protections, and provide additional regulatory tools to oversee Oregon financial institutions and consumer finance licensees. The measure deletes out-of-date processes and statutes for savings associations, none of which currently exist in Oregon. It also authorizes DCBS to share information with the U.S. Treasury through the Financial Crime Enforcement Network; allows DCBS to hold a single rulemaking proceeding to set fees for banks and trusts, credit unions and consumer finance licensees; moves the date on which DCBS calculated the discount rate from the first business day of each calendar year to the second Friday in December each year; and eliminates the 30-day posting requirement for consumer finance license applications. Finally, House Bill 2199 broadens the authority of the department to ensure that financial institutions comply with federal regulations.

Effective date: June 25, 2009

House Bill 2268

Requires customer authorization of motor vehicle repairs

In both 2007 and 2008, the Oregon Department of Justice received over 100 complaints from consumers regarding motor vehicle repairs. While many of the complaints were related to quality of work or warranty issues, there were also allegations of performance of unnecessary services or repairs, the providing of services that were different than those ordered or paid for, or quality lower than was ordered or expected. In some such cases, the consumer was unable to pay for these unauthorized vehicle repairs.

House Bill 2268 requires that vehicle repair shops prepare an estimate for any work on a personal vehicle expected to exceed $200 and to obtain the owner's approval, or approval of the owner's designee, prior to proceeding with the repair. The vehicle owner is authorized to waive approval after being provided with the estimate. In addition, vehicle repair shops are required to maintain written records and documentation of work done for a minimum of one year, the purpose of which is to allow for review should a dispute between the repair shop and the customer arise later.

Effective date: January 1, 2010

House Bill 2365

Prohibits novelty lighters

Lighters designed to look like toys, cartoon characters, animals, vehicles, cameras, cells phones, and holiday decorations are inherently appealing to children. The addition of audio effects like music, whistles and buzzers or flashing or colored lights only serves to increase their appeal. When children can't distinguish between lighters and toys, the potential for fires resulting in property damage, painful burns and even death increases.

House Bill 2365 prohibits the sale, distribution, import and manufacture for sale in Oregon of novelty lighters. The measure directs the State Fire Marshall to develop criteria to identify novelty lighters and maintain a list

of those to which they apply. It also creates civil penalties for violations not to exceed $500 per day for a retailer or distributor, $1000 per day for a wholesaler and $10,000 per day for a manufacturer or importer and gives the Fire Marshall authority to conduct inspections and seize listed products. There is no prohibition against individuals possessing novelty lighters as long as they do not sell them.

Effective date: March 4, 2009

House Bill 2371

Limitations on use of information from driver licenses

As is the case with most other states, Oregon driver licenses electronically store information that can be accessed by "swiping" the card through an electronic device that can read the electronically stored information. This information includes name, identification number, date of birth, address, gender, eye color, height, weight, and endorsements and restrictions, including whether the individual uses corrective lenses or is an organ donor.

These machine-readable features allow easy verification of both identity and age. However, there is an industry of "data aggregators" that collect information on individuals from courthouses and other public sources, where it is scanned from driver licenses, and compile the information into databases which can be sold to third parties and used to glean information on things such as shopping habits or lifestyle choices.

House Bill 2371 declares that machine-readable features on driver licenses, permits and identification cards are intended solely to verify age or identity, not to facilitate collection of personal information or the creation of private databases of transactions associated with individuals. The measure restricts the situations in which private entities may swipe, store, share or sell information from driver licenses and identification cards to the following: verification of authenticity of the card; verification of age when providing age-restricted goods or services; fraud prevention in cases of merchandise returns or refund requests; and transmission of information to check service companies for approval of transactions. The measure also limits the data that may be collected to name, address, date of birth and license/identification number.

Effective date: January 1, 2010

House Bill 2434

Statute of ultimate repose for commercial structures

House Bill 2434 decreases the statute of ultimate repose for large commercial structures from ten years to six years. The measure applies to causes of action arising on or after January 1, 2010, and exempts large commercial structures owned or maintained by homeowners associations or associations of unit owners. Public bodies as defined by ORS 174.109 are also exempted.

Effective date: January 1, 2010

House Bill 2578

Notice requirements for towers

A work group consisting of tow truck operators, property managers and past victims of patrol towing reached consensus regarding new towing regulations contained in House Bill 2578. Patrol towing involves an agreement between a property owner and tower to allow any unauthorized vehicle on the property to be towed without notice. Victims of this practice complained of paying hundreds of dollars to retrieve vehicles they believed had been legally parked.

House Bill 2578 requires towers to contact property owners prior to towing a vehicle except in cases where public safety or access may be compromised or in residential lots with fewer spaces than units. Landlords are required to post rules, restrictions or limitations in guest parking spaces and towers must photograph vehicles prior to towing. If a vehicle owner is present at the time of the tow, the tower must release the vehicle without charge or, if hookup is complete, for a fee not to exceed the hookup charge.

Effective date: January 1, 2010

House Bill 2614

Notice requirements for tenants living on flood plains

Oregon law currently requires that sellers of real property disclose to potential buyers whether that property lies within a 100-year flood plain, as defined by the National Flood Insurance Program of the Federal Emergency Management Agency. A flood plain is flat, or nearly flat, land adjacent to a stream or river that experiences occasional or periodic flooding; the 100-year flood plain refers to land that is calculated to be the level of flood

water equaled or exceeded every 100 years, on average. A property in a 100-year flood plain has approximately a one-percent chance of experiencing a flood on any given year. Disclosure to potential buyers that the property is in a flood plain educates the buyer to potential dangers to life and property.

House Bill 2614 requires that landlords of dwellings that are located on a 100-year flood plain notify tenants, and potential tenants, of the existence of the flood plain. The measure specifies that a tenant who is not notified and, who subsequently suffers an uninsured loss due to a flood, may recover from the landlord the lesser of the actual loss or two months rent.

Effective date: January 1, 2010

House Bill 2673

Prohibits software used to circumvent equitable distribution of event tickets

House Bill 2673 prohibits the use of computer software designed to circumvent measures used by legitimate ticket sellers and resellers to ensure an equitable distribution of admission tickets for entertainment events. The measure classifies violation of the prohibition as an unlawful trade practice.

Tickets for sporting events, concerts and other events are often purchased at face value by ticket brokers and subsequently resold, often at a significantly higher price than the original face value. While ticket brokers typically charge a commission, the resale price can be many times higher than the original price for the event. In some cases, the reseller purchases the tickets through the use of specialized software that allows for the multiple online purchase of tickets, capable of circumventing the limit on the number of tickets to which other buyers must abide. This software often violates the terms of use of the original seller's website. The result is that consumers seeking to purchase tickets for highly anticipated events find themselves unable to find available tickets at all, or facing much steeper prices for those tickets.

Effective date: January 1, 2010

House Bill 2911

Disposition of property subject to a self-service storage facility lien

The Uniform Disposition of Unclaimed Property Act provides a single point of contact within the state for citizens seeking unclaimed property, requiring businesses and other organizations to file an annual report and remit unclaimed funds due to Oregon residents. Until claimed, funds are deposited in the Common School Fund, with earnings made available to fund K-12 schools. The Unclaimed Property Section of the Department of State Lands works to locate the owners of unclaimed funds. Owners, or their heirs, can submit a claim with proof of ownership to receive a refund of the assets.

House Bill 2911 specifies that self-storage facilities that sell the contents of a rental storage unit following abandonment of the property must report any remaining unclaimed proceeds due to the renter as unclaimed property. The storage facility owner is allowed to collect delinquent rent from the proceeds, but must hold the balance of proceeds for the occupant pursuant to sale of the property. The property owner has two years to claim abandoned property, or proceeds from the sale of that property; the unclaimed balance must be delivered to the Department of State Lands if it remains unclaimed at the end of the two-year period. The measure also prohibits the owner and related parties from acquiring the property when disposing of the property, or in lieu of disposing of the property.

Effective date: January 1, 2010

House Bill 3004

Protection for mortgagor from certain foreclosures

An 80/20 mortgage loan, also called a no-money-down loan, is actually two separate mortgage loans: a first mortgage at 80 percent of the value of the property and a second mortgage for 20 percent of the property's value. The 80/20 loan precludes the need to pay private mortgage insurance and generally provides lower rates than most types of 100-percent financing, as well as providing lower monthly payments and eliminating the need for a down payment.

Recent court cases, however, have permitted the holder of the junior loan to sue for remaining deficiencies in cases where the property is sold for foreclosure for failure to pay for the primary loan. House Bill 3004 provides that foreclosure and sale of a residential property by trustee precludes further action against the mortgagor.

Effective date: August 4, 2009

House Bill 3020

Consumer protection for military servicemembers

The federal Servicemembers Civil Relief Act currently protects active duty military, disabled veterans, disabled servicemembers, and spouses. The Act, however, only provides federal enforcement of the consumer protection provisions. House Bill 3020 provides additional consumer protection of servicemembers, disabled veterans, disabled servicemembers and their spouses by incorporating the relevant federal provisions into Oregon's Unlawful Trade Practices Act and by providing clear protection under state law.

Effective date: January 1, 2010

Senate Bill 328

Unlawful debt collection practices

Senate Bill 328 makes engaging in an unlawful debt collection practice in a business, vocation or occupation an unlawful trade practice. The measure puts actions that violate the Unlawful Debt Collection Practices Act (UDCPA) under the enforcement rubric of the Unlawful Trade Practices Act (UTPA). Since 2001, complaints about debt collection entities and practices have been on the Department of Justice's Top 10 Consumer Complaint List. Senate Bill 328 gives the Department of Justice (DOJ) authority to take action against debt collection entities that violate the UDCPA. Persons alleging unlawful debt collection practices continue to have a private right of action under current law. By putting unlawful collection practices or acts under the UTPA framework, Senate Bill 328 enables the DOJ to provide additional assistance to individual debtors who complain that a debt collection entity has violated state debt collection law and allows the DOJ to compel compliance with debt collection laws.

Effective date: January 1, 2010

Senate Bill 377

Rerating of personal insurance policies

Senate Bill 377 allows a consumer to request an annual rerating of a personal insurance policy if an insurer uses a consumer's credit history or insurance score in rating the consumer's policy. Oregon law allows insurers to use credit scoring when issuing a new policy. Consumers may annually request rerating for insurance purposes. Senate Bill 377 requires an insurer to rerate within 30 days of a consumer's request. The measure prohibits an insurer from raising a consumer's premium based on the rerating information if the consumer requested rerating. Senate Bill 377 also requires an insurer to reduce the premiums on a consumer's personal insurance policy if the consumer qualifies for a more favorable rate, and it requires the insurer to apply the same standards at rerating as used during initial application. The effective date of the rate change is the date that the consumer requested rerating. Senate Bill 377 allows an insurer to provide the difference between the current and the improved rate as a credit upon renewal if the rerating request is received within 60 days of renewal or if the improved rate for the consumer is less than $10. Senate Bill 377 also requires the refund of any unearned premium if a policy is canceled or not renewed.

Effective date: January 1, 2010

Senate Bill 515

Revision to motor vehicle "lemon law"

Senate Bill 515 revises Oregon's "lemon law," providing additional protections for consumers who purchase a new motor vehicle that does not conform to the manufacturer's warranty. Senate Bill 515 expands the law to include vehicles registered, not just purchased, in Oregon, and requires that subsequent purchasers be told of the vehicle's history of defect and manufacturer buyback. Senate Bill 515 also adds a reasonable-allowance-for-use formula to current statute and changes informal dispute resolution provisions of the lemon law. The measure extends the time period available for a consumer remedy for a nonconforming vehicle. It grants a manufacturer, manufacturer's agent or authorized dealer of the manufacturer at least three attempts to repair or correct a nonconformity during the earlier of the two-year period after delivery of the vehicle or the date the vehicle's mileage reaches 24,000, or if the motor vehicle is out of service at least 30 days or motor home is out of service at least 60 days due to repair or correction. The measure gives the manufacturer, manufacturer's agent or authorized dealer of a manufacturer at least one attempt to repair or correct a nonconformity if the nonconformity is likely to cause death or serious bodily injury.

Senate Bill 515 also provides specific calculations for determining the reasonable allowance for use of a motor vehicle, motorcycle, or motor home by a consumer

when that consumer returns the vehicle, motorcycle or motor home to the manufacturer. Under Senate Bill 515, an arbitration decision resulting from an informal dispute settlement procedure is binding on a manufacturer but not on a consumer. The measure allows an award of attorney fees, expert witness fees, and costs to a prevailing consumer, and allows an award of attorney fees to a manufacturer if the court finds a consumer brought an action in bad faith or for purposes of harassment. Senate Bill 515 also requires a manufacturer to request a title inscription identifying a vehicle, if applicable, as a "Lemon Law Buyback," and mandates disclosure that the vehicle was a manufacturer buyback in any future sale, lease or transfer. Senate Bill 515 makes failure to disclose that the vehicle was subject to buyback an unlawful trade practice.

Effective date: June 23, 2009

Senate Bill 628

Requirements for foreclosure notices

Senate Bill 628 revises the notice required to be delivered to a grantor, generally the property owner, upon the notice of default on a residential trust deed. The measure specifies that the notice include information pertaining to loan modification procedures. It requires that a mortgage modification request form be delivered to a grantor with the notice of a potential default. Senate Bill 628 delineates the contents of the loan modification request form. It requires that the beneficiary, generally a lender, evaluate the information provided by a grantor, process modification request form in good faith, and respond to the grantor within 30 days of receipt of the information. The measure prohibits a foreclosure sale until after a beneficiary responds to a grantor's modification request. Senate Bill 628 also outlines the procedures for a meeting between a grantor and beneficiary and requires that the beneficiary or the beneficiary's agent have the authority to modify the relevant loan.

Senate Bill 628 requires that a trustee to a foreclosure sale record an affidavit describing compliance with the procedures outlined in the measure. The trustee must also send a copy of the affidavit to the Department of Consumer and Business Services (DCBS) before conducting the property sale. The provision requiring the trustee to send the affidavit copy to DCBS is repealed one year after the effective date of the Act. Senate Bill 628 allows a beneficiary to not modify a mortgage if the beneficiary determines that the loan is not eligible. The measure does not apply to property secured by a trust deed that a government agency holds for a loan funded through a government program. Senate Bill 628 requires the Department of Justice to use the proceeds from the settlement with Countrywide Financial Corporation to make grants to non-profit entities providing foreclosure relief services, unless sufficient funding is otherwise available.

Effective date: July 30, 2009

Senate Bill 731

Protection of funds from garnishment

Senate Bill 731 protects the funds in a garnishee's financial account equal to the lesser of the amount of certain direct deposit or electronic transfer exempt funds deposited in the calendar month preceding delivery of a writ of garnishment, or the total balance in account. Federal and state law prohibit the garnishment of certain funds. Funds exempt from garnishment include: Social Security benefits; veterans' benefits; unemployment insurance benefits; public assistance; workers' compensation; and other similar benefits or payments. Current law permits a judgment creditor to garnish an account in a financial institution, even if the debtor's funds in that account are exempt. The financial institution pays the creditor from the garnished account. In order to recover the exempt funds, the debtor must file a challenge to the garnishment and go to court. A debtor may incur fees from the financial institution or other entities if, during the process of garnishment and recovery of exempt funds, the debtor overdrafts or makes late payments because of temporarily insufficient funds in an account.

Senate Bill 731 specifically identifies the funds exempt from garnishment and indicates that the statutory protection applies when a financial institution can readily identify the qualifying exempt funds or when an account holder formally identifies the qualifying exempt funds. The measure specifies the first in, first out accounting method as the method to be used when identifying exempt funds in the account. It also prohibits a financial institution from charging a processing fee if a debtor's deposited funds are not subject to garnishment. Senate Bill 731 increases the garnishment search fee paid to a financial institution from $10 to $15, but exempts the Department of Revenue from the search fee increase. The measure releases financial institutions

from potential liability if the institution acts in good faith when determining whether an accountholder's funds are subject to garnishment.

Effective date: January 1, 2010

Senate Bill 796

Regulation of death care professionals

The "death care" industry is typically divided into three segments: ceremony and tribute (funeral or memorial service); disposition of remains through cremation or burial (internment); and memorialization in the form of monuments, marker inscriptions or memorial art.

The Oregon Mortuary and Cemetery Board licenses individual death care professionals responsible for the care, preparation, processing, transportation, and final disposition of human remains (including funeral service practitioners, embalmers, cemetery and crematory authorities, and industry salespeople) and the facilities where they practice. The board's mission is to protect public health, safety and welfare by fairly and efficiently performing its licensing, inspection and enforcement duties while promoting professional behavior and standards in all facets of the Oregon death care industry. The board's programs affect people who have suffered the loss of a loved one, those who make final arrangements, and those who provide death care goods and services.

Senate Bill 796 requires that death care consultants, who provide families with coping techniques following the death of a loved one as well as physical alternatives to traditional burial, be licensed by the Oregon Mortuary and Cemetery Board. It also requires that facilities for final disposition obtain a certificate of authority from the board, and expands the definition of "cemetery" to include scattering gardens (where human remains can be interred naturally) and cenotaphs (tombs and monuments erected to memorialize individuals whose remains are elsewhere). The measure directs the board to establish rules promoting environmentally sound death care practices, particularly in the disposal of unclaimed remains of deceased indigent persons.

Effective date: July 14, 2009

LEGISLATION NOT ENACTED

House Bill 2141

Expansion of definition of "hazardous substances"

House Bill 2141 would have expanded the definition of "hazardous substances" to include those that pose a risk of irreversible or chronic adverse health effects. The Oregon Department of Human Services' (DHS) Office of Environmental Public Health currently regulates substances which may cause immediate injury or death; this measure would have added substances which may cause injury or death over time to DHS oversight.

The measure would have required DHS to adopt standards for the labeling of articles that contain hazardous substances and procedures for dealing with misbranded products. In cases where DHS determined a product containing a hazardous substance could not be labeled adequately to protect public health or safety, it would have allowed the item to be identified as a banned hazardous substance and removed from commerce.

In exercising its authority, House Bill 2141 would have required DHS to rely on the weight of scientific evidence obtained through laboratory findings, epidemiologic studies and public surveillance.

House Bill 2366

Residential contractor liens

House Bill 2366, as originally drafted, would have established the Residential Lien Assistance Fund. This fund would have been available in cases where a subcontractor or supplier obtained a lien on a residence for nonpayment by the general contractor who had been paid in full by the homeowner. Many past cases have resulted in homeowners having to "pay twice" for the services or supplies provided by subcontractors.

In hearings before the House Consumer Protection Committee, stakeholders objected to the concept of the fund and presented evidence that similar funds in other states had proven problematic. As a result of this testimony, House Bill 2366 was amended to provide that residential liens would be disallowed in cases where the consumer could prove payment to the general contractor, who had subsequently failed to pay subcontractors or suppliers. This concept was also contained in House Bill 2113 which was considered, but not enacted, in 2007.

Senate Bill 386

Unlawful debt collection made an unlawful collection practice

Senate Bill 386 would have designated an attempt to collect, or threat to collect, debt that a person knows or should know does not exist, as an unlawful collection practice. Under current law, debt collectors cannot attempt to or threaten to enforce a right or remedy if they know or have reason to know that the right or remedy does not exist. Current law, however, does not specifically include as an unlawful collection practice an action to collect a debt that a collector knows, or has reason to know, does not exist. Senate Bill 386 would have added that provision. The measure also prohibited a debt collector from making false or misleading statements when collecting or attempting to collect a debt. It would have revised current debt collection statutory provisions relating to the award of attorney fees, costs and expenses, and made a violation of the federal law a violation of state law. In addition, Senate Bill 386 would have allowed the award of attorney fees to a prevailing debt collector if the action by the debtor is brought in bad faith or to harass and the award of attorney fees, costs and expenses to prevailing debtor.

Education

2009 SUMMARY OF LEGISLATION

House Bills 2062 and 2063 Senate Bills 45, 46, 47, 48, and 123

Protection of children from sexual abuse in schools

During the February 2008 Special Legislative Session, The Oregonian ran a series of articles describing school districts that were concerned about inappropriate and possibly sexual relationships between a teacher or staff member and a student or students. The articles stated that districts had entered into confidential settlement agreements whereby the teacher or staff member was allowed to resign from the district and receive a neutral or favorable recommendation if contacted by a future employer. No legislation was adopted during the 2008 Special Session to address the issue. The Interim House Education Committee and the Interim Senate Education and General Government Committee held a series of public hearings on the issue and appointed two work groups during the 2008 Interim. Those work groups and committees introduced a package of measures to prevent such confidential agreements and address related issues.

Senate Bill 45 (not enacted) would have required a public education provider with reasonable cause to believe that a boundary violation occurred to place the employee on paid administrative leave or in another position without direct, unsupervised contact with children. It also would have prohibited a person whose license or registration was suspended or revoked by the Teacher Standards and Practices Commission (TSPC) from working in another position for the employing district. Senate Bill 45 was not enacted, but its concepts were incorporated into House Bill 2062.

Under Senate Bill 46 (Effective date: June 23, 2009), the Department of Education's authority to require fingerprints of school employees other than those licensed by TSPC was extended to include all employees, regardless of whether they have direct, unsupervised contact with children as well as contractors.

Senate Bill 47 (Effective date: July 1, 2009) authorizes the TSPC to reprimand or suspend or revoke the right to apply for a license or registration for persons enrolled in an approved teacher-education institution or program under certain circumstances. It also removes the five-year limitation on the TSPCs power to revoke a license or registration following conviction for certain crimes and prohibits the TSPC from issuing a license to any person whose registration or license was revoked in another jurisdiction for conduct substantially equivalent to existing grounds for license revocation in Oregon.

Senate Bill 48 (not enacted) would have provided that the disciplinary records of school employees or former school employees are not exempt from disclosure if the employee or former employee was convicted of certain crimes, or was found by the TSPC to have engaged in conduct with a student in grade 12 or below that would constitute a specified crime, regardless of any age requirement found in the specified crime. The measure provided circumstances under which disciplinary records could be disclosed and established procedures for reporting and investigating employees suspected of child abuse or sexual conduct. Senate Bill 48 also would have provided disciplinary procedures for employees in which a claim for child abuse or prohibited sexual conduct was substantiated. The measure required the TSPC to revoke any license, or revoke an applicant's right to apply for a license, if the applicant was found to have engaged in prohibited conduct with a student in grade 12 or below. Those found by TSPC to have engaged in prohibited conduct would also have been prohibited from applying for reinstatement of a license or registration and authorized the TSPC to issue a public reprimand or suspend or revoke a person's right to apply for a license under certain circumstances.

Senate Bill 123 (Effective date: June 18, 2009), although not part of the original package of legislation, is closely related. It requires the Department of Human Services to make records related to the reporting of child abuse available to the TSPC upon preliminary investigation of a complaint.

House Bill 2062 (Effective date: July 1, 2009) requires school boards to adopt policies for reporting sexual conduct by a school employee toward students. A school employee with a reasonable belief that another school employee engaged in sexual conduct is required to report this belief to the employee's supervisor or a person designated by the school board. The measure specifies steps to be taken by education providers if a report of child abuse or sexual conduct is substantiated. Education providers, in turn, are required to give school employees and children who attend school annual training on prevention, identification, and reporting of sexual conduct. Applicants for an education position must supply a list of current and former employers, authorization for those employers to disclose certain information,

and a statement as to whether the applicant is or has been the subject of reports or investigations related to child abuse or sexual conduct. The measure requires school districts to conduct a criminal records check on applicants for certain positions. Education providers are prohibited from entering collective bargaining agreements, contracts or agreements for resignation, termination, or severance under certain circumstances.

House Bill 2063 (Effective date: June 2, 2009) includes TSPC employees involved in investigations and discipline in the definition of public officials who must report child abuse.

House Bill 2507

Revised requirements for completion of high school

House Bill 2848 (2007) required the award of modified diplomas and alternative certificates to any student who qualified under rules devised by the State Board of Education or by school districts or public charter schools. Prior to enactment of House Bill 2848, school districts could choose to issue modified diplomas but were not required to do so.

House Bill 2507 codifies the modified diploma requirements established by the Board and adds extended high school diplomas that require completion of a distribution of 12 credits. In order to be eligible to receive an extended diploma, a student must: 1) have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers, or a documented history of a medical condition that creates a barrier to achievement; and 2) have participated in an alternate assessment beginning no later than grade six and lasting for two or more assessment cycles. It has been reported that approximately one percent of students meet these criteria. Additionally, a student's parent or guardian must give consent in order for a student to pursue a modified or extended diploma.

Effective Date: July 1, 2009

House Bill 2509

Requirements for sex education courses

ORS 336.455 currently provides guidance regarding the contents of sex education courses in public schools. House Bill 2509 supplements those elements and specifically requires that sex education information be medically accurate and age-appropriate. Sex education courses are to be designed to enhance student understanding of sexuality as a normal and healthy aspect of human development. The measure does not alter the requirement that a sex education course emphasize that abstinence from sexual contact is the only 100-percent effective method of preventing unintended pregnancy and transmission of HIV and other sexually transmitted diseases.

Effective date: July 1, 2009

House Bill 2599

Requirements for school harassment, intimidation and bullying policies

House Bill 2599 requires school districts to include additional items in their harassment, intimidation and bullying policies. The definition of harassment, intimidation, and bullying includes interfering with the psychological well-being of a student and may be based on, but not limited to, membership in a protected class. The measure requires districts to add the following items to existing policies on harassment, intimidation, and bullying policies: the definition of protected class; a statement of the scope of the policy; procedures that are uniform throughout the district on reporting and investigating harassment, intimidation, and bullying including the job title of responsible school officials; and procedures for a person to request that a district review the actions a school took in responding to a harassment, intimidation, or bullying report. Districts that fail to comply with the new harassment, intimidation, and bullying policy requirements would be considered nonstandard and State School Fund moneys could be withheld.

Effective date: July 1, 2009

House Bill 2732

Creates the Career and Technical Education Collaboration Task Force

House Bill 2732 creates a Career and Technical Education Collaboration Task Force, consisting of 12 members representing the Legislative Assembly, kindergarten through grade 12 education, community colleges, labor, business/industry, career schools, nonprofit organizations, the Bureau of Labor and Industries, the Department of Community Colleges and Workforce Development, the Department of Education, and the Workforce Investment Board. Its purpose is to identify

collaborations and partnerships among the represented entities as they relate to career and technical education and to make recommendations on how to increase collaboration and the sharing of resources to develop a high-skill, high-wage, sustainable workforce. The Task Force is directed to submit a plan to the interim committees related to education and workforce development by October 1, 2010.

Effective date: July 28, 2009

House Bill 2834

Closes the Oregon School for the Blind

The Oregon School for the Blind (OSB) opened in February 1873 to provide education and programs to ensure the independence of blind students. In 1895, OSB relocated to its present campus in Salem. From 1971 until the present, responsibility for operating the OSB has rested with the State Board of Education, the Superintendent of Public Instruction and the Oregon Department of Education (ODE).

The Legislative Assembly created the Board of Directors for OSB with the passage of House Bill 2263 (2007). Recent enrollment levels at the school have fluctuated between a high of 52 students in 2000 to a low of 28 students in 2006. Current enrollment in OSB is 32 students (6 day students and 26 residential students). The ODE estimates that the 2007-2009 per year cost per pupil at the OSB is $143,000.

House Bill 2834 closes the OSB by September 1, 2009 and provides for the integration of OSB students into their home districts. It requires that plans be developed for each student that offer educational services that are substantially equivalent to the level, type, and frequency of services offered when the student was enrolled in the OSB except that residential services need not be included.

House Bill 2834 also directs the Department of Administrative Services to sell the real property associated with the OSB. Proceeds, after reimbursement of costs associated with appraisal and sale, will be deposited into the Education Stability Fund. The measure creates the Blind and Visually Impaired Student Fund to hold appropriations to ODE to assist blind and visually impaired students and to supplement resources already provided within other state and local programs. The measure allows the Superintendent to designate one of the regional programs that provides special education to blind and visually impaired students to provide statewide coordination and technical assistance related to activities paid for by the fund.

Effective date: June 25, 2009

House Bill 3117

Dispute resolution related to career pathways programs

House Bill 3117 provides a dispute resolution process for instances when a community college seeks to offer a new career pathways program that may also be offered by a private institution, such as a career school. Career pathways focus on employers' needs for specific occupational competencies and are tied to demand occupations in local or state labor markets. Career pathways programs are developed in collaboration with employers, workforce partners, and education faculty. The measure defines a career pathways program and establishes a procedure to be followed when a community college seeks to offer a career pathways program.

Effective Date: January 1, 2010

House Bill 3118

Hiring practices for specified employees in college athletics

House Bill 3118 requires public institutions of higher education to interview one or more qualified minority applicants when hiring head coaches or athletic directors. It defines a minority as a person: having origins in any of the black racial groups of Africa; of Hispanic culture or origin; having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; or an American Indian or Alaskan Native. It provides an exception to the requirement if the institution is unable to identify a qualified minority applicant who is willing to interview for the position. The requirement sunsets on January 2, 2020.

House Bill 3118 was modeled on the "Rooney Rule" that was adopted by the National Football League (NFL). That rule, named after Pittsburgh Steelers owner Dan Rooney, specifies that NFL teams must give fair interviews to minority candidates whenever a head-coaching position comes open.

Effective Date: January 1, 2010

House Joint Memorial 10

Urging Congress to amend section 529 of the Internal Revenue Code to allow accounts in qualified tuition programs to be used for repayment of student loans

The 1999 Legislative Assembly created Oregon's 529 College Savings Network. The plan, named for section 529 of the Internal Revenue Code, allows for the creation of savings accounts in which families can set aside funds for future college costs. Investments in 529 accounts grow tax-deferred, and can be used to pay for qualified higher education expenses including tuition, room and board, and books and supplies. Student loan repayment is not considered a qualified higher education expense.

Recent economic conditions have adversely affected the value of Oregon's 529 College Savings accounts which has led to problems for account holders whose children will soon be attending college and will not have time to recover their account losses because of the need to pay for education expenses. House Joint Memorial 10 urges Congress to change federal law to allow 529 account holders to use their accounts to repay student loans, rather than pay for tuition, room and board, and books and supplies. The change advocated by the measure would permit a 529 account holder time to rebuild their account's value while the account beneficiary attends college.

Filed with Secretary of State: June 19, 2009

Senate Bill 44

Establishing the Full-Day Kindergarten Implementation Committee

In January 2007, concerns were raised regarding the practice of charging tuition for kindergarten in the Corvallis Unified School District. The district sought legal counsel from the Oregon Department of Education which, in turn, sought counsel from the Attorney General's Office (AG). In December 2007, the AG issued an opinion stating that if school districts offered more than a half-day kindergarten program, the entire program was part of their regular school program and, therefore, the school district may not charge students tuition to participate in the program. The AG's opinion was considered advisory to the school districts and the Superintendent of Public Instruction recommended that school districts seek local counsel and evaluate their programs based on local legal advice.

Senate Bill 1068 (2008) required school districts to offer half-day kindergarten free of charge and permitted school districts and charter schools to charge tuition for supplemental kindergarten through the 2009-2010 school year.

Senate Bill 44 extends the law that allows school districts and public charter schools to charge tuition for supplemental kindergarten through the 2011-2012 school year. It also establishes the Full-Day Kindergarten Implementation Committee to aid and advise the Legislative Assembly, school districts, and public charter schools in order to provide full-day kindergarten by the 2012-2013 school year. The committee is charged with providing resources to school districts and public charter schools on capital needs, enrollment trends, funding requirements, and best practices for providing full-day kindergarten. The Superintendent of Public Instruction will determine membership of the committee that will include legislators as nonvoting members. The committee is to submit a report and provide proposed legislation with a method for funding full-day kindergarten programs to interim legislative committees no later than October 1, 2010. The statute instituting the committee sunsets upon the convening of the 2011 legislative session.

Effective Date: June 18, 2009

Senate Bill 348

Recognizing and treating traumatic brain injuries in school sports

Senate Bill 348 is popularly referred to as "Max's Law" in honor of Max Conradt who sustained a traumatic brain injury during a 2001 football game for Waldport High School. The measure requires school districts to ensure that coaches receive annual training on recognizing the symptoms of a concussion and seeking proper medical treatment. It also prohibits coaches from allowing athletic team members to participate in athletic events or training sooner than a day after an athlete experiences a blow to the head or body, provided that an athlete no longer exhibits symptoms consistent with a concussion or the athlete receives clearance from a health care professional.

Effective Date: July 7, 2009

Senate Bill 442

Efficiencies in higher education operations

A report commissioned by the Oregon University System (OUS) in 2008 made several recommendations regarding how the four regional OUS institutions might achieve increased enrollment, administrative efficiencies, and cost savings by sharing administrative and student services. Eastern Oregon University in La Grande, the Oregon Institute of Technology in Klamath Falls, Southern Oregon University in Ashland, and Western Oregon University in Monmouth comprise the regional universities.

Senate Bill 442 implements several of that report's recommendations. The measure authorizes the Joint Boards of Education to study and report on converting some or all institutions of higher education, including community colleges, to a semester calendar; increasing student enrollment and success for rural residents; and combining enrollment management functions into a single office for institutions whose enrollment is less than 7,500. It also requires the State Board of Higher Education to develop and implement a common admissions process and review the missions and programs of each institution of higher education.

Effective Date: July 23, 2009

Senate Bill 444

Revises statutory provisions related to hazing

The term "hazing" is often used as a synonym for harassment or bullying. While hazing can involve many behaviors that would also characterize harassment and bullying, its definition is more specific and generally includes behavior that is humiliating, degrading, and emotionally or physically harmful. It is behavior that is expected in order to join or maintain one's full status in a group or membership organization and can occur regardless of an individual's willingness to participate.

Senate Bill 444 updates existing statutory provisions related to hazing. It prohibits student organizations or their members from intentionally hazing potential members. Student organizations include fraternities, sororities, athletic teams, or any other organization that is organized or operating on a college, university or elementary or secondary school campus for the purpose of providing members an opportunity to participate in student activities of the college, university or elementary or secondary school.

Effective Date: January 1, 2010

Senate Bill 610

Funding for retrofitting and replacement of aging school buses

House Bill 2172 (2007) modified school districts' approved transportation costs to exclude moneys received to repower, retrofit, or replace school buses to reduce or eliminate diesel fuel emissions. It also excluded transportation costs paid with funds from the Clean Diesel Engine Fund and required the Department of Environmental Quality (DEQ) to track progress made and to report on that progress to the Legislative Assembly. The DEQ data indicates that during the 2007-2009 interim, 20 school districts will retrofit 370 school buses using grants equaling $783,360 from the DEQ and the federal Environmental Protection Agency.

School districts may be reluctant to retrofit or replace aging diesel buses unless the cost of doing so is fully reimbursed. Federal funds typically cover only a portion of the cost. Currently, costs paid from the Clean Diesel Engine Fund are not included as approved transportation costs for inclusion in the school formula transportation grant. Federal stimulus dollars are expected to be available for deposit into the fund.

Senate Bill 610 allows the inclusion of federal funds passed through the Clean Diesel Engine Fund in approved transportation costs. This will provide additional school formula transportation grant funding for further retrofitting and replacement of aging diesel buses.

Effective date: July 1, 2009

Senate Bill 637

Requirement for Integrated Pest Management Plans at schools

Senate Bill 637 requires schools, including community colleges, to adopt integrated pest management (IPM) plans no later than July 1, 2012. Generally, IPM programs use information on the life cycles of pests and their interaction with the environment. The information, in combination with available pest control methods, is used to manage pest damage by economical means with the least possible hazard to people, property, and the environment.

Under Senate Bill 637, schools are required to adopt a list of low-impact pesticides for use within each IPM plan. They are also required to designate an IPM plan coordinator whose duties are outlined in the measure. One specific duty is to give written notice of any proposed pesticide application at a campus to, at a minimum, parents and guardians of minor students, adult students, school administrators, as well as faculty and staff members. The measure charges the Oregon State University Extension Service, in cooperation with the Department of Human Services, with developing one or more model IPM plan for schools no later than July 1, 2011.

Effective Date: January 1, 2010

Senate Bill 767

Establishes the Online Learning Task Force

Under the public charter school statutes, a charter school that offers any online courses is required to have at least 50 percent of its students reside in the district in which the school is located. The State Board of Education (Board) has granted two waivers to this requirement. Under Senate Bill 767, virtual public charter schools (virtual schools) are defined as those that provide online courses. Charter schools that offer online courses, but primarily serve students at a physical location, are not considered virtual schools.

Senate Bill 767 prohibits virtual schools, with some exceptions, from increasing the number of students receiving online instruction. The base number of students is determined from the number of students that were receiving online instruction on May 1, 2009, and the prohibition lasts until July 1, 2011. The measure also prohibits the Board from approving waivers of the 50 percent rule for virtual schools and revokes any waivers that were granted after April 27, 2009.

Senate Bill 767 also establishes the Online Learning Task Force that will sunset upon convening of the next regular legislative session. The Task Force is directed to prepare a report no later than December 15, 2009 and to prepare legislation for the first special session of the Legislative Assembly occurring in 2010.

Senate Bill 767 also incorporates elements of Senate Bill 366 (2009) that, if it had been enacted, would have required charter school applicants to provide a description of, and plan for, having financial management systems in place. Senate Bill 767 permits the failure to maintain sound financial management systems for two consecutive years to be used as grounds to terminate a charter.

Additional requirements of virtual schools under Senate Bill 767 include having: an itemized budget on file that includes annual operating expenses and the profit margin of any third-party entity contracted with to provide educational services; a plan to address improving student learning and meeting academic content standards; performance criteria to measure progress in meeting academic performance goals; a plan to directly and significantly involve each school's parents and guardians of students as well as professional employees; a budget, business plan and governance plan; an agreement that the school will use an interactive Internet-based technology platform that monitors and tracks student progress and attendance; an agreement to employ only licensed teachers who are highly qualified under federal law; a plan for maintaining student and school records at a designated central office; a plan to provide equitable access that ensures each student has computer and printer equipment and is offered an Internet service cost reimbursement arrangement; a plan to conduct educational events at least six times each year; a plan to conduct biweekly meetings between teachers and students either in person or through other means; and a plan to provide face-to-face meetings between teachers and students at least six times a year.

Effective Date: July 14, 2009

LEGISLATION NOT ENACTED

House Bill 2419

School nutrition standards in employee-only areas

House Bill 2650 (2007) established nutritional standards for food and beverages sold at schools. The standards include maximum allowances for calories, sugar, saturated fats per serving of food or beverage and vary for elementary, middle, and high schools. The standards went into effect in September 2008. The Department of Education has interpreted House Bill 2650 to apply to all food and beverages sold in schools, including vending machines in areas such as faculty lounges.

House Bill 2419 would have permitted the sale of food and beverages that do not meet the standards in school areas that are accessed primarily by school employees or contractors and not by students.

Senate Bill 574

Consolidation of education service districts

Education Service Districts (ESDs) originated when the Legislative Assembly established a system of common schools. The names and responsibilities of ESDs have changed over time, and numerous ESD studies have occurred over the years, examining issues such as consolidation and appropriate services to be provided to students by ESDs. In 1991, the Legislative Assembly authorized a task force to study regional services on a statewide basis; that study resulted in Senate Bill 26 (1993), the ESD Reorganization Act that required consolidation of 29 ESDs into a total of 21 ESDs. In 2003, Yamhill ESD voluntarily merged with Willamette ESD to bring the current number of ESDs to twenty.

Senate Bill 574 would have reduced the total number of ESDs to 13 as of July 1, 2011. It also would have discontinued the direct election of ESD boards of directors. The new form of governance was piloted in House Bill 3184 (2005) and requires that each district be divided into five zones. Within each zone, ESD directors are elected by constituent school boards; the elected directors then appoint four additional directors including: one at-large director; one director representing public post-secondary institutions within the ESD; one director representing social service providers; and one director representing the business community.

Elections and Ethics

2009 SUMMARY OF LEGISLATION

House Bill 2005

Regulation of signature gathering and submission for initiative petitions

The Initiative Reform Modernization Act (IRMA) (House Bill 2082 (2007) modified the signature gathering and verification process for initiatives, referendum or recall petitions. IRMA required paid signature-gatherers to register and complete training with the Secretary of State; prohibited persons convicted of fraud, forgery, or identity theft during the previous five years from being paid signature gatherers; and required chief petitioners and signature-gatherers to use cover and signature sheet templates prepared by the Secretary of State.

House Bill 2005 expands on the 2007 reforms by adding prospective petitions to the IRMA provisions for hiring paid signature-gatherers and requiring chief petitioners to follow the same reporting procedures applicable to initiative petitions. The measure expands the authority of the Secretary of State to prevent forgery and fraudulent activity by requiring the State Police to provide the Secretary of State with information concerning the criminal background of an applicant for purposes of determining eligibility as a petitioner, prohibiting the Secretary of State from registering as signature-gatherers individuals who have been found guilty of fraud and forgery offenses within five years prior to the date of application or had civil or criminal penalty imposed against them for violations of election law, and prohibits person from gathering signatures for prospective petition for which the person is being paid, at the same time as for one the person is not being paid.

House Bill 2005 also modifies the timeline for submitting signature sheets to the Secretary of State and expands the authority of the Secretary of State to pull petitions collected by a circulator who has violated election laws or been found liable for specified civil or criminal violations. The measure increases the maximum penalty to $10,000 for violations of election law relating to the circulation and signature-gathering for initiatives, referendum or recall petitions and the use of threats and intimidation to interfere, hinder or delay the initiative, referendum or recall process.

Effective date: June 25, 2009

House Bill 2386

Establishes an electronic voter registration system

House Bill 2386 directs the Secretary of State to establish an electronic voter registration system to allow qualified individuals to complete and deliver a voter registration card electronically using a secure connection on the Secretary of State's website.

The measure is one of several legislative initiatives that aim to remove participatory barriers, modernize electoral procedures and reduce costs of electoral participation to underrepresented voting demographics such as students, minorities, and persons with disabilities. House Bill 2386 models Oregon's online voter registration system on those of Washington and Arizona, where the programs have proven popular. In 2003, the first year of Arizona's Online Voter Registration program, 25 percent of all new voter registrations were done online. In 2007, that percentage jumped to 72 percent. When Washington implemented online voter registration in 2008, more than 38 percent of all Washington voter registrations that year were completed online.

House Bill 2386 requires an applicant to provide a valid driver's license, driver's permit, or state identification card number, date of birth, and name exactly as it appears on that license, permit or identification card. In the absence of a signature on a paper registration, the Oregon Department of Transportation is required to provide the Secretary of State digital copies of the state-issued license, permit or identification card with the applicant's signature for comparison upon return of the elector's ballot. Also, an applicant is required to indicate, under penalty of law, that they are U. S. citizens and that they are 17 years old.

Effective date: August 7, 2009

House Bill 2414

Establishes criteria for referendum petition referrals; ballot measure titles for House Joint Resolution 7 and House Joint Resolution 13

House Bill 2414 establishes the criteria for referendum petition referrals to voters and contains ballot measure titles and explanations for two other measures, House Joint Resolution 7 and House Joint Resolution 13.

House Joint Resolution 7 refers to the voters, for approval or rejection at the 2010 General Election, an amendment to the Oregon Constitution relating to

eligibility to receive loans from the Oregon War Veterans' Fund. House Joint Resolution 13 refers to the voters for approval or rejection at the 2010 Primary Election, a revision to the Oregon Constitution to exempt local taxing districts from constitutional limitations on bonded indebtedness beginning January 1, 2011, if bonded indebtedness is incurred to finance school capital costs.

In addition, House Bill 2414 sets January 26, 2010, as the date for a possible special election if House Bill 2649 or House Bill 3405 are referred to the people by petition. The measure establishes a joint legislative committee to prepare ballot titles, explanations, and financial estimates and provides for expedited review with the Supreme Court for contested ballot amendment titles or explanatory statements. Further, the measure outlines the process permitting the Supreme Court or Attorney General to certify a modified explanatory statement to the Secretary of State, if the Supreme Court determines that the title does not comply with legal requirements.

Effective date: July 16, 2009

House Bill 2511

Allows long-term absent electors to cast ballots by facsimile

A long-term absent elector (ORS 253.500 to 253.640) is a resident of Oregon: (1) currently serving in or discharged from the Armed Forces of the United States for not more than 30 days; (2) currently serving in or discharged from the Merchant Marine of the United States for not more than 30 days; or (3) temporarily living outside the territorial limits of the United States and the District of Columbia.

Current law requires that ballots for long-term absentee voters be mailed 45 days before the election and requires that all ballots be received by the Secretary of State, county clerk or other filing officer no later than 5 p.m. the day of the election. Long-term absentee voters are military personnel often stationed overseas, aboard military vessels, or deployed in regions that lack timely or regular postal service. These circumstances affect the timely receipt of ballots by personnel, the ability to attain accurate election information from election officials, and the receipt of a ballot by the appropriate filing officer by election deadline.

In September 2008, the Federal Voting Assistance Program (FVAP) made recommendations to Oregon's Secretary of State for legislation to simplify and streamline the voting process used by Oregon residents covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The report recommended that Oregon expand current provisions allowing the electronic transmission of the Federal Post Card Application (FPCA) for voter registration, ballot requests, and the transmission of blank ballots, by expanding the use of facsimile machine for transmission of a completed ballot from a long-term absent elector.

House Bill 2511 allows certain long-term absent electors, primarily deployed military, to use a facsimile machine to cast their ballot.

Effective date: June 26, 2009

House Bill 2518

Exempts school employees from gift limits for extracurricular activities and student supervision trips

House Bill 2518 exempts public school employees from gift limits, as related to government ethics regulation, for reasonable sums paid to an employee for specific extracurricular educational activities, services or trips relating to the supervision of students.

In 2007, the Legislative Assembly enacted Senate Bill 10, which made revisions to Oregon's government ethics laws, including changes to and exemptions from the definition of "gift" as it pertains to public officials. Senate Bill 10 reduced the gift limit for certain gifts to public officials, including a public school employee, to $50 annually from any single source.

The measure exempts public school employees from gift limitations when paid to the employee for expenses associated with accompanying students on educational trips. House Bill 2518 adds conferences to the category of meetings which public school employees may attend that are exempt from the gift definition, and adds program materials to the list of materials, publications, and subscriptions excluded from the gift definition.

Also, House Bill 2518 exempts expenses paid by a non-profit organization from gift restrictions regardless of how much of the non-profit's funding comes from a for-profit organization and changes the date upon which a person who ceases to be a public official may have direct beneficial financial interest in an organization which once held a public contract from two years after the date that the person ceases to be a public official to two years after the date which the contract was originally authorized by a public official.

Effective date: July 7, 2009

House Bill 2941

Ballot titles drafted by Attorney General for initiative petitions

House Bill 2941 changes state law on ballot titles drafted by the Attorney General for initiative petitions.

Current law provides that "to avoid confusion, a ballot title shall not resemble any title previously filed for a measure to be submitted at the election." This provision encourages initiative petition sponsors to submit more than one substantially similar measure for title drafting. These sponsors are then able to select from among different titles drafted by the Attorney General. This is called "ballot title shopping."

House Bill 2941 stops the practice of ballot title shopping, and requires the Attorney General to provide identical draft ballot titles for state measures if the Attorney General determines that the subject, purpose and major effect of two or more state measures are substantially similar. The measure deletes the current statutory requirement that ballot titles not resemble any title previously filed for a measure to be submitted at that election.

Effective date: June 25, 2009

House Bill 3451

Restrictions on timing of scanning ballots

Voter turnout in Oregon has steadily increased over the past several decades, culminating in record participation for the 2004 and 2008 Presidential elections. According to county clerks, elections offices, particularly in larger counties, are being overwhelmed with ballots on Election Day. The increase in voter turnout has led to delays in ballot tabulation, decreased time available for vote validation, and prevented the timely release of official election results. Many counties incur substantial personnel and election costs and potentially compromise accuracy in the ballot counting process trying to process the large volume of ballots in a timely manner. Currently, many counties must rent extra ballot counting equipment and schedule elections staff for shifts lasting more than 24 hours in order to allow vote tally results to be released on Election Day.

House Bill 3451 allows county elections officials to begin scanning ballots into an approved vote tally system no sooner than the seventh day before the date of an election. The option to implement earlier ballot scanning practices is available only to those counties with an approved elections security plan that implements protocols to prevent the early release of election results and where the county clerk has conducted multiple public certification tests.

Effective date: January 1, 2010

House Bill 3473

Adoption of school district plans to encourage student participation in elections

House Bill 3473 directs school districts with public high schools to adopt plans to encourage students to register to vote and to vote in elections.

The 2007 Legislative Assembly adopted multiple initiatives to improve civic education and voter participation among students and new voters in Oregon including measures directing community colleges and state institutions of higher education to adopt plans to encourage students to register to vote and participate in the electoral process (Senate Bill 951) and allowing those 17 years old to register to vote at any time as long as they are 18 at the time of an election (House Bill 2910).

A Task Force on Civics and Financial Education, established by the 74th Legislative Assembly, studied how to increase and improve civic and financial education in students from kindergarten to 12th grade. The Task Force report included evidence that young people, and the citizenry as a whole, are not as civically engaged, as voting practices and participation in civic organizations by young people decreases.

House Bill 3473 builds on these previous initiatives and efforts to improve civic participation by students by directing the Oregon State Board of Education to incorporate voter registration skills into the Essential Learning Skills required for graduation, as provided by ORS 329.045, part of the Oregon Educational Act for the 21st Century.

Effective date: July 14, 2009

Senate Bill 30

Revises government ethics laws

In 2007, the Legislative Assembly passed the Oregon Ethics Reform Act (OERA). The measures, Senate Bill 10 and House Bill 2595 (2007), made changes to government ethics laws that included requiring lobbyists

and all public officials to file quarterly statements of economic interest (SEI), with the names of their relatives and members of their household over the age of 18 and the five most significant sources of income for the public official and members of the household. The SEI filings are subject to public disclosure laws and included in a public electronic online reporting system. OERA also set a monetary limit on gifts received by public officials at $50 per year from a single source with a legislative or administrative interest and prohibited public officials from accepting unlimited food, travel, or lodging expenses unless the expenses fit into a specific exemption to the definition of "gift." The limits on gifts also applied to the public official's relatives and members of the official's household.

Senate Bill 30 provides clarity, resolves definitional ambiguity, and remedies unintended consequences of OERA. The measure defines "candidate" for purposes relating to government ethics, changes the definition of "public official" and conforms the application of ethics laws to both "public officials" and "candidates," throughout the ORS chapter. The measure also clarifies that "legislative or administrative interest" lies in a "decision or vote" of the public official.

Senate Bill 30 applies certain gift limits when the source has a legislative or administrative interest in the public official, and not in the public official's agency and clarifies that gift limits do not apply to gifts from private employment or volunteer work of the public official or relative, when given as part of the usual and customary practice, and bears no relationship to the official's holding of public office. Also, the measures states that officials may attend receptions or meetings when they are representing a governmental entity and removes the requirement that 501(c)(3) organizations must receive less than 5 percent of funds from for-profits in order to pay for public officials' attendance at conventions, fact-finding missions or other meetings. Senate Bill 30 also eliminates the ban on entertainment gifts, making entertainment subject to gift limits.

In addition, Senate Bill 30 eliminates the quarterly reporting requirement for public officials, removes the requirement to list names of relatives and members of household on a SEI, and changes the requirement that officials must list sources of income that produce 10 percent or more for household. Also, 21 public officials are added to the list of those who must file an annual SEI. The measure prohibits the Oregon Government Ethics Commission (OGEC) from disclosing names of any relatives or members of household provided from January 1, 2008 until January 1, 2010 and from imposing a penalty on an official who relies in good faith on the Ethics Commission manual or a staff advisory opinion.

Senate Bill 30 delays the implementation of an electronic filing system and requirement that OGEC post filings online in a format searchable by the public until 2013.

Effective date: April 15, 2009

Senate Bill 326

Modified fusion voting

House Bill 2614 (2005) was enacted to resolve statutory ambiguity in situations when a voter participates in a minor party and major party nominating process. The measure prohibits a voter from returning a primary election ballot and participating in the nomination process of an unaffiliated candidate, by signing the minutes at a nominating convention or by signing a certificate of nomination. If a filing officer determined, during the certification process, that a voter had participated in more than one nominating process, the signature was invalidated.

The 2005 measure limited the ability of unaffiliated candidates to obtain sufficient signatures to be nominated for public office thereby making it more difficult for unaffiliated candidates to run for public office in Oregon. Senate Bill 326 repeals the 2005 prohibition and allows a voter to participate in the nomination process for an unaffiliated candidate and to also cast a primary election ballot.

Current statute, ORS 254.135(3)(a), states that the name of each candidate nominated shall be printed on the ballot in one place, regardless of how many times the candidate may have been nominated. Prior to 1958, Oregon law required all party nominations to be printed on the ballot, but in 1958 a law was passed limiting each candidate to one party label on the ballot. Senate Bill 183 (1995) restored the pre-1958 statutory language that had previously been interpreted to permit cross-nomination of candidates to be listed on the ballot. The Independent Party of Oregon sought an injunction against the Oregon Secretary of State for refusing to list multiple parties on the ballot for candidates who had been cross nominated for the 2008 General Election. The Marion County Circuit Court

denied the injunction, ruling that listing candidates on the ballot with the nominations of multiple parties was contrary to legislative statute and inconsistent with the Secretary of State's long-time interpretation of the law. Senate Bill 326 implements a modified form of Fusion Voting by allowing for cross-nominations of candidates, but not listing the parties on separate ballot lines. The measure allows the names of up to two additional parties to appear opposite a candidate's name on a ballot.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2588

National Popular Vote Interstate Compact

The National Popular Vote Interstate Compact is an agreement among states that would replace the current electoral college system of presidential elections with a direct, nationwide vote of the people. Currently, five states have enacted the compact, totaling 61 electoral votes or 23 percent of the 270 needed for the compact to take effect. As of April 2009, measures to join the compact were introduced in forty-three additional states, although many were not pending.

The compact is based on Article II, Section 1 of the U.S. Constitution, which gives each state legislature the right to decide how to appoint its own electors. States have chosen various methods of allocation over the years, with regular changes in the nation's early decades. Today, 48 states award all of their electoral votes to the candidate with the most popular votes statewide.

States joining the compact will continue to award their electoral votes in their current manner until the compact has been joined by enough states to represent a controlling majority of the Electoral College (currently 270 electoral votes). After that point, all of the electoral votes of the member states would be cast for the winner of the national popular vote in all 50 states and the District of Columbia. With the national popular vote winner sure to have a decisive majority in the Electoral College, he or she would automatically win the Electoral College and therefore the presidency.

House Bill 2588 would have enacted the Interstate Compact for Agreement Among the States to Elect the President by National Popular Vote in Oregon. The measure would have required the compact to take effect when states cumulatively possessing a majority of electoral votes have enacted a substantially similar compact.

Energy

2009 SUMMARY OF LEGISLATION

House Bill 2180

Tax incentive program analysis for wind energy and conservation projects

House Bill 2180 requires the Department of Energy, in consultation with the Public Utility Commission and the Economic and Community Development Department, to prepare an analysis of the dependence of wind energy facilities and conservation projects on state tax incentives for initial investment and continued operation. The Department of Energy is directed to report to the Legislative Assembly by February 1, 2011.

The Business Energy Tax Credit (BETC) program was created in 1979 for recycling, energy conservation, and renewable energy projects. During the 2009 session, the consideration of House Bill 2472 involved changes that would, among other things, reduce the credit for certain projects. With recent strong growth in the BETC program, there is significant interest in gaining a more complete understanding of the policy's impact on investment in renewable energy projects.

Effective date: January 1, 2010

House Bill 2182

Small scale energy loan program

House Bill 2182 expands eligibility of alternative fuel projects to use the Oregon Department of Energy's Small Scale Energy Loan Program (SELP). Currently, only vehicle fleets and fueling facilities are eligible; the measure expands eligibility to include other kinds of equipment fueled by alternative energy sources. The measure also increases the term of service for members of the Small Scale Local Energy Project Advisory Committee from two to four years.

SELP was created in 1979 to offer low-interest, fixed rate, long-term loans for any qualified Oregon project that invests in energy conservation, renewable energy, alternative fuels, or creates products from recycled material.

Effective date: January 1, 2010

House Bill 2186

Authorizes adoption of low-carbon fuel standard; Establishes the Metropolitan Planning Organization Greenhouse Gas Emissions Task Force;

House Bill 2186 authorizes the Environmental Quality Commission (EQC) to adopt a low-carbon fuel standard, including a schedule to phase in implementation to reduce greenhouse gas emissions per unit of fuel energy of fuels to 10 percent below 2010 levels by 2020. The low-carbon fuel standard may become operative January 1, 2011 and authorization for the standard is repealed December 31, 2015. The measure also directs the EQC to adopt requirements to prevent tampering, alteration and modification of the original design or performance of motor vehicle pollution control systems; requirements that motor vehicle service providers check tire pressure; and restrictions on engine use by parked commercial ships. The Department of Environmental Quality is directed to conduct a study of potential requirements regarding maintenance and retrofitting of medium and heavy duty trucks to reduce aerodynamic drag and greenhouse gas emissions and to report to interim legislative committees on or before December 31, 2010 and future Legislative Assemblies.

House Bill 2186 also establishes a 16-member Metropolitan Planning Organization (MPO) Greenhouse Gas Emissions Task Force. The Task Force is to study and evaluate alternative land use and transportation scenarios and the potential cost to implement scenarios related to population and employment growth in areas served by MPOs while reducing emissions. The Task Force is also directed to calculate the amount by which emissions from motor vehicles with gross vehicle weights of 10,000 pounds or less need to be reduced by 2035. The Task Force is to recommend legislation to interim legislative committees related to transportation and environment and sunsets at the start of next biennial legislative session.

The 2007 Legislative Assembly adopted a goal to reduce greenhouse gas emissions in Oregon as

follows: (a) by 2010, arrest the growth of Oregon's greenhouse gas emissions and begin to reduce greenhouse gas emissions; (b) by 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels; and (c) by 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

Effective date: July 22, 2009

House Bill 2626

Energy efficiency and sustainable technology loan program

House Bill 2626 directs the Oregon Department of Energy (ODE) to establish and administer the Energy Efficiency and Sustainable Technology (EEAST) loan program to provide low-cost loans to individuals for projects to increase energy efficiency in homes and small businesses. The measure authorizes ODE and the Public Utility Commission (PUC) to begin implementation of the program through pilot projects and to begin the full program after the pilot programs have been deemed successful without returning to the Legislative Assembly for approval.

House Bill 2626 also authorizes local governments to establish programs to make loans to homeowners for energy improvements.

The Small Scale Energy Loan Program (SELP), administered by ODE and the Energy Trust of Oregon, offers energy efficiency loans. However, residential and small commercial property owners have difficulty accessing low-cost, up-front financing for efficiency and renewable energy investments. The EEAST loan program is expected to generate savings on energy consumption and consumer energy bills that can be used to pay back the loans. An on-bill repayment mechanism is also addressed in the legislation.

Effective date: July 22, 2009

House Bill 3039

Solar energy feed-in tariff pilot program

House Bill 3039 directs the Public Utility Commission (PUC) to develop a pilot program to demonstrate the effectiveness of feed-in tariff incentives for electricity delivered from solar photovoltaic energy systems. The measure requires the total solar generating nameplate capacity of all electric companies by 2020 to be at least 20 megawatts of alternating current, with no single project greater than five megawatts. For each kilowatt hour produced by a solar photovoltaic energy facility that is operational before January 1, 2016, and that generates at least 500 kilowatts, an electric company will be credited with two kilowatt hours toward compliance with the renewable portfolio standard (RPS). In addition, the measure encourages state agencies to use fuel cell power systems in lieu of other power equipment and directs the Oregon Department of Energy to develop criteria for agencies to use in comparing fuel cell power systems with other equipment options.

House Bill 3039 is intended to further Oregon's commitment to its RPS through incentives for solar energy projects. The RPS requires Oregon's largest utilities to provide 25 percent of their retail sales of electricity from newer, clean, renewable sources of energy by 2025. Solar photovoltaic systems use solar panels made of silicon to convert sunlight into electricity. Feed-in tariffs allow homeowners and small businesses to be paid for electricity they feed into the grid from their own solar power generating equipment.

Effective date: July 22, 2009

House Bill 3153

Siting of Transmission Lines on High Value Farmland

House Bill 3153 directs utility providers, after a transmission line route is approved by a siting authority but before construction begins, to consult with an owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the effect of the transmission line on farming operations.

ORS 215.275 permits a utility facility to be sited on land designated as exclusive farm use under specific conditions. It is common for utility providers to site facilities on rural lands to meet their urban customers' power needs because of lower land costs and fewer landowners. Currently, an owner of a utility facility is not required to consult with owners of high-value farmland prior to installing a transmission line, despite the fact that siting facilities on agricultural land may interfere with use of the property by the landowner and impede accepted farm practices. House Bill 3153 requires that the utility provider consult with owners of high-value farmland prior to installing a transmission line.

Effective date: January 1, 2010

House Bill 3367

Shielded light fixtures

House Bill 3367 requires a public utility that provides customers with outdoor lighting fixtures to offer customers the option of using shielded outdoor lighting fixtures. Beginning 60 days after its effective date, the measure also prohibits the sale or installation of outdoor mercury vapor lighting fixtures. Public buildings

that are either being constructed or on which outdoor lighting fixtures are being replaced are to have installed shielded outdoor lighting to the greatest extent practicable on or after January 1, 2010.

The term "light pollution" is used to describe a situation when outdoor lighting is misdirected, unshielded, excessive or unnecessary, resulting in light spilling unnecessarily upward and outward, causing glare and a nighttime urban "sky glow" overhead. Light pollution is an indication of wasted energy and results in an obscured view of the nighttime sky. The installation of shielded fixtures or light bulbs that direct the light only where it is needed can reduce light pollution and save energy costs.

Effective date: June 25, 2009

House Bill 3463

Renewable Fuel Standard

House Bill 3463 requires notice be provided to dealers when the capacity of biodiesel production facilities in Oregon reaches certain levels. The measure prohibits the sale of diesel fuel that does not contain specified percentages of biodiesel after a certain date and deletes a provision allowing a specified percentage of other renewable fuel diesel in place of biodiesel. The measure imposes a two-year moratorium on applying standards to "other renewable diesel." The changes applicable to biodiesel production in the Willamette Valley are effective on or after August 1, 2009 and the rest of the state on or after October 1, 2009. The renewable diesel standard applies to other renewable diesel on January 2, 2012.

The 2007 Legislative Assembly established a Renewable Fuel Standard (RFS) for biodiesel and ethanol and set a trigger for the biodiesel RFS based on an in-state production of five million gallons per year for three consecutive months from qualifying feedstock. House Bill 3463 changes the trigger to when the capacity of biodiesel production facilities reaches at least five million gallons on an annualized basis.

Effective date: July 22, 2009

House Bill 3497

Exempts premium gasoline from ethanol blending requirement

House Bill 3497 exempts gasoline with an octane rating of 91 or above from the mandate to blend gasoline with ethanol.

House Bill 2210 (2007) required that gasoline retailers sell only gasoline containing at least 10 percent ethanol after Oregon production of ethanol reached 40 million gallons per year. House Bill 1079 (2008) amended this requirement to permit the sale of non-blended gasoline for several non-road uses, including: certain aircraft that utilize motor vehicle fuel (the blending requirement does not apply to aviation gasoline); antique vehicles; Class I and Class III all-terrain vehicles; racing activity vehicles; snowmobiles; tools such as leaf blowers; and watercraft. The exemptions were created because of reported problems experienced by the exempted devices and because the ethanol blending requirement was designed to apply to vehicles on Oregon roads. The ethanol in gasoline sold in Oregon is typically blended at the terminal prior to distribution to retailers. In addition, most retail sellers maintain only one or two underground tanks for gasoline; one for regular unleaded and one for premium-grade unleaded. These two factors have limited the availability of unblended fuels to owners of the vehicles and tools exempted from the ethanol requirement. House Bill 3497 exempts premium gasoline, which has an octane rating of 91 or above, from the 10 percent ethanol blending requirement imposed under ORS 646.913.

Effective date: January 1, 2010

Senate Bill 79

Creates the Task Force on Energy Performance Scores

Senate Bill 79 creates the Task Force on Energy Performance Scores. The Task Force is directed to study and evaluate energy use in new and existing commercial and residential buildings and to develop recommendations regarding a voluntary energy performance scoring system for such buildings in time for the Oregon Department of Energy to adopt the recommendations by rule no later than July 1, 2010. In addition, the measure requires the Task Force to present its recommendations to an interim energy committee of the Legislature no later than October 1, 2010.

Senate Bill 79 also requires the Director of the Department of Consumer and Business Services in consultation with the appropriate advisory boards, to adopt, amend, and administer a reach code separate from the state building code. The measure defines a "reach code" as a set of statewide optional construction standards and

methods that are economically and technically feasible. The reach code provisions of the measure become operative January 1, 2010.

In 2007, the Legislative Assembly enacted a greenhouse gas reduction goal 10 percent below 1990 levels by 2020, and 75 percent below 1990 levels by 2050. Energy use in commercial and residential buildings is responsible for a significant portion of greenhouse gas emissions from fossil fuel burning in Oregon. In the spring of 2008, Governor Kulongoski established the Energy Efficiency Working Group with the goal of developing recommendations relating to energy efficiency in the built environment, which resulted in the original proposed legislation.

Effective date: July 22, 2009

Senate Bill 190

Permit and application requirements for geothermal wells

Senate Bill 190 clarifies permit requirements and application processes for prospect and geothermal wells. The measure increases fee provisions related to these types of wells and requires that permit applicants provide a bond or an alternate form of financial security. In addition to a geothermal well permit, an operator is required to obtain a water quality permit before injecting any fluid except well drilling fluids. The measure clarifies that any geothermal or prospect well from which an operator has no intention of deriving useable geothermal resources or other useful information in the development of geothermal resources must be plugged and decommissioned.

Oregon has a high potential for geothermal energy development. Recently, the Department of Geology and Mineral Industries (DOGAMI) has seen an increase in applications for geothermal drilling permits. Since 1971, DOGAMI has issued approximately 197 geothermal drilling permits and 111 geothermal prospect permits. Prior to 2008, the last geothermal permit had been issued in 1995; in 2008 DOGAMI received 15 applications. Presently, there are three major areas of geothermal development located in Oregon: Vale, the flanks of Newberry Volcano, and the Klamath Basin. If the potential is realized at these three sites, DOGAMI estimates that they could provide between 94 to 154 megawatts of power annually, or the equivalent average base load for 62,381 to 98,041 residential customers.

Effective date: July 23, 2009

LEGISLATION NOT ENACTED

House Bill 2121

Establishment of a solar pilot program

Currently, Oregon's solar energy producers use incentives such as federal and state tax credits and, if eligible, funding from the Energy Trust of Oregon, to offset the up-front costs of their facilities. Another approach, used in some countries and elsewhere domestically, provides financial assistance to solar energy producers through the price paid for energy to promote the production of solar energy. This concept is called a "feed-in tariff" and provides renewable energy facilities a guaranteed buyer, the utility, for their electricity, and also guarantees payments over a long period of time.

House Bill 2121 would have directed the Public Utility Commission (PUC) to establish a solar pilot program to demonstrate the uses and effectiveness of volumetric incentive rates and payments for electricity delivered through photovoltaic energy systems. The measure was to set the parameter that the program may not exceed 25 megawatts with a goal of 75 percent of the energy under the pilot program to be generated by projects generating 50 kilowatts or less and 25 percent to be generated by projects of 50 to 500 kilowatts. Renewable energy certificates were to have been applicable to the Renewable Portfolio Standard. The measure would have allowed all prudently incurred costs associated with compliance to be recoverable by the electric company. The PUC would have been required to submit a report to the Legislative Assembly by January 1st of each odd numbered year beginning in 2013, and to also report before January 1, 2011 with any recommended legislative changes to improve the program.

House Bill 2181

Funding energy conserving improvements in existing buildings

It is generally less expensive to integrate energy efficiency into the design of a new building than to improve an existing older building. Costs for improving the energy efficiency of existing buildings are usually financed by short-term loans, affecting the ability of many owners to finance energy improvements.

House Bill 2181 would have authorized local

governments to establish local improvement districts to finance energy efficiency and renewable energy improvements for existing homes and some commercial buildings. The measure would have granted local governments the ability to assess a property owner who obtained a loan to cover a portion of the cost of the program and authorized the Oregon Department of Energy (ODE), working with the Oregon Housing and Community Services Department, to establish rules to define types of eligible projects and other considerations. It also authorized ODE to provide loan funds to a local government or directly to a property owner in a qualified local improvement district.

House Bill 3090

Inclusion of clotheslines in definition of renewable energy device

House Bill 3090 would have defined a "renewable energy device" as a solar panel or a device obtaining energy from renewable energy resources, or a clothesline or other device that uses solar, wind, or other renewable energy resources to accomplish household tasks. The measure would have prohibited provisions in declarations or bylaws of a planned community or a condominium from banning installation or use of a renewable energy device on the owner's lot, unit or in or on limited common elements reserved for unit.

The use of appliances accounts for approximately 17 percent of an average household's energy consumption, with refrigerators, clothes washers, and clothes dryers at the top of the consumption list. House Bill 3090 would have prohibited planned communities and condominiums from banning the use or installation of clotheslines or other devices that use solar, wind, or other renewable energy resources to accomplish household tasks.

House Bill 3134

Siting of energy transmission and distribution facilities

House Bill 3134 would have required the Oregon Department of Energy to determine locations for certain energy transmission and distribution facilities. The measure specified requirements for an energy transmission and distribution facility siting process and established the Energy Transmission and Distribution Facilities Siting Authority and delineated its duties. It also included a specific process for the review of decisions related to energy transmission and distribution facilities.

Senate Bill 977

Costs incurred by state agencies in connection with energy facilities

Senate Bill 977 would have required permit applicants seeking to construct an energy facility to compensate the state for the cost associated with review and evaluation of the permit, authorization or certification needed to site or construct the facility. The measure defined compensable costs, established payment and dispute resolution processes, and would have allowed the Director of the Oregon Department of Energy to adopt rules to implement its provisions.

Environmental Quality

2009 SUMMARY OF LEGISLATION

House Bill 3037

Paint stewardship pilot program

House Bill 3037 creates a paint stewardship pilot program to reduce the generation of postconsumer paint by promoting its reuse and developing a process of collecting, transporting and processing it in an environmentally sound fashion. The measure requires the creation of a stewardship organization made up of paint manufacturers to implement the program by developing a plan and funding its implementation, including the development of educational materials for consumers. The bill requires the Department of Environmental Quality to supervise the program, including charging administrative fees and reporting to the Legislative Assembly on its effectiveness. The pilot program sunsets June 30, 2014.

Product stewardship is an environmental management strategy in which the parties involved in the design, production, sale and use of a product take responsibility for minimizing the product's environmental impact throughout all stages of the product's life.

Effective date: July 22, 2009

House Bill 3123

Discharges from passenger vessels

House Bill 3123 declares it to be the policy of the state to protect water quality by controlling discharge of sewage, gray water, and hazardous materials from passenger vessels and, to the extent allowed by federal law, prohibiting the discharge of sewage from passenger vessels. The measure directs the Department of Environmental Quality (DEQ) to study the impact of vessel discharges on water quality and reasonable availability of adequate facilities for safe and sanitary removal of sewage from passenger vessels. The DEQ is to report study results to the Legislative Assembly on or before January 14, 2011. The Act is repealed on January 2, 2012.

There is concern about an increasing number of cruise ships entering Oregon waters and interest in ensuring that adequate protections are in place with respect to water quality. House Bill 3123 directs the DEQ to study this issue and report to the Seventy-sixth Legislative Assembly.

Effective date: January 1, 2010

Senate Bill 38

Greenhouse gas emission reporting

Senate Bill 38 authorizes the Environmental Quality Commission (EQC) to adopt rules requiring registration and reporting by persons who import, sell or distribute electricity or fossil fuels for use in Oregon. The measure authorizes the EQC, with regard to electricity, to adopt rules to require reporting of information necessary to determine the greenhouse gas emissions from generating facilities used to produce electricity and related electricity transmission line losses. The measure authorizes the EQC, with regard to fossil fuels, to require reporting of the type and quantity of fuel and any additional information necessary to determine the carbon content of fuel. Senate Bill 38 directs the EQC to minimize the burden of reporting by allowing concurrent reporting, the use of good engineering practice calculations, electronic reporting, establishment of thresholds, requiring reporting by the fewest amount of people in a fuel distribution system, or other appropriate means. In addition, it directs the Department of Environmental Quality to evaluate a funding mechanism for developing and implementing a greenhouse gas reporting program and to report to the Seventy-sixth Legislative Assembly, or to any special session of Seventy-fifth Legislative Assembly.

The 2007 Legislative Assembly adopted greenhouse gas emission reduction goals. ORS 468A.205 declares that the policy of the state is to arrest the growth and begin reducing Oregon's greenhouse gas emissions by 2010, and then reduce those emissions to 10 percent below 1990 levels by 2020 and to 75 percent below 1990 levels by 2050. In 2008, at the Governor's request, the EQC adopted a greenhouse gas reporting rule. The rule requires annual emissions reporting for Oregon sources that include power generators, cement manufacturers, pulp and paper mills, and landfills.

Effective date: July 22, 2009

Senate Bill 76

Klamath River dams removal framework

For the past two years the Klamath Settlement Group, comprised of 26 organizations, has been engaged in negotiations on the decommissioning of four dams on the Klamath River: the J.C. Boyle, Copco 1, Copco 2, and Iron Gate. In November 2008, Oregon, California, the United States Department of Interior, and PacifiCorp

signed an Agreement in Principle (AIP) that lays out the framework for the removal of the dams in 2020, as well as a commitment from the parties to negotiate a final agreement. If a final agreement is not executed by June 30, 2009, all parties have a right to withdraw from the AIP. The AIP is based on the preliminary view that the potential benefits of dam removal for fisheries, water, and other resources outweigh the potential costs and risks. The AIP funding mechanism requires that the customer contribution in Oregon and California not exceed $200 million.

Senate Bill 76 establishes a framework to pay for the removal costs of the Klamath River dams. The measure directs the Public Utility Commission (PUC) to set rates to allow PacifiCorp to recover Oregon's share of any undepreciated investment in dams, costs incurred by PacifiCorp due to operational changes in dams prior to removal, replacement resources, and dam removal costs. In addition, it authorizes the state to enter into an agreement with representatives from California to establish each state's share of the $200 million customer contribution and to establish and administer the authorized trust accounts. The PUC is directed to require PacifiCorp to begin collecting surcharges on the date the filing is made or January 1, 2010, whichever is later. Senate Bill 76 requires that surcharges not exceed the amount necessary to fund Oregon's share of the customer contribution of the $200 million and requires that any excess amounts of collected funds be refunded to the customers, used for their benefit, or that future surcharges be adjusted to offset the excess amount. In addition, Senate Bill 76 outlines the procedure and process for judicial review to the Supreme Court.

Effective date: July 14, 2009

Senate Bill 101

Greenhouse gas emissions standard

Senate Bill 101 establishes a greenhouse gas emissions standard of 1,100 pounds of carbon dioxide per megawatt-hour of electrical generation for Oregon, but also authorizes the Public Utility Commission (PUC) to modify the standard. An effort to phase out coal and petroleum-based power production, the measure prohibits Oregon electricity suppliers from entering into long-term financial commitments unless the electricity acquired meets the standard.

Gases that trap heat in the atmosphere are often called greenhouse gases. Among the principal greenhouse gases that enter the atmosphere because of human activities are carbon dioxide (CO2) and methane. Carbon dioxide enters the atmosphere through the burning of fossil fuels (oil, natural gas, and coal), wood products, and solid waste, and also as a result of other chemical reactions (for example, the manufacture of cement). Carbon dioxide is removed from the atmosphere when it is absorbed by vegetation. According to the United States Energy Information Administration, energy-related carbon dioxide emissions, resulting from the combustion of petroleum, coal, and natural gas, represented 82 percent of total U.S. anthropogenic greenhouse gas emissions in 2006. In 2004, the United States produced about 22 percent of global carbon dioxide emissions from burning fossil fuels. According to the New York Times, some 600 coal-fired power plants in the United States are responsible for about one-third of the country's total carbon emissions.

Effective date: January 1, 2010

Senate Bill 102

Extends statutory air quality provisions for solid fuel burning devices

Senate Bill 102 extends the statutory air quality provisions relating to woodstove emissions to solid fuel burning devices. A "solid fuel burning device" includes any device that burns wood, coal, or any other nongaseous or non-liquid fuels. In addition, the measure renames the Residential Wood Heating Air Quality Improvement Fund the Residential Solid Fuel Heating Air Quality Improvement Fund. Senate Bill 102 provides that if the Environmental Quality Commission (EQC) has adopted more stringent standards and if the devices were manufactured at least 15 years prior to the more stringent standard being adopted, or the device is located in a nonattainment area, EQC may: prohibit the installation and sale of a used solid fuel burning device for sale as new; set standards to require certified solid fuel burning devices to be removed and destroyed upon the sale of a home; and require the curtailment of solid fuel burning devices. Senate Bill 102 authorizes the EQC to adopt rules and the Department of Environmental Quality (DEQ) to implement and enforce a program to curtail residential solid fuel heating during periods of air stagnation if a local government has not met its requirement under the federal Clean Air Act.

Since 1991, Oregon has required that new woodstoves be certified to meet air pollution standards. United

States Environmental Protection Agency (EPA) data demonstrate that certified woodstoves are much less polluting than older, noncertified woodstoves, and can reduce fine particulates in the smoke by 70 percent. Woodstoves are also a major source of benzene and carbon dioxide in the air which can impact human health and the environment. In September 2006, the EPA tightened the fine-particulate standard based on new health studies. The DEQ identifies wintertime residential wood burning as a significant source of fine particulate air pollution, which at times exceeds federal air quality health standards.

Effective date: January 1, 2010

Senate Bill 103

Registering air contamination sources as an alternative to permitting

Senate Bill 103 authorizes the Environmental Quality Commission (EQC) to establish a schedule of fees for registering any class of air contamination sources that a person is required to obtain permit for but chooses, if allowed by the EQC, to register instead. The measure requires that the fee be based on the anticipated cost of developing and implementing the programs related to different classes, including but not limited to the cost of processing registrants, compliance inspections, and enforcement. The measure also authorizes the EQC to establish a schedule of fees for reporting of any class of air contamination sources that are required to obtain a state or federal operating permit. Senate Bill 103 requires the EQC to consider the total fees for each class of sources subject to reporting before establishing the reporting fees.

The federal Environmental Protection Agency (EPA) adopted a series of new regulations called the National Emission Standards for Hazardous Air Pollutants. These regulations will require thousands of small Oregon businesses, such as auto body shops, to get an air quality permit from the Department of Environmental Quality for the first time. Senate Bill 103 provides the EQC with the authorization to establish a registration fee as an alternative to obtaining a permit.

Effective date: June 18, 2009

Senate Bill 105

Increases maximum penalties for environmental laws

Senate Bill 105 increases the maximum administrative and criminal penalties for violations of pollution control laws from $10,000 to $25,000 per day. The measure requires that the Environmental Quality Commission (EQC) and the Regional Air Quality Control Authorities consider whether the violator gained an economic benefit and if there have been any prior violations when imposing a penalty. The measure modifies the penalties for wildlife damage so that they are consistent with the State Fish and Wildlife Commission's penalties. Senate Bill 105 increases the maximum penalty from $10,000 to $25,000, per violation, for the following: violations of laws governing solid waste, waste tires, and novelty items containing mercury; violations of laws governing hazardous substance removal or remedial action; violation of the hazardous waste laws; hazardous material spill and clean up laws; oil storage tank violations; and the misdemeanor fines related to air quality laws and permits, asbestos abatement, cleanup, hazardous waste, on-site sewage, solid waste, and underground storage tanks. The measure also eliminates the lower penalties for environmental crimes caused by corporations by requiring that corporations pay the same fine that an individual person would pay. In addition, bilge water violations are added to the list of generally applicable penalties, with a maximum of $25,000. Senate Bill 105 increases the maximum penalty for negligently or intentionally spilling oil or hazardous materials into waters of the state or negligently cleaning up a spill from $20,000 to $100,000. It also increases the maximum penalty for distributing cleaning agents containing phosphorous from $500 to $1,000. Senate Bill 105 increases the maximum civil penalty for a violation that results in an imminent likelihood of an extreme hazard to public health or that causes extensive damage to the environment from $100,000 to $250,000. The measure provides that new penalty levels do not take effect until January 1, 2011; however, the EQC may adopt rules earlier.

The current statutory maximum penalty for violations of environmental laws was set in 1973. The Department of Environmental Quality uses a variety of tools to help ensure that businesses and individuals comply with state and federal environmental laws. These tools include technical assistance, compliance inspections, investigation of complaints, warning letters, assessment of civil penalties and compliance orders.

Effective date: January 1, 2010

Senate Bill 513

State policy regarding ecosystem services

Senate Bill 513 establishes that it is the policy of the state to support the maintenance, enhancement, and restoration of ecosystem services. State agencies are encouraged to adopt and incorporate adaptive management mechanisms. The measure requires that if a state agency adopts a strategy that calls for mitigation that they consider strategies that recognize the need for biological connectivity at a landscape scale, rather than an automatic preference for on-site, in-kind mitigation. Senate Bill 513 requires that the Sustainability Board convene an ecosystem services markets working group and requires that the Board report back to the legislature no later than January 1, 2011.

"Ecosystem services" refers to the benefits that human communities enjoy as a result of natural processes and biological diversity. In 2008, the Institute for Natural Resources, a multi-campus research institute administered by Oregon State University, identified ecosystem service policy as a key challenge facing Oregonians.

Effective date: July 23, 2009

Senate Bill 528

Lowers allowable acreage of field burning

Senate Bill 528 applies to open field burning, propane flaming and stack pile burning of grass seed crop residues or cereal grain crop residues in Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton, and Lane Counties. The measure establishes that the maximum total acreage allowed to be open burned in 2009 is 20,000 acres and thereafter none; the amount allowed to be stack or pile burned from 2009 - 2012 is 1,000 acres and thereafter none; and the amount allowed to be propane flamed from 2009 - 2012 is 500 acres and thereafter none. The measure establishes that 15,000 additional acres may be allowed to be burned on steep terrain or on identified species.

Field burning disposes of leftover straw and stubble on fields after grass seed harvesting. It is used to control weeds, insects and plant diseases, and helps maintain grass seed purity. The practice began more than 50 years ago, with as much as 250,000 acres being burned in the mid 1980s. In 1991, passage of House Bill 3343 began a phase-down of field burning, with the acreage limit reduced from 180,000 to 40,000 acres. The current limit of 65,000 is based on 40,000 acres plus a 25,000 acre limitation for certain fire-dependent grass species and grasses grown on highly erodible soils on steep slopes.

Effective date: July 14, 2009

Senate Bill 596

Expands statutory list of brominated flame retardant chemicals to include Decabrominated Diphenyl Ether

Senate Bill 596 expands the list of brominated flame retardant chemicals designated in statute as hazardous substances to include decabrominated diphenyl ether (decaBDE). The measure prohibits the introduction of any product containing more than one-tenth of one percent by mass of decaBDE into commerce, unless it is a replacement part for a product entered into commerce before January 1, 2011. The measure provides an exemption for any new raw material or component part used in a motor vehicle or airplane.

Polybrominated diphenyl ethers (PBDEs) are members of a broader class of brominated chemicals used as flame retardants. They are often added to products such as computers, televisions, furniture, and carpet pads to reduce the risk of fire. There are three main types of PBDEs used in consumer products: pentabromodiphenyl ether (pentaBDE), octabromodiphenyl ether (octaBDE), and decaBDE. PBDEs have been found in human blood, fat, and breast milk around the world. In 2005, the Legislative Assembly passed Senate Bill 962, which banned pentaBDE and octaBDE from being introduced into commerce.

Effective date: January 1, 2010

Senate Bill 631

Modifies the prohibition on the sale or distribution of cleaning agents containing phosphorus

Senate Bill 631 reiterates the prohibition on the sale or distribution for sale of a cleaning agent that contains more than 0.5 percent phosphorous by weight. In addition, it narrows the exemption for cleaning agents used in automatic dishwashers to only apply to commercial dishwashers.

Phosphorus is a naturally occurring element that stimulates plant growth. When introduced into freshwater, phosphorus promotes the growth of weeds and algae and can degrade water quality. In 1991, the Legislative Assembly enacted legislation to prohibit the sale

or distribution of cleaning agents that contained more than 0.5 percent phosphorous by weight in order to reduce phosphorous pollution and maintain existing water quality. The 1991 legislation also included an exemption for cleaning agents used in dishwashers.

Effective date: January 1, 2010

Senate Bill 942

Oregon Climate Corps implementation

Senate Bill 942 requires that the University of Oregon (UO), in consultation with the Oregon State University Extension Service (OSU Extension Service), implement the Oregon Climate Corps (Corps) through the UO Institute for a Sustainable Environment Climate Masters program. The measure stipulates that the Climate Corps be made up of trained volunteers to help Oregon residents, businesses, and other entities increase their understanding of climate change issues, greenhouse gas emission reduction strategies, as well as other ways to address climate change challenges that face Oregon. Senate Bill 942 requires that the Climate Corps program be modeled after other successful public service programs and specifies the types of projects that Corps participants should be educated on. The measure requires that the UO, in consultation with the OSU Extension Service develop a long-term plan to fund the Corps.

The UO has developed a climate corps master volunteer program. In order to deliver the program statewide, the UO entered into a partnership with OSU Extension Service. Senate Bill 942 formalizes the partnership between the OSU Extension Service and UO to create the Oregon Climate Corps.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2184

Expansion of the "Bottle Bill"

House Bill 2184 would have established a beverage container return rate goal of at least 80 percent to be achieved by 2015. Beginning January 1, 2016, if the Department of Environmental Quality (DEQ) determined that in previous calendar year annual beverage container return rate is not at least 80 percent, the refund value would have increased to not less than 10 cents. The measure would have also added a deposit to sports drinks, coffee, tea, juice and other non-carbonated beverage containers effective January 1, 2013.

The Oregon "Bottle Bill" was passed in 1971 to reduce litter and increase recycling. Since its inception, the number and types of single-serving beverage containers have increased, with many types not covered by the Bottle Bill. The 2007 Legislative Assembly applied the five-cent beverage container deposit to water and flavored water beverage containers and created a nine-member Bottle Bill Task Force to study beverage container collection and refund matters. The task force submitted its report to the Legislative Assembly in November 2008.

House Bill 2676

Littering of cigarette butts

House Bill 2676 would have created the offense of unlawful disposition of a tobacco product if person knowingly disposed of a cigarette, cigar or filter in any container other than a fireproof container that was specifically designed for disposal of cigarettes or cigars.

Cigarette butts are one of the most commonly littered items picked up during beach cleanups and other litter cleanup efforts. Cigarette filters can take decades to degrade, the toxic residue in cigarette filters is damaging to the environment, and littered cigarette butts cause numerous fires every year. House Bill 2676 would have created the offense of unlawful disposition of a tobacco product.

Senate Bill 80

Reducing greenhouse gas emissions

Senate Bill 80 would have directed state agencies to use their existing authorities to reduce greenhouse gas emissions immediately and to develop comprehensive planning to enable the state to meet 2020 statutory greenhouse gas reduction goals. The measure provides that if it is not technologically or economically feasible to reach the statutory goals, planning must be designed to achieve the maximum feasible reductions. In addition, it would have established the Climate Policy Advisory Council for the purpose of coordinating actions between agencies. The Council would have been authorized to: investigate, research, develop, and propose mechanisms for reducing greenhouse gas emissions for sectors of the economy for which the agencies involved have authority; coordinate activities across economic sectors; cooperate with the Department of Administrative Services to coordinate activities and assess agency greenhouse gas emission reduction activities; and inventory carbon reduction activities.

Oregon is a participating member in the Western Climate Initiative (WCI) which provides a regional framework for reducing greenhouse gas emissions through a cap and trade program. The WCI framework allows participating members to develop strategies unique to their jurisdictions. The 2007 Legislative Assembly declared that it is the policy of the state to reduce greenhouse gas emissions in Oregon. They established the following goals: by 2010, arrest the growth of Oregon's greenhouse gas emissions and begin to reduce greenhouse gas emissions; by 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels; and by 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

Senate Bill 598

Pharmaceutical take-back program

Senate Bill 598 would have required drug manufacturers to establish pharmaceutical take-back programs to be approved and regulated by the Department of Human Services (DHS). The objective of the program is to address three public health concerns: prescription drug abuse, drug-associated poisonings, and contamination of drinking water. United States Geological Survey and Oregon Department of Environmental Quality water quality sampling detected pharmaceuticals in both groundwater and surface water sources used for drinking water in Oregon. The majority of drugs reach water through excretion; however, the Teleosis Institute of California collected data on unused drugs and found that consumers did not use nearly 45 percent of what they were prescribed. Currently, standard wastewater treatment methods are not designed to remove pharmaceuticals or other emerging compounds.

Government

2009 SUMMARY OF LEGISLATION

House Bill 2339

Exempts public safety officers from disclosure of information

House Bill 2339 allows a public safety officer to request that certain personal information about the public safety officer contained in public records not be disclosed. Non-disclosure is allowed unless the public interest requires otherwise. The measure requires the public safety officer requesting non-disclosure to submit a request in writing to the government agency in possession of the records and to identify that specific documents not be disclosed.

Effective date: January 1, 2010

House Bill 2500

Establishes the Transparency Oregon Advisory Commission

In 2006, Congress passed spending-transparency legislation resulting in the creation of a searchable website for all federal contracts and grants of more than $25,000, titled www.usaspending.gov. The increase focus on transparency and accountability by the federal government led to some states developing searchable databases, websites and Internet sites to enable the public to access aggregate state financial records and performance data. Currently, 12 states have operational websites for posting state spending; six states post the financial information of selected departments and seven more states have recently passed laws to create online spending websites. The information included on the websites varies significantly amongst the states, in part because of the variations in public records statutes.

House Bill 2500 directs the Oregon Department of Administrative Services (DAS) to develop and make available a State of Oregon transparency website by January 1, 2010. The measure requires state agencies to provide reports and links to existing state financial information and performance data including agency revenue and expenditures; tax expenditures; agency audits and contracts; human resource expenses; agency missions, functions, and program categories; and agency information from the Oregon Progress Board.

House Bill 2500 also establishes a nine-member Transparency Oregon Advisory Commission comprised of one senator and one representative from the majority party; one senator and one representative from the minority party; one appointment by the Governor; one appointment by the Director of DAS; one appointment by the Legislative Fiscal Officer; and two public members with experience or interest in public finance. The Commission will advise and make recommendations to DAS about the creation, contents and operation of, and long-term enhancements to the website. The Commission will submit a report to the Legislative Assembly, no later than January 15 of each odd-numbered year, describing the current level of functionality and future enhancements including the feasibility of expanding content to include interactive applications to permit the public to simulate balancing a biennial budget and performance outcomes that measure the success of state agency programs.

Effective date: July 28, 2009

House Bill 2839

Name changes for persons in domestic partnerships

The Legislative Assembly provided for the creation of domestic partnerships with the passage of House Bill 2007 (2007), also known as the Family Fairness Act. A domestic partnership allows an unmarried couple, including two persons of the same gender, to share the rights, benefits and responsibilities that the state provides to married couples without bestowing the status of marriage. In 2004, Oregon voters amended the Oregon Constitution with the passage of Ballot Measure 36 officially recognizing only marriages between one man and one woman as valid and legal in the state.

House Bill 2839 makes the process for domestic partners to undergo a name change the same as the process for married couples.

House Bill 2839 also addresses an unintended consequence of House Bill 2007 by stipulating that domestic partners must pay federal taxes on benefits provided to one partner by the employer of the other partner.

Effective date: September 28, 2009

House Bill 2867

Cost demonstration requirements for public contracting

House Bill 2867 requires governmental entities procuring goods or services with an estimated contract value of $250,000 or more to first demonstrate that the cost of providing those goods or services with the agency's own personnel or resources would be greater than the cost of procuring the same through a contractor. The measure applies to all governmental entities except: cities

and counties with populations less than 15,000; community colleges with 1,000 or fewer full-time equivalent students; special districts; the Port of Portland; and districts seeking procurement for client services. The measure also prohibits agencies from contracting for administration with the parties to the contract to be administered.

Under the measure, before entering into a public contract, an agency must establish measurable standards by which to assess the quality of a contractor's performance and clear consequences for failure to meet those standards. The Department of Administrative Services is directed to provide consultation and evaluation of the program's effectiveness and to report to the Legislative Assembly by January 10, 2011.

Effective date: August 4, 2009

House Bill 2873

Alternative public employee retirement plans

All employers of police officers and firefighters are required to provide retirement benefits through the Public Employees Retirement System (PERS) except in cases where the employer offers a benefits program that is equal to or better than that provided to equivalent employee classes by PERS. The City of Portland, for example, offers such a plan, known as the Fire and Policy Disability and Retirement Fund.

Multnomah County established a temporary, three-year income tax for residents with approval of Measure 36-48 in May 2003. On December 31 of that year, the county received an outside legal opinion that the state's PERS statutes prohibited the county from taxing retirement benefits under the PERS system, and that the county would likewise be prohibited under federal law from taxing federal pension benefits, but that local retirement benefit plans could be taxed.

House Bill 2873 establishes that in cases involving alternative retirement benefit plans, the returns of contributions and death benefits are exempt from county and municipal taxes. However, the measure does not apply to inheritance taxation or to state personal income taxation of retirement benefits.

Effective date: August 4, 2009

House Bill 2907

Interstate agreements concerning prevailing rates of wage

The Oregon Department of Transportation (ODOT) enters into interstate agreements for public works projects that can involve the payment of federal prevailing wage rates, which supersede Oregon's prevailing wage rate law. An interstate agreement between ODOT and Idaho's transportation department would have paid less than the state's prevailing wage rates for the work that was being conducted within Oregon.

House Bill 2907 clarifies that Oregon contracting agencies cannot enter into an interstate agreement that allows a contractor to pay less than Oregon's prevailing wage rate.

Effective date: June 17, 2009

House Bill 3021

Compensation for volunteer emergency providers

The Oregon Law Commission Work Group on Emergency Preparedness met from September 15, 2008 to January 12, 2009 to consider and recommend reforms to address compensation issues related to volunteers when they are injured, or when they inadvertently cause injury to others, as well as to reorganize ORS Chapter 401 to make it more user-friendly and clear.

House Bill 3021 overhauls the system for government compensation of qualified volunteer emergency providers injured in either Governor-declared emergencies or search and rescue operations by providing them Workers' Compensation coverage. The measure provides government compensation for people injured by such emergency providers by treating these providers as agents of the state for purposes of coverage under the Oregon Tort Claims Act.

Effective date: January 1, 2010

House Bill 3139

State agency risk assessments

House Bill 3139 requires each state agency that is required to have an internal audit function to produce a risk assessment for the entire agency. The assessment must conform to nationally recognized audit standards, and will be used as the basis for at least one internal audit per calendar year. The measure also requires

agencies to audit a component of their governance and risk management processes at least once every five years and to file a report on that audit with the Department of Administrative Services.

Oregon administrative rules require that state agencies with total biennial expenditures in excess of $100 million, or more than 400 full-time equivalent employees, or a total dollar value of cash items received and processed annually in excess of $10 million, have an internal audit function. Such agencies must establish, maintain and fully support a full-time internal audit function, or get permission to have part-time audit functions or audits performed by contractors. House Bill 3139 places in statute requirements currently contained in administrative rule.

Effective date: January 1, 2010

House Bill 3158

Establishes the Oregon Broadband Advisory Council

The Oregon Telecommunications Coordinating Council (ORTCC) was authorized by the Legislative Assembly beginning in 2001 (Senate Bill 765) to study and recommend strategies for public-private telecommunication investments that would help Oregon businesses compete in global markets and to study alternative approaches to providing coordinated, statewide, regional and local telecommunication services in all areas of the state. The Council is scheduled to sunset on February 1, 2010.

House Bill 3158 creates the Oregon Broadband Advisory Council (OBAC) to replace the ORTCC. This smaller group's focus is to create, advocate, and receive funding for the statewide deployment of broadband infrastructure and the applications that run on it as well as to establish Oregon's broadband policies and coordinate their implementation. The OBAC's makeup consists of representatives from the education, health care, public safety, eGovernment, telecommunications, and local government sectors.

The measure requires certain state agencies to support the Council by providing staff or facilities and mandates that all government agencies furnish information necessary for the Council to function.

Effective date: July 22, 2009

House Bill 3254

Allows formation of radio and data communication special districts

Situated between Umatilla and Morrow County, the Umatilla Chemical Depot (UMCD) is one of six Army installations in the United States that store and maintain the nation's chemical weapons stockpile. Under federal mandate, the United States Army acquired, maintained and operated a tactical 450 MHz ultra-high frequency (UHF) communications system for on/off-post communication for 31-unit local emergency responders. Federal funding currently pays 100 percent of costs during the process of destroying chemical agents and munitions. Additionally, the Army is expected to leave behind a tactical communications system, valued at $14 million, that has been used and relied upon by Umatilla and Morrow County emergency responders. However, UMCD is scheduled to cease operation in the spring of 2010. Of the 14 radio sites in the Chemical Stockpile Emergency Preparedness Program, the Oregon Wireless Interoperability Network (OWIN) is scheduled to take possession of eight sites, while Umatilla and Morrow Counties will retain six sites. OWIN administrators estimate the total partnership savings to Oregon to be approximately $60 million.

House Bill 3254 allows radio and data communications districts to be formed as special districts within all or part of one or more counties. The measure authorizes these districts to acquire, maintain and operate voice and data communications systems for use by public safety agencies within their boundaries and authorizes districts to contract with the United States for acquisition and operation of radio and data communication facilities and related property. The measure provides a mechanism for Umatilla and Morrow Counties to secure optional revenue streams, similar to a fire district, that would fund and govern the current system's continued operation and maintenance.

Effective date: September 28, 2009

House Bill 3401

Public Employees Retirement System side accounts

Public employers that participate in the Public Employees Retirement System (PERS) can make lump sum payments to the system to pre-fund employer obligations – these payments are typically made after issuing pension obligation bonds or savings from internal operations.

In turn, PERS establishes a separate account for the lump sum amount and amortizes the account to offset contributions made over a specified period. Once these payments are paid into the system, the employer cannot direct how the funds in the separate account are to be used within the system, or request a refund of those funds. According to PERS, as of December 2008, 142 employers have established such "side" accounts; the majority of participating employers are school districts, followed by community colleges. Thirty-four employers have multiple side accounts.

House Bill 3401 allows employers with PERS side accounts to request that excess amounts in side accounts established for lump sum payments be applied to offset contributions to an individual account program if the PERS Board determines that the amounts in the account exceed the amounts necessary to fund the actuarial liabilities of the employer. The excess amounts can be used to offset contributions only to the extent that the application will not result in an account balance being reduced to less than the outstanding principal balance owed on the bonds issued to fund the account. For its part, the PERS Board can only offset contributions if doing so does not cause the loss of qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and pursuant regulations. The measure also directs the PERS Board to seek a ruling from the Internal Revenue Service regarding whether the measure would cause the loss of governmental retirement plan qualifications.

Effective date: August 4, 2009

House Joint Resolution 13

Proposing revision to the constitution relating to bonded indebtedness

House Joint Resolution 13 refers to voters for approval or rejection at the May 2010 Primary Election, a proposed revision to the Oregon Constitution to exempt local taxing districts from constitutional limitations on bonded indebtedness beginning January 1, 2011, if bonded indebtedness is incurred to finance capital costs.

Funding for new school infrastructures is primarily the responsibility of local school districts, most commonly financed through bond sales. Currently, school districts do not have access to state assistance for capital funding needs other than the facility grant in the school equalization formula. The facility grant became effective in the 1999-2000 fiscal year to be used for classroom equipment outside the bonded debt. The facility grant funds up to eight percent of construction costs but the grant is limited to $25 million per biennium and is prorated if eight percent of eligible costs exceed $25 million.

The constitutional revision, if approved, would create an exception in the Oregon Constitution to the definition of capital "improvements" in Article XI, Section 11. The current definition of capital improvements is "new construction, reconstruction, major additions, remodeling, renovation, and rehabilitation, including installation, but does not include minor construction or ongoing maintenance and repair." (Article XI, Section 11 (10)(a)(A)) If amended, the definition of "capital costs" would be "costs of land and of other assets having a useful life of more than one year, including the costs associated with acquisition, construction, improvement, remodeling, furnishing, equipping, maintenance or repair."

House Joint Resolution 13, if approved, would also add a new Article to the Oregon Constitution to permit the state to incur indebtedness to provide matching funds to finance capital costs of school districts, notwithstanding constitutional property tax limitations, which have received voter approval for general obligation bonds. The resolution redirects funding from the school capital matching subaccount to match funds for a broader range of capital expenditures and repay state general obligation bonds issued to provide matching funds.

Filed with the Secretary of State: July 6, 2009

Senate Bill 51

Prevailing wage rate contract fee

Current law requires that public agencies awarding public works contracts pay a fee to the Bureau of Labor and Industries (BOLI) to pay costs of surveys, administration, and education relating to prevailing wage law. Under current temporary law, the fee is 0.1 percent of each contract, with a minimum of $250 and a maximum of $7,500. The minimum and maximum fee amounts are scheduled to decline to $100 and $5,000 respectively, in 2011. At these reduced levels, fee revenues will not cover the cost of administering the prevailing wage rate law.

Senate Bill 51 prevents a scheduled decline in the fee amounts paid to BOLI by retaining the current minimum fee of $250 and maximum fee of $7,500.

Effective date: July 23, 2009

Senate Bill 112

Reemployment of retired members of Public Employees Retirement System

Public Employees Retirement System (PERS) members may retire with either a monthly benefit or a lump sum payment of benefits. Under current law, members who return to work after retirement face different consequences and have different limitations depending on whether they retired with a monthly benefit or lump sum payment. In some instances, members who retire with a lump sum payment may be required to repay benefits and face tax consequences. Senate Bill 112 addresses this inconsistency.

The measure also addresses a loophole in the number of hours a PERS retired member can work during a calendar year. A retired member who is receiving a monthly retirement allowance return can work up to 1,040 hours in a calendar year for a PERS employer and unlimited hours in a position exempt from the 1,040-hour limitation, but those hours currently apply to the 1,040 hour limitation if the member is concurrently employed by both positions. Senate Bill 112 establishes that hours worked by a retired member in an exempt position does not count toward the limitation, regardless of whether the retiree is also employed in a non-exempt position in the same calendar year. The measure applies to all hours of employment of a retired member on or after January 1, 2004.

Effective date: June 18, 2009

Senate Bill 217

Use of Historic Preservation Revolving Loan Fund

Senate Bill 217 provides a funding mechanism for the protection of state cultural resources and historic sites through the Historic Preservation Revolving Loan Fund (Fund).

Senate Bill 217 allows the Fund to be used for promoting cultural preservation public education and for enforcement of the laws protecting historic and cultural sites. The measure requires that moneys collected in enforcement of the laws protecting cultural resources be placed in the Fund. It allows the state Historic Preservation Officer to seek or accept gifts, grants or donations for protection of cultural resources and sites and provides that the gifts, grants or donations shall be paid into the Fund. Senate Bill 217 also authorizes the Historic Preservation Officer to establish criteria and procedures to use the Fund to reimburse the Attorney General for expenses incurred in the enforcement of cultural resource protection laws.

Effective date: May 14, 2009

Senate Bill 274

Appointment and removal of Chief Administrative Law Judge

Senate Bill 274 requires the Governor to appoint a Chief Administrative Law Judge (ALJ) and authorizes the Governor to remove the Chief ALJ "for cause." The measure requires the Attorney General to consult with an advisory group to make hearing rules. The measure also allows agencies to modify a finding of historical fact by an ALJ only if there is clear and convincing evidence the finding is wrong. The disclosure requirement for ex parte contact is expanded to include Assistant Attorneys General who are not advising the agency conducting the hearing. Finally, the bill requires the Secretary of State to use the Office of Administrative Hearings (OAH).

Effective date: August 4, 2009

Senate Bill 399

PERS rollover contributions

Many Public Employees Retirement System (PERS) members have gaps in their service history due to either an initial probationary period or forfeited service times. Currently, eligible PERS members may fill gaps in their service by paying into the system. Senate Bill 399 permits eligible members to do such with pre-tax dollars from a governmental deferred compensation plan or a tax-sheltered annuity.

The transferred funds can only be used for filling such gaps, and cannot exceed the necessary amount needed to obtain restoration of forfeited creditable service or to purchase the retirement credit.

The measure requires the PERS Board to adopt rules and procedures for determining whether a member is allowed to obtain restoration or purchase retirement credit, ensuring that transfers do not adversely affect the status of the system and the Public Employees Retirement Fund as a qualified governmental plan and trust under federal Internal Revenue Service (IRS) law.

Effective date: January 1, 2010

Senate Bill 597

Conflicts of interest for board members of non-governmental entities

Senate Bill 1149 (1999) directed electric and power utilities to collect a three percent "public purpose charge" from retail customers for the purpose of investing in energy-efficient technologies and renewable resources. The funds collected as a result of the public purpose charge are used to finance energy conservation programs, develop renewable energy resources, and weatherize low-income households. The Public Utility Commission (PUC), Energy Trust of Oregon, Oregon Housing and Community Service Department, and local education service districts are the authorized entities designated to receive the public purpose funds.

The Energy Trust of Oregon is a non-profit organization established under the direction of the PUC. As an independent organization, the Energy Trust Board is self-appointing and its members are not subject to the same public disclosure requirements as other elected or appointed officials. The Energy Trust is the only non-governmental entity currently authorized to receive and invest public purpose funds.

Senate Bill 597 requires the board members of a non-governmental entity who receive public purpose funds to file a Statement of Economic Interest with the PUC and declare actual or potential conflicts of interest before each board meeting. The measure requires annual independent audits of the non-governmental entity's financial statements and that the entity file an action plan, quarterly and annual reports, and annual budget with the PUC. Senate Bill 597 allows the PUC to remove a member from the board of a non-governmental entity that receives public purpose charges if the board member fails to comply with reporting requirements and conflict disclosure requirements.

Effective Date: January 1, 2010

Senate Bill 867

Public accountancy reciprocity

The Board of Accountancy licenses and regulates Certified Public Accountants (CPAs) and Public Accountants (PAs) in Oregon, assuring that approximately 8,500 CPAs, PAs, municipal auditors and public accounting firms registered to practice in Oregon demonstrate and maintain professional competency. The Board is authorized by ORS chapter 673 to establish and enforce standards and regulations and license qualified applicants to practice public accountancy in Oregon.

Oregon has participated in reciprocity with other states, if the other states' licensing is substantially equivalent to Oregon's. Most states, with the notable exceptions of California (unless licensed under section 5093), Colorado, Delaware, Florida, New Hampshire, and Vermont, are substantially equivalent. Substantially-equivalent licensees have been eligible to apply and pay the $300 fee for an Authorization for Transfer from the Oregon Board of Accountancy. Individuals from other states may also qualify for performing accountancy in Oregon through individual substantial equivalency. The annual fee has been $100.

Senate Bill 867 implements a "driver's license" approach to reciprocity with other states. Senate Bill 867 authorizes accountants licensed in other states to practice public accountancy in Oregon, if the accountant's requirements for licensing or qualifications are substantially equivalent to Oregon's, without notification or payment of fees to the Oregon Board of Accountancy. Senate Bill 867 provides authority for the Board to censure an accountant licensed in another state, directs the Board to investigate complaints made by another state's accountancy board, and authorizes the Board to discipline an Oregon licensee for the licensee's actions in another state.

Effective date: June 24, 2009

LEGISLATION NOT ENACTED

House Bill 2784

Oregon financial institutions that receive funds from the Troubled Asset Relief Program

The federal Troubled Asset Relief Program (TARP) was undertaken beginning in 2008 to strengthen and stabilize the nation's financial sector, most notably in response to the subprime mortgage crisis. The program allows for the purchase of insurance up to $700 billion in "troubled assets," defined as: residential or commercial mortgages that, absent protection, threaten stability of financial markets; or any other financial instrument that the Secretary of the U.S. Treasury, after consultation with the Chairman of the Federal Reserve, determines the purchase of which is necessary to promote financial market stability. The program is available to qualifying U.S.-controlled banks, savings associations, and related holding companies that elected to participate by November 14, 2008. The maximum subscription amount is the lesser of $25 billion or three percent of risk-weighted assets.

House Bill 2784 would have required that state-regulated entities receiving funds from the federal TARP program report to the appropriate House and Senate interim legislative committees regarding the disposition of those funds.

House Bill 3333

Premium expenses for insurance offered by the Public Employees' Benefit Board

House Bill 3333 would have required statewide elected officials, agency directors, and legislators who participate in a benefit plan provided by the Public Employees' Benefit Board (PEBB) to contribute nine percent of their premium's cost.

Senate Bill 633

Investment of public funds in companies doing business in or with Iran

Senate Bill 633 directed the Oregon Investment Council and the State Treasurer to ensure that investment funds are not invested in violation of applicable federal law in any company that is doing business in or with Iran, or is owned or controlled by the government of Iran. Twelve other states have adopted divestment policies from Iran, including California, Florida, Illinois, Louisiana, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas.

Health Care

2009 SUMMARY OF LEGISLATION

House Bill 2009

Creates the Oregon Health Policy Board and the Oregon Health Authority

The 2007 Legislative Assembly enacted Senate Bill 329, which created the Oregon Health Fund Board. The Board made recommendations to the Legislative Assembly about how to improve the state's health care system. Among its recommendations were proposals to establish a citizen-lead Health Authority to integrate reform efforts and to increase accountability for all stakeholders in the health care system, and to implement mechanisms that would stem rising costs and improve quality and consistency of care. These mechanisms included the creation of an all-payer and all-claims database; to establish requirements for insurers to report administrative costs and other data; the promotion of the use of electronic health records; and the development of evidence-based medicine guidelines for health care. House Bill 2009 is the Legislative Assembly's attempt to codify many of the Oregon Health Fund Board's recommendations.

Oregon Health Policy Board

House Bill 2009 establishes the nine-member Oregon Health Policy Board, which is the policy-making and oversight body on the development and implementation of health care policy in Oregon. The measure specifies the board's composition, qualifications, and authority. The duties of the Board are to: 1) develop a plan for the Legislative Assembly by December 31, 2010 to provide and fund access to affordable health care for all Oregonians by 2015; 2) develop a program to provide health insurance premium assistance to all low and moderate income individuals who are legal residents of Oregon; 3) establish and continuously refine uniform, statewide health care quality standards for use by all purchasers of health care; 4) establish evidence-based clinical standards and practice guidelines that may be used by providers; 5) approve and monitor community-centered health initiatives that are consistent with public health goals, strategies, programs and performance standards adopted by the Board and report regularly to the Legislative Assembly on the progress; 6) establish cost containment mechanisms to reduce health care costs; 7) ensure Oregon's health care workforce, in quantity and qualifications, can meet the demands of the expanded populations once health care coverage is created; 8) establish a baseline health benefit package for all health benefit plans offered through the Oregon Health Insurance Exchange; 8) develop and submit a plan to the Legislative Assembly by December 31, 2010 with recommendations for the development of a publicly owned health benefit plan that operates in the exchange under the same rules and regulations as other health insurance plans offered through the exchange; 9) meet cost-containment goals by structuring reimbursement rates to reward comprehensive management of diseases, quality outcomes and efficient use of resources through cost-effective procedures, services and programs; 10) oversee the expenditure of moneys from the Health Care Workforce Strategic Fund to support grants to primary care providers and rural health practitioners, increase primary care educators and support efforts to develop career ladder opportunities; and 11) work with the Public Health Benefit Purchasers Committee, administrators of the medical assistance program and the Department of Corrections to identify uniform contracting standards for health benefit plans for maximum quality and cost outcomes and to align the contracting standards for all state programs to the greatest extent practicable. Additionally, the Board is required to report to the Legislative Assembly by December 31, 2010 on the feasibility and advisability of future changes to the Oregon health insurance market that would require every resident to have health insurance coverage; that a payroll tax be an incentive for employers to continue providing health insurance to their employees; that the expansion of exchange include a program of premium assistance to advance reforms of the insurance market; and that the system implementation interoperable electronic health records be used by all health care providers throughout the state. In addition, the Board is to establish and continuously refine statewide health care quality standards; establish evidence-based clinical standards, establish cost containment mechanisms to reduce health care costs; and to ensure Oregon's health care workforce is sufficient in numbers and training to meet demand for health care. The Board will carry out these duties through the Oregon Health Authority.

Oregon Health Authority

House Bill 2009 establishes the Oregon Health Authority, which will carry out and implement policies adopted by the Board. The Authority is directed to develop an Oregon Health Insurance Exchange to administer the Oregon Prescription Drug Program, the Family Health Insurance Assistance Program, report to the Board on the performance of health service contractors that serve clients enrolled in medical assistance programs, and guide and support community-centered health

initiatives. The following state governmental agencies will transfer to the Board's jurisdiction: 1) Division of Medical Assistance Programs; 2) Addictions and Mental Health Division and the Public Health Division within the existing Department of Human Services (DHS); 2) Oregon Medical Insurance Pool within the Department of Consumer and Business Services (DCBS); 3) Office of Private Health Partnerships; and 4) Public Employees' Benefit Board and the Oregon Educators Benefit Board. The transfer of these agencies to the Board's jurisdiction must be completed by June 30, 2011, and the Governor's budget for 2009-11 must reflect the implementation of this transfer. House Bill 2009 also eliminates the Oregon Health Fund Board and the Oregon Health Policy Commission.

Baseline Health Benefit Package

House Bill 2009 specifies minimum, but allows for additional, criteria for the baseline health benefit package, authorizes the Authority, in consultation with the Director of DCBS to develop a plan for staffing, funding and administration of the Oregon Health Insurance Exchange. The measure includes components for consideration and specifies that the Board submit the plan for approval.

Patient Centered Primary Care Home Program

House Bill 2009 establishes the patient centered primary care home (PCPCH) program in the Office for Oregon Health Policy and Research (OHPR). The measure directs OHPR to: define core attributes of the patient centered primary care home to promote a reasonable level of consistency of services provided by the homes; focus on determining if the homes offer comprehensive primary care that includes prevention and disease management services; establish a simple and uniform process to identify the PCPCHs that meet the core attributes; develop uniform quality, nationally accepted measures and allow for standard measurement of PCPCH performance; develop uniform quality measures for acute care hospitals and ambulatory services that align with PCPCH quality measures; develop policies that encourage the retention of, and the growth in the numbers of, primary care providers; and establish a learning collaborative where state agencies, private health insurance carriers, third party administrators and PCPCH share information and best practices for culturally competent and linguistically appropriate care, the adoption and use of the latest techniques in effective and cost-effective patient centered care, that coordinate efforts to develop and test methods to align financial incentives to support PCPCHs, coordinate efforts to conduct research on PCPCHs and evaluate strategies to implement the PCPCHs to improve health status, quality, and reduce overall health care costs. Additionally, the measure directs the Authority director to appoint a 15-member advisory committee to advise OHPR in implementing the program.

Additional Initiatives

House Bill 2009 directs the Board to begin implementing (through the Authority) a variety of specific health care reform initiatives designed to reduce health care costs and improve the quality of health care. Initiatives include: the establishment and operation of a statewide Physician Orders for Life-Sustaining Treatment registry; the creation of a Health Information Technology Oversight Council to promote the use of electronic health records and data exchange; the creation of the Statewide Health Improvement Program to prevent chronic disease and reduce the utilization of expensive and invasive acute treatments; the establishment of a Health care Workforce database; and, the development of evidence-based health care guidelines for use by health care providers, consumers, and purchasers of health care in Oregon.

Furthermore, the measure attempts to strengthen requirements for the collection of health market data—including insurance company data, capital project investment data of certain health care providers, health care data for the purposes of determining the distribution of resources allocated to health care, identifying the demands for health care, evaluating the effectiveness of intervention programs, comparing the costs and effectiveness of various treatment settings, improving the quality and affordability of health care, and evaluating health disparities—including those related to race and ethnicity.

Effective date: June 26, 2009

House Bill 2058

Specifies and standardizes the appointment, confirmation, removal process, term of office, and compensation of members of health profession regulatory boards

Currently, Oregon's health profession regulatory boards vary in membership requirements, appointing authority, qualifications, confirmation and removal process, term of office, compensation, and size of board. The issue was raised that the lack of continuity and standardization

among the health regulatory boards has been confusing and can lead to a fragmented approach to consumer protection and safety.

House Bill 2058 establishes that board members are to be appointed by the Governor, confirmed by the Senate, that the Governor should strive for geographic and ethnic balance in member representation. The measure also specifies that the public member(s) of a board cannot be a spouse, domestic partner, child, parent or sibling of an individual licensed by the board. In addition, several health professional licensing boards that currently have one public member were increased to two public members.

Effective date: June 25, 2009

House Bill 2059

Reporting of unprofessional conduct of health professional licensee to appropriate regulatory board

There has been an increase in complaints about physicians/health care professionals molesting anesthetized patients. In a 2004 case, a physician who was part of a group practice molested an anesthetized patient, while another physician in the practice, as well as staff, was aware of the misconduct and did not report the actions to the appropriate regulatory board. The issue was brought to the attention of the 2007 House Interim Health Care Committee, which reviewed issues that included: current reporting requirements; variations in reporting procedures between health care professional boards; reporting to appropriate law enforcement agencies; rights of the patients; rights of the physicians; professions that have mandatory reporting; and various types of misconduct.

House Bill 2059 requires a licensed health professional to report prohibited conduct by another licensed professional to his or her licensing board no later than 10 working days from learning of the conduct. Additionally, the bill requires the licensing board that receives the report on the prohibited conduct to notify the appropriate licensing board. The licensing board must report on the prohibited conduct to the appropriate law enforcement agency, and licensees that fail to report commit a Class A violation and are subject to discipline by the board. The board or licensee that reports on conduct in good faith is immune from civil liability.

Effective date: January 1, 2010

House Bill 2116

Establishes Health System Fund and Health Care for All Oregon Children Program

The Oregon Health Fund Board, created with the passage of Senate Bill 329 (2007), was charged with developing recommendations to be presented to the Legislative Assembly about how to improve the state's health care system. One of the Board's recommendations was to expand health insurance coverage for children and low-income adults. In the 2009-11 Governor's Recommended Budget, the Governor proposed assessments on health insurance premiums and hospitals.

According to the Office for Oregon Health Policy Research (OHPR), the state will collect $215 million in provider taxes from hospitals and Medicaid managed care organizations during the 2007-2009 biennium. These moneys will generate another $343 million in federal matching funds to pay for health care coverage for low-income adults. Combined, these funds sustain coverage under the Oregon Health Plan (OHP) Standard program (also known as the "expansion population") and support payments to hospitals and Medicaid managed care organizations for providing services to all OHP enrollees. OHPR asserts that the current data indicates that Oregon has between 576,000 and 621,000 uninsured individuals; approximately 12.5 percent of Oregon children (ages 0-18) are uninsured, as are approximately 20 percent of adults ages 19-64.

House Bill 2116 creates the Health Care for All Oregon Children program to make health care available to all of Oregon's children. The measure establishes two assessments: a one-percent health insurance premium assessment on a specified group of health insurers, Medicaid managed care plans, and the Public Employees Benefit Board; and an assessment on hospitals that are paid by Medicare under a diagnostic related grouping (DRG) reimbursement mechanism. The health insurance premium assessment is paid into a newly created Health System Fund, which is continuously appropriated to the Department of Human Services to implement the Health Care for All Oregon Children program. The hospital assessment is paid into an existing fund, the Hospital Quality Assurance Fund, and proceeds from the assessment are primarily to be used to fund the OHP Standard program. The premium assessment is expected to provide funding for nearly 80,000 children during the 2009-11 biennium, while the hospital assessment will allow the OHP Standard program to double from

an average monthly caseload of approximately 25,000 low-income adults to 50,000 during the 2009-11 biennium. Both assessments sunset on September 30, 2013.

Effective date: September 28, 2009

House Bill 2165

Authorizes certain members of the Oregon National Guard to provide health care services when Governor declares certain emergencies

Currently, Oregon has approximately 11,393 emergency medical technicians and first responders, out of a total population of 3.7 million. The Oregon Military Department indicates that the total number of on-hand military health care professionals in the state include 283 medics in the Army Guard, 86 medics in the Air Guard, and 30 doctors, physician assistants and registered nurses.

House Bill 2165 permits the Governor to authorize certain members of the Oregon National Guard who are trained and certified by the Armed Forces of the United States to provide health care services in Oregon when the Governor declares certain emergencies. The measure specifies that the authorized military personnel are on active state duty, and are qualified to perform the same or similar functions to provide health care services in Oregon and, under these conditions, those personnel are not subject to the Oregon licensing requirements for health care providers.

Effective date: January 1, 2010

House Bill 2245

Renames Oregon Board of Radiologic Technology to the Oregon Board of Medical Imaging

The Board of Radiologic Technology was established in 1977 to ensure the quality of radiation therapy, fluoroscopy, computed tomography (CT) scans, mammography, bone densitometry and other means of medical imaging by assuring the quality of radiologic technology operators. The board licenses diagnostic or therapeutic technologists and diagnostic technicians, administers limited permit examinations to determine initial competence to practice as radiologic technicians, and approves continuing education offerings to ensure continuing competence for both technologists and technicians.

To reflect the changes that have occurred in the medical imaging field, House Bill 2245 changes the name of the Board of Radiologic Technology to the Oregon Board of Medical Imaging; defines medical imaging modality and other related terms; creates specific medical imaging modalities that update and reflect current technology; revises various provisions relating to medical imaging licenses and limited X-ray machine operator permitees; and increases the board membership from nine to twelve members.

Effective date: July 1, 2010

House Bill 2345

Establishes the impaired health professional program

Impairing conditions can affect the general population, including health care professionals. Chemical dependency is recognized as a disease that is chronic, progressive, and relapsing. Since 1972, in multiple policy statements, the American Medical Association has defined the impaired physician as: "one who is unable to practice medicine with reasonable skill and safety to patients because of physical or mental illness, including deterioration through the aging process or loss of motor skill, or excessive use or abuse of drugs, including alcohol." Generally, impairment can lead to decreased or altered clinical judgment, or diminished technical skills which can impact patient safety.

House Bill 2345 directs the Department of Human Services (DHS) to establish, or contract to establish, the impaired health professional program (IHPP) to protect the public from impaired health professionals. The measure defines the term "impaired professional" and specifies DHS's role in: 1) reporting the list of participants to a monitoring entity; 2) administering diversion agreements; 3) working with employers to ensure adequate supervision of licensees; 4) assessing compliance; 5) reporting noncompliance; and 6) arranging for a third party to audit the program to ensure compliance with program guidelines. In addition, DHS is required to report the results of the audit to the Governor, the Legislative Assembly and to the appropriate health profession licensing boards; and to report on the IHPP to the Governor, to the Legislative Assembly and to health profession licensing boards on or before January 31, 2011.

House Bill 2345 also requires DHS to contract with an independent third party to establish a monitoring entity for impaired professionals. The measure specifies that the monitoring entity is required to: 1) compare

the weekly lists submitted by the IHPP to determine if any enrollees are no longer participating in the IHPP; and 2) report to the appropriate health profession licensing board when a licensee is substantially noncompliant with the licensee's diversion agreement. DHS is required to arrange for an independent third party to audit the monitoring entity to ensure compliance with program guidelines.

House Bill 2345 is permissive and does not require board participation in the IHPP, however the measure stipulates that boards opting to participate in the IHPP may only refer impaired licensees to the IHPP and "may adopt rules opting to participate in the impaired health professional program," but they may not establish their own impaired health professional program. House Bill 2345 repeals the authority of the following health profession licensing boards to establish, approve, sanction, enter into contracts, or impose fees for their own diversion programs for impaired professionals: 1) Oregon Health Licensing Agency; 2) Oregon Board of Licensed Social Workers; 3) Oregon Board of Licensed Professional Counselors and Therapists; 4) Oregon State Board of Nursing; 5) Oregon Board of Massage Therapists; 6) Oregon Medical Board; 7) Oregon Board of Chiropractic Examiners; and 8) Oregon Board of Pharmacy. The measure also dissolves the existing impaired professional programs and authorizes DHS to recoup the administration of the IHPP with a fee to be paid by the health profession licensing boards that participate in the IHPP and to collaborate with the participating health profession licensing boards that currently have their own diversion programs to transfer funding and licensees.

Effective date: July 14, 2009

House Bill 2435

Oregon Medical Board to implement process for issuing an expedited license to qualified physicians

House Bill 2435 establishes requirements for the Oregon Medical Board (OMB) to implement a process for issuing an expedited license by endorsement to qualified physicians by January 1, 2010. The measure outlines requirements for physicians to be considered qualified for licensure and directs the OMB to use existing databases for application information verification and to accept certain documents from the state where the applicant was first licensed as a means for verification. Additionally, the measure requires the OMB to report to the Legislature on or before January 31, 2011.

The Oregon Medical Board was created in 1889 and is responsible for administering the Medical Practice Act and establishing the rules and regulations pertaining to the practice of medicine in Oregon. The board determines requirements for Oregon licensure as a Medical Doctor (MD), Doctor of Osteopathy (DO), Doctor of Podiatric Medicine (DPM), Physician Assistant (PA), and Acupuncturist (LAc); ensures that all applicants granted licensure meet all Oregon requirements; investigates complaints against licensees and takes disciplinary action when a violation of the Medical Practice Act occurs; and monitors licensees who have come under disciplinary actions. The OMB receives no General Fund moneys; most of the Board's funding is generated by the licensing and registration fees paid by licensees.

Effective Date: September 28, 2009

House Bill 2506

Coverage for licensed professional counselors and therapists under health benefit plans

House Bill 2506 requires that health benefit plans include coverage for licensed professional counselors and licensed family therapists acting within their scope of practice. The measure specifies that only persons licensed by the Oregon Board of Licensed Professional Counselors and Therapists may practice "professional counseling" or "marriage and family therapy" and use those terms. An exemption is provided for alcohol and drug counselors acting in their scope of practice.

The Oregon Board of Licensed Professional Counselors and Therapists was created to assist the public by setting education, experience and examination standards for licensed professional counselors and licensed family and marriage therapists, and to investigate complaints against licensees and unlicensed counselors and therapists claiming to be licensed.

Effective date: January 1, 2010

House Bill 2535

Creates a voluntary Charitable Prescription Drug Program in the State Board of Pharmacy

A majority of states have created prescription drug repositories for the purpose of distributing unused prescription drugs to persons of economic need. Some states require that the drugs must have been in the

control of a health care facility or health care professional. The patients or estates of patients, as the owners of their drugs, need to give permission in some states for the drugs to be donated to the repository. States generally prohibit the donation of controlled substances to repositories and that donated drugs must be in the original, sealed packages or unopened single-unit dose packages. Additionally, most states allow the repository site to charge a nominal handling fee to the patients who are the recipients of the donated prescriptions.

House Bill 2535 creates a Charitable Prescription Drug Program within the State Board of Pharmacy for the purpose of distributing donated prescription drugs to needy or uninsured individuals, subject to safety and quality control specifications. The measure stipulates that drugs must be in original, sealed packaging that displays lot number and expiration date, and cannot be accepted if: the expiration date is less than nine months from donation date; if there is any evidence of adulteration or misbranding; or if the drugs belong to certain categories of controlled substances. Additionally, the measure specifies that the pharmacist is to use professional judgment, based upon a visual inspection, to verify compliance. Furthermore, the measure requires that all personal information be removed from labels of donated drugs; that the drugs must be kept in a secure location used exclusively for the program; and that the recipients of the donated drugs sign a form attesting to the various stipulations.

Effective date: June 17, 2009

House Bill 2589

Insurance coverage for hearing aids for children under 18 years of age

Oregon has a newborn screening system for detecting hearing problems in infants. It is estimated that 1,290 children have hearing needs that are not currently being met. There is a direct correlation between hearing and communication, as well as social and cognitive development. Non-disposable hearing aids typically cost between $1,000 and $2,500 each, with additional costs for batteries and ear molds. They usually need to be replaced every two to three years.

House Bill 2589 requires insurers to provide coverage for hearing aids for children under 18 years of age and for persons 18 years and older that are eligible as a dependent under a health benefit plan and enrolled in an accredited educational institution. The measure specifies that hearing aids must be prescribed, fitted, and dispensed by licensed audiologists and approved by licensed physicians. Additionally, the measure establishes a maximum benefit amount of $4,000 every 48 months and prohibits insurers from imposing financial or contractual penalty on audiologist if the insured opts to purchase a hearing aid priced higher than the benefit allowance as long as the insured pays the difference.

Hearing loss in a newborn can be caused by a number of conditions. Some risk factors include: high bilirubin levels, drugs that are toxic to the ears, prolonged mechanical ventilation, conditions relating to low Apgar scores, meningitis, prematurity, and/or low birth weight. Hearing loss can sometimes be inherited in genes passed from the parents to the newborn or be the result of a gene mutation that occurred during fetal development.

Effective date: January 1, 2010

House Bill 2702

Creates seven-member Work Group on Prescriptive Authority for Licensed Psychologists

Currently, to become a licensed psychologist an individual must have a doctoral degree in psychology, which generally requires from five to seven years of graduate coursework in the social and behavioral sciences. Psychologists must also complete a one-year internship and pass a state licensure exam. Patients with mental illness often require psychotropic medications as part of their treatment; such drugs are typically prescribed by a licensed physician. Psychologists cannot prescribe medications to these patients. Proposals have been made in 17 states to authorize specially trained psychologists to prescribe psychotropic medications. To date, two states, New Mexico and Louisiana, have passed such legislation. In the early 1990s, the U.S. Department of Defense (DoD) Psychopharmacology Demonstration Project conducted a pilot demonstration project funded by Congress to train military clinical psychologists in the safe and effective prescription of psychotropic medication, under certain circumstances, to eligible beneficiaries of the military health system. The first participants (licensed psychologists) completed the program in 1994. Since 1991, when the program began, through 1994, 13 psychologists have participated, with 10 having completed the training. In 1997, Congress released a report concluding that while DoD met the mandate to train psychologists to prescribe drugs, and that psychologists demonstrated they can provide this service

with the military health services system, there was no reason to reinstate the demonstration project.

House Bill 2702 creates a seven-member Work Group on Prescriptive Authority for Licensed Psychologists to evaluate, review and develop recommendations for legislative consideration to allow clinical psychologists to be granted prescriptive authority. The measure also specifies membership criteria, directs the activities of the work group, and specifies that the work group submit a report to the Legislative Assembly, or to an appropriate interim legislative committee, by January 31, 2010. The work group is repealed on June 30, 2010.

Effective date: June 25, 2009

House Bill 2794

Health benefit plan coverage of human papillomavirus vaccine

There are more than 100 types of human papillomaviruses (HPV); most are harmless but many cause genital warts and about 30 types cause cancer, most frequently cervical cancer. According to the Department of Human Services, approximately 23,000 Oregon women annually have abnormal pap smears related to HPV infection of the cervix. The HPV vaccine protects females from the four types of HPV that cause 70 percent of cervical cancers and 90 percent of genital warts.

House Bill 2794 requires health benefit plans to provide the human papillomavirus vaccine to female beneficiaries over 11 years of age but not older than 26 years of age.

Effective date: January 1, 2010

House Bill 3022

Expedited partner treatment of sexually transmitted diseases

Sexually transmitted infections are the most common communicable diseases reported in Oregon, representing as much as two-thirds of all reported conditions. Chlamydia is ranked by the Oregon Public Health Association (OPHA) as the most commonly reported disease in the state. Chlamydia and gonorrhea both may produce lifelong pain, disability, tubal pregnancy and infertility in women, as well as increased risks of HIV infection. Studies sponsored by the federal Centers for Disease Control and Prevention found that expedited partner therapy programs significantly reduce the rate of infection and re-infection and increase partner notification and completed partner treatment.

House Bill 3022 authorizes practitioners to prescribe antibiotic drugs to patients for use by the patient, as well as to each sexual partner of the patient, for the treatment of gonorrhea and Chlamydia. The measure authorizes the health professional regulatory boards to adopt rules permitting practitioners to practice this expedited partner therapy. In addition, the measure requires the practitioners to provide informational materials about sexually transmitted diseases to be provided by the Department of Human Services and the specific dosage information for the patient and each partner for whom the medication is prescribed.

Effective date: January 1, 2010

House Bill 3055

Prohibits any person, other than the anatomical gift donor, from revoking the donor's gift as designated on the driver license or state identification card

House Bill 3055 clarifies that an anatomical gift made by a designation on the donor's driver license or identification card is conclusively presumed valid.

The Uniform Anatomical Gifts Act (UAGA) was created in 1968 to apply the same standards for anatomical donations nationwide. UAGA has been amended several times over the years, with the 2006 revisions being the most significant. Under this version, the concept of "first-person consent" was introduced, which states that no other person may revoke or amend an individual's decision to donate his or her anatomical gift of body, body part or organ. The 1987 UAGA purported to adopt that concept through language making an individual's gift "irrevocable," but in practice, some procurement organizations reportedly ignored the wishes of a donor if surviving family members objected.

Except in the case of unemancipated minors, Oregon's Uniform Anatomical Gifts Act currently has language prohibiting survivors from amending or revoking an anatomical gift from the donor, unless they can show a contrary indication by the donor as stated in ORS 97.963 (1).

Effective date: January 1, 2010

House Bill 3103

Recordkeeping requirements for pharmacists; rulemaking for dispensing drugs by vending machines

House Bill 3103 imposes record keeping requirements, to be adopted by rule, for pharmacists to personally possess and/or store drugs within their scope of practice. The measure also removes the current requirement that a practitioner's instruction "to not substitute generic drugs" be in the practitioner's or pharmacist's handwriting and establishes that such instruction may also be conveyed electronically or by telephone and requires that pharmacies continue to post signs relating to the substitution of generic drugs.

Current law prohibits the dispensing of drugs by vending machines; House Bill 3103 authorizes the State Board of Pharmacy to adopt rules approving the dispensing of drugs by vending machines.

Effective date: June 17, 2009

House Bill 3204

Unsupervised practice of dental hygiene by limited access permit dental hygienists

House Bill 3204 modifies qualifications for an authorized limited access permit (LAP) dental hygienist authorized to practice dental hygiene without supervision. Requires 2,500 hours of supervised training, 40 hours of course work in formal, post-secondary accredited educational program, and 500 hours of dental hygiene practice on patients under the direct supervision of member of faculty of a dental program or dental hygiene program with required accreditation. LAPs may render all services permitted under scope of practice of dental hygiene to patients in hospitals, medical clinics, medical offices or offices operated or staffed by nurse practitioners, physician assistants or midwives.

Oregon was one of the first states to recognize the need to utilize dental hygienists to increase access to oral health and that dental hygiene supervision requirements restricted the public's access to preventive dental hygiene services. The state legislatively authorized dental hygienists to provide services in a variety of health care settings without the supervision of a dentist, and in 1997 enacted legislation allowing for a "limited access" dental hygiene permit or LAP. Through that legislation, a dental hygienist certified with a limited access permit is legally allowed to examine the patient, gather data, interpret the data to determine the patient's dental hygiene treatment needs, and formulate a patient care plan. LAP dental hygienists are required to have additional education and clinical practice experience to receive this special permit to provide dental hygiene services without supervision by a dentist. There is currently a shortage of licensed dental hygienists. House Bill 3204 expands the ability of LAPs to provide dental hygiene treatments to underserved Oregonians, especially rural areas and those residents of limited financial means. The measure is intended to reduce some of the barriers that prevent LAPs from providing hygiene treatments to needy Oregonians.

Effective date: June 25, 2009

House Bill 3236

Allows pharmacists to administer vaccines to persons who are at least 11 years of age

Currently, pharmacists are allowed to administer influenza vaccinations and immunizations to persons over 15 years of age if the pharmacist has special accreditation or certification, and to persons 18 or older under all circumstances outlined in ORS 689.645. Oregon now ranks 39th among states for the number of residents who are immunized. Pharmacists presently administer 85 percent of the flu shots in Oregon. Rural areas are commonly underserved by medical personnel who can administer vaccines and immunizations to children.

House Bill 3236 allows pharmacists to administer vaccines to persons who are at least 11 years of age. The measure requires Department of Human Services to adopt rules requiring pharmacists to report information about the administration of vaccines to the immunization registry under ORS 433.094 and specifies that rule adoption becomes operative on January 1, 2011.

Effective date: January 1, 2010

House Bill 3418

Medicaid reimbursement for health care delivered through primary care homes

The "primary care home model" or the "patient-centered medical home" is a team approach of health care delivery where the patient is at the center. Common characteristics of a primary care home include: 1) an ongoing and personal relationship between the physician and the patient; 2) the physician leads a team of

individuals (at the practice level) who collectively are responsible for the patient's care; 3) the physician is responsible for providing and/or arranging comprehensive care to the patient; 4) the patient's care is coordinated and integrated across all facets of the health care system; 5) using electronic medical records and technology to provide evidence-based treatments which improves the quality and safety to the patient; 6) primary care home models, generally have enhanced access to care for the patient (open scheduling, expanded hours, options for communication between patient, physician and staff); and 7) payment that appropriately recognizes the increased value of patients who have a patient-centered medical home.

Currently, primary care providers are paid for each patient visit. Typically, medical providers address specific patient complaints when the patient has an appointment, but may not, for various reasons, address other medical issues.

House Bill 3418 requires the Department of Human Services (DHS) to evaluate the feasibility of implementing a system of reimbursement for health care delivered through primary care homes in the Medicaid program. Additionally, the measure defines primary care home elements, the reimbursement system components (if feasible), and authorizes DHS to develop specified means of payment to improve the current primary care delivery system of managed care capitation rates and fee-for-service. House Bill 3418 directs DHS to apply to Centers for Medicare and Medicaid Services for appropriate waiver to obtain federal funding and authorizes the Department to develop specified means of payment to improve current primary care delivery system.

Effective date: June 25, 2009

Senate Bill 8

Allows volunteer health practitioners to practice in Oregon during an emergency

As demonstrated during the aftermath of Hurricanes Katrina and Rita in 2005 and many other emergencies in the nation's history, volunteer health practitioners are essential to meeting surge capacity in public and private sectors. Underlying the successful deployment and use of volunteer health practitioners during emergencies is the need for a legal environment that supports their efforts. A critical element in responding to emergencies is having trained and qualified surgeons able to enter another state to provide the necessary care when the size and scope of the disaster is such that the local medical community can be overwhelmed or severely incapacitated due to the disaster. Currently, Oregon maintains the SERV-OR state-wide registry system to help pre-credential health care providers and, in 2006, Congress introduced the Uniform Emergency Volunteer Health Practitioners Act, which provides for licensing reciprocity relief from civil liability, and Workers' Compensation protections for "state forces" deployed to respond to emergencies. Senate Bill 8 establishes the infrastructure of credentialing, registry, and deployment of health care practitioners in Oregon during an emergency.

Effective date: January 1, 2010

Senate Bill 9

Removes the sunset requirement that health insurers provide coverage for treatment of inborn errors of metabolism

Senate Bill 9 removes the sunset provision of the Oregon Medical Foods Law, which was established by the 1997 Legislative Assembly and reinstated six years later. Parents of children diagnosed with Inborn Errors of Metabolism were being denied reimbursement from insurers for the medical foods needed to treat these rare conditions. The Federal Drug Administration defines "medical food" as a food which is formulated to be consumed or administered entirely under the supervision of a physician, and intended for the specific dietary management of a disorder. Dietary therapy must be continued throughout life. Oregon was the first state to require screening for Phenylketonuria (PKU), an inherited disorder of metabolism which prevents an individual's body from processing phenylaline, leading to an accumulation in the blood and damage to the brain. Without treatment or prevention, the brain damage is severe and irreversible. By removing the sunset provision established by the 2003 legislation, insurers will continue to provide coverage for treatment of these disorders. Newborn screening in Oregon now allows the pre-symptomatic detection and treatment of over 30 inborn errors of metabolism. For over 46 years the Oregon Public Health Division, in partnership with Oregon Health & Science University has provided early detection, medical consultation, follow-up, and clinical intervention for metabolic disorders to prevent early mortality or lifelong disability.

Effective date: July 1, 2009

Senate Bill 16

Actions that health care representatives may take on behalf of person with dementia executing advance health care directive.

Senate Bill 16 grants authority for a health care representative to consent to hospitalization, not to exceed 18 days, for treatment of behavior caused by dementia, and other actions that may be taken on behalf of person executing advance health care directive, and further specifies that dementia is not mental illness. One component of an advance directive is to appoint a health care representative that is responsible for making decisions on the patient's behalf, and who follows the patient's desires as stated in the advance directive document. Senate Bill 16 adds short-term authorization to the actions that a health care representative may make on behalf of the patient. The goal of short-term hospitalization is to help improve quality of life, decrease anxiety, agitation and usually results in people being safe to live in their communities.

Dementia is the progressive deterioration of intellectual functioning and other cognitive skills that leads to a significant impairment in social or occupational function and that represents a decline from a previous level of functioning. It can cause a person to act in ways that are dangerous to the person or others. The Alzheimer's Association predicts a 33 percent increase in the number of Oregonians with dementia between 2000 and 2010, a 58 percent increase between 2000 and 2020, and a 93 percent increase between 2000 and 2025.

Effective date: June 18, 2009

Senate Bill 24

Insurance coverage for evidence-based telemedicine health services

Senate Bill 24 establishes that telemedicine, defined as communication through a two-way video that allows a health professional to interact with a patient who is at an originating site, be covered by health benefit plans if otherwise covered by the plan. Access to health care providers is one of the major issues that contribute to the health care delivery challenges in Oregon. New approaches to tackle this problem include optimal use of health care provider's workforce, as well as the innovative use of technology. Telemedicine is one of those technological advances that allow a two-way video communication in which the practitioner can directly access and communicate with the patient. The benefits of telemedicine include: increased access to health care services in rural and underserved communities; saved time, travel, and related expenses of going to the physician's office; reduced hospitalization, emergency department visits, critical care transports, and related care costs; and elimination or reduction of duplicate medical testing. The patient information communicated electronically must be medically necessary, evidence-based, not limited to underserved areas or areas where there is a shortage of specialists, does not duplicate or supplant a health service that is available to the patient in person, and meets the terms and conditions of the health benefit plan, including deductible, copayment or coinsurance requirements.

Effective date: January 1, 2010

Senate Bill 158

On-site surveys of licensed health care facilities

The Health Care Licensing and Certification (HCLC) program is responsible for regulating over 500 health care facilities, providers and suppliers in acute care and community-based programs. These include hospitals, home health agencies, ambulatory surgical centers, rural health clinics, special inpatient care facilities, birthing centers, hospices, rehabilitation agencies and clinics, comprehensive outpatient rehabilitation facilities, and community mental health centers.

Senate Bill 158 requires on-site surveys of all licensed health care facilities and agencies at least once every three years, which is the recognized industry standard set by the Joint Commission for the Accreditation of Health Care Organizations. The measure provides HCLC with oversight authority for agencies that provide around-the-clock nursing care in the home and infusion providers that assist individuals in their home with the administration of ongoing intravenous treatment. Also, it aligns the definition of ambulatory surgical centers (ASCs) with the definition of ASCs used by the federal Centers for Medicare/Medicaid Services and charges HCLC with the regulatory oversight responsibility of ASCs.

Further, Senate Bill 158 requires that patients be provided information to assist them in making informed decisions about where to receive care. Health care providers are required to inform a patient if they have a financial interest in the facility where a procedure or treatment will be performed. Also, it requires the

informed consent process to include disclosure about where the patient is to be transferred in the event that complications arise that cannot be dealt with at a non-hospital location.

Effective date: January 1, 2010

Senate Bill 316

Requires health benefit plans to provide coverage of routine costs of care for patients participating in qualifying clinical trials

Currently, insurers are contractually obligated to pay for routine costs of care; however, some health plans do not cover these costs once a patient makes a decision to participate in a qualifying clinical trial. Senate Bill 316 defines clinical trials as a biomedical or health-related research study in human beings that follow a pre-defined protocol. Participants in clinical trials can play a more active role in their own health care, gain access to new research treatments before they are widely available, and help others by contributing to medical research. All clinical trials have guidelines about who can participate, based on such factors as age, gender, the type and stage of a disease, previous treatment history, and other medical conditions, all of which are important in determining if a person is qualified for the study. An insurer that provides coverage is not liable for any adverse effects of the clinical trial. The measure also removes the requirement that the health plan must reimburse health care providers who do not participate in the plan at the same rate as the plan pays participating providers for the same service not delivered in a clinical trial, taking into account copayments, coinsurance or deductibles. Senate Bill 316 further defines "routine costs" to exclude items and services required solely for clinically appropriate monitoring, prevention, diagnosis or treatment of complications arising from the provision of the investigational drug, device or service.

Effective date: January 1, 2010

Senate Bill 327

Eliminates statutory preference for naturally derived pharmaceuticals

The Oregon Board of Naturopathic Examiners has been responsible for regulating the practice of naturopathic medicine since 1927 and practitioners were granted prescribing authority in 1953. Established in 1988, the Oregon Board of Naturopathic Examiners' Formulary Council, comprised of pharmacists, pharmacologists, a medical doctor, and two naturopathic physicians, is responsible for determining what drugs to include, based on its naturally derived structure, in the naturopathic formulary. Currently, there are over a thousand drugs from every major therapeutic category included in the formulary, but precludes several commonly used drugs that are considered "standard of care" in primary care settings.

Senate Bill 327 removes the statutory reference to "naturally-derived" pharmaceuticals which would grant naturopathic physicians prescription privileges commensurate with naturopathic principles and current trainings as primary-care physicians. The measure maintains the authority of the Oregon Board of Naturopathic Examiners' Formulary Council to exclude drugs from the formulary that are not consistent with the naturopathic principles. Currently, there are four other states that permit naturopathic physicians to prescribe all drugs that are used in primary care.

Effective date: June 18, 2009

Senate Bill 355

Requires establishment of an electronic prescription monitoring program

Senate Bill 355 requires the Department of Human Services (DHS) to establish and maintain a prescription monitoring program for monitoring and reporting of prescription drugs, classified in schedules II, III, or IV under the federal Controlled Substances Act, dispensed by pharmacies throughout the state. The measure requires pharmacies, within one week of dispensing prescription, to report to DHS the: (a) name, address and date of birth of the patient; (b) identification of the pharmacy dispensing the prescription drug; (c) identification of the practitioner who prescribed the drug; (d) identification of the prescription drug by a national drug code number; (e) date of origin of the prescription; (f) date the drug was dispensed; and (g) quantity of drug dispensed.

Senate Bill 355 does not require providers to utilize information in the database when making prescribing decisions and a pharmacist may not refuse to fill a valid prescription solely because the pharmacist cannot receive patient information from the prescription monitoring program established at the time the patient requests that the prescription be filled.

The measure also prescribes the conditions when DHS can disclose the information reported and the manner in which the data could be used. DHS may disclose prescription information to a practitioner or pharmacist who certifies that the requested information is for the purpose of evaluating the need for or providing medical or pharmaceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is providing or has provided care. Also, the information may only be disclosed: to a designated representative of DHS or any vendor or contractor with whom DHS has contracted to establish or maintain the electronic system; when a federal, state, or local law enforcement agency has a valid court order; to a health professional regulatory board that certifies that the requested information is necessary for an investigation related to licensure, renewal or disciplinary action involving the applicant, licensee or registrant to whom the requested information pertains; to a prescription monitoring program of another state if the security and privacy standards of the requesting state are equivalent to those of DHS; or for education, research or public health purposes, provided the identity of a patient, practitioner or drug outlet are not provided. In addition to any other penalty provided by law, the Attorney General may impose a civil penalty not to exceed $10,000 for each violation and each improper release of information from the prescription monitoring program.

Senate Bill 355 includes several protections to ensure that patients are notified when there is information entered into the database or when a practitioner searched their records. DHS is required to disclose information relating to a patient maintained in the electronic system at no cost to the patient within 10 business days after the department receives a request from the patient for the information. Also, a patient may request DHS correct any erroneous information about the patient that is in the database.

The measure also establishes an 11-member Prescription Monitoring Program Advisory Commission (PMPAC) within DHS for the purpose of developing a business case and implementation plan for the program including protocols for the access to, and the use of, the data in the prescription drug monitoring database.

Currently, 39 states have enacted legislation requiring prescription drug monitoring programs (PDMPs) and 33 states have operational programs. The objectives of prescription drug monitoring programs (PDMPs) are to help identify and deter or prevent drug abuse and diversion, support access to legitimate medical use of controlled substances, facilitate the identification, intervention with and treatment of persons addicted to prescription drugs, and inform public health initiatives through outlining of use and abuse trends. The National Survey of Drug Use and Health, conducted annually by the Substance Abuse and Mental Health Services Administration, estimates that 228,000 people in Oregon abuse prescription medications each year, including a growing trend of abuse of prescription medications amongst youth in the state, where an estimated 8 percent of 12 to 17 year olds have engaged in non-medical use of pain relievers.

Effective date: July 23, 2009

Senate Bill 556

Requires that certain places of public assembly have automated external defibrillators

An automated external defibrillator (AED) is a portable electronic device that analyzes cardiac rhythm and prompts a user to deliver a shock when necessary. An AED, used under life-threatening situation, requires the user to attach pads to a patient's chest, turn the device on, and follow audio instructions. The AED first looks for a shockable heart rhythm. An AED cannot administer shock unless it has determined the victim's condition requires it; a rescuer cannot accidentally deliver shock. The intent of an AED is to specifically treat abnormal rhythm such as ventricular fibrillation back to normal sinus rhythm. The American Heart Association asserts that an individual's chance of survival decreases by 10 percent for every minute that passes by without such interventions.

Senate Bill 556 requires the owner of a place of public assembly to have on the premises at least one automated external defibrillator (AED). The measure defines a place of public assembly to be a facility that has 50,000 square feet or more of floor space where the public congregates for purposes such as deliberation, shopping, entertainment, amusement or awaiting transportation; or where business activities are conducted. Either type of place is subject to the requirement if at least 25 individuals congregate there on a normal business day. Senate Bill 556 also requires that at least one staff member of the public place or business has been trained on the use of the AED and is present during the hours of operation.

Effective date: January 1, 2010

Senate Bill 605

Allows clinical nurses to delegate non-judgmental dispensing functions to staff assistant

Currently, Certified Nurse Practitioners (CNP) or Certified Clinical Nurses (CCN) must personally hand prescriptions to patients when they are not being dispensed directly by a pharmacy or pharmacist. Senate Bill 605 would amend ORS 678.390 to include prescription drugs dispensing to staff assistants when the accuracy and completeness of the prescription is verified and supervised by the CNP or CCN. The Oregon Board of Nursing and the Oregon Board of Pharmacy jointly grant the privilege of prescription drug writing to nurses upon evidence of completion of a prescription drug dispensing training program. The Medical Practice Act governing physicians contains the specification that "nonjudgmental dispensing functions may be delegated to staff assistants." Senate Bill 605 would add the above mentioned language from the Medical Practice Act to the Nurse Practice Act allowing delegation dispensing functions. The responsibility for educating the patient about their medication, the side effects and how the prescription must be taken, continues to be the responsibility of the CNPs and CCNs.

Effective date: January 1, 2010

Senate Bill 679

Authorizes insurers to pay cash dividends to enrollees who participate in programs to promote healthy behaviors

Senate Bill 679 authorizes insurers to pay dividends in the form of cash to enrollees who participate in a program approved by the insurer that promotes healthy behaviors that are generally defined behaviors that encourage fitness, healthy eating and other activities that are beneficial to good health. Chronic diseases such as heart disease, cancer, lung disease, stroke, and diabetes are among the most serious threats to the nation's health. More than 90 million Americans live with these or other chronic diseases. Unlike many acute illnesses, chronic conditions are generally not caused by infectious agents. Instead, the development of chronic diseases is largely the result of behavioral factors, while genetics and exposure to environmental toxins may influence the development of chronic diseases.

Effective date: January 1, 2010

Senate Bill 734

Smoking cessation programs

Smoking is described as the leading preventable cause of death in the United States. Medical experts indicate that smokers who quit generally live longer and have fewer years living with a disability, on average, than if they continued to smoke. Smoking cessation treatments are varied and may include medication, education, and counseling. Tobacco use cessation treatment is considered the single most cost-effective preventative health care that a person can obtain.

Senate Bill 734 requires health insurers to provide payment, coverage, or reimbursement of at least $500 for tobacco use cessation programs for persons aged 15 years or older. Qualifying programs must be recommended by a physician who follows the United States Public Health Service guidelines, and must include both education and medical treatment components designed to help a person overcome an addiction to nicotine.

Effective date: January 1, 2010

Senate Bill 862

Establishes requirements, approval process, and rules for community-based health care initiative, and local health care coverage program

Multi-share health improvement programs offer successful bridges to assure access to timely, quality, and affordable services for those who do not qualify for Medicaid, yet cannot afford traditional insurance on their own. Senate Bill 862 allows local communities to take proactive steps to reduce the uninsured, and to enhance implementation of community health improvement programs. These community-based programs provide access to health care services through innovative and strategic partnerships and through contributions from the employer, employee and community. The local health care programs emphasize preventive care, health education and empowerment, offering a discount on the cost of coverage if individuals agree to meet with a health coach, and attend wellness courses; the program does not have a pre-existing medical clause. The initiative would include a non-profit corporation governed by a board of directors with representatives of participating health care providers and qualified employers. At least 80 percent of the board members must be a resident of the community they serve.

Effective date: June 23, 2009

LEGISLATION NOT ENACTED

House Bill 2376

Manufacturers of pharmaceuticals and other medical products reporting requirement

House Bill 2376 would have required manufacturers of pharmaceuticals and other medical products to report to the Department of Justice (DOJ) gifts, fees, payments, subsidies or other economic benefits the manufacturer provides to purchasers, providers or dispensers of the manufacturer's drugs in Oregon. The measure specified that no gifts shall exceed $100/annually. Additionally, the measure required DOJ establish a searchable database and website for the public to search the database. The Department would have also been required to report to the Legislative Assembly and the Governor on the information received and on any enforcement actions taken.

According to the National Conference of State Legislatures, five states (California, Maine, Minnesota, Vermont, and West Virginia) and the District of Columbia have enacted legislation regulating pharmaceutical marketing and advertising practices, including the banning of industry gifts to prescribers, and requiring drug and device manufacturers to publicly disclose any permitted financial relationships with physicians and other health care providers.

Beginning in January 2009, the Pharmaceutical Research and Manufacturers of America (PhRMA) implemented a revised Code of Interaction with Health Care Providers. Two of the several changes include: prohibits the distribution of non-educational items (such as pens, mugs, and other "reminder" objects that generally contain logos) to health care providers and their staff; and prohibits company sales representatives from providing restaurant meals to health care professionals, but does allow the representatives to provide occasional meals in health care professionals' offices in conjunction with informational presentations. Industry representatives have indicated that state legislation is unnecessary in light of the efforts made by individual companies, trade groups and medical institutions. Key stakeholders agree in principle on the goal of greater transparency of the relationships between physicians and drug and device manufacturers, but discussions focus on the methods chosen to achieve this goal.

House Bill 2468

Drug manufacturers to file annual report on compensation given or paid to physicians and nurse practitioners

House Bill 2468 would have required drug manufacturers to file annual reports with the State Board of Pharmacy listing the compensation given or paid to physicians and nurse practitioners, and that the report be a public record.

According to the National Conference of State Legislatures, five states (California, Maine, Minnesota, Vermont, and West Virginia) and the District of Columbia have enacted laws affecting pharmaceutical marketing and advertising practices. Some state laws require drug companies to report physician payments. Others limit gifts to $25 or $50 a year, and Massachusetts is weighing a complete gift ban. Topic papers can be found at: http://www.ncsl.org/programs/health/drugbill08.htm

In 2008, Pharmaceutical Research and Manufacturers of America (PhRMA) adopted a revised code that redefined the category of educational and gift items company representatives could give to health care professionals. The PhRMA fact sheet can be found at:

http://www.phrma.org/files/Marketing%20and%20Promotion%20Facts_071108_FINAL.pdf

House Bill 2598

Establishes Human Stem Cell Research Committee

Stem cells are cells that have potential to develop into many different cell types in the body. Serving as a sort of repair system for the body, they can theoretically divide without limit to replenish other cells for as long as the person or animal is still alive. When a stem cell divides, each "daughter" cell has the potential to either remain a stem cell or become another type of cell with a more specialized function, such as a muscle cell, a red blood cell, or a brain cell.

House Bill 2598 would have created the Human Stem Cell Research Committee within the Department of Human Services. The measure: 1) delineates the number of members to be appointed by the Governor, their term of office, the areas they will represent and other organizational rules; 2) requires the committee to study the nature of informed consent and provide recommendations to the Governor; 3) defines procedures and guidelines for the conduct of stem cell research; 4) establishes the Human Stem Cell Research Grant Fund,

defines its rules and makes it separate and distinct from the General Fund; 5) defines when the crime of reproductive cloning is committed and defines terminology; 6) further defines violations and penalties associated with reproductive cloning; and 7) delineates effective dates of various sections of the measure.

House Bill 2924

Provides Oregon-grown produce to low-income seniors

The Oregon Farm Direct Nutrition Program (FDNP) is a state-administered federal nutrition program that provides funds for low-income, nutritionally at-risk pregnant women and young children enrolled in the Women, Infants and Children (WIC) program and for eligible low-income seniors (identified as receiving Medicaid and/or food stamps). Eligible clients receive these funds in the form of checks to spend at Oregon farmer's markets and farm stands, specifically to purchase locally grown fresh fruit and vegetables from authorized farmers. The program runs from June 1 through October 31 each year.

House Bill 2924 would have appropriated $400,000 from the General Fund to the Department of Human Services (DHS) for the purpose of providing fresh, Oregon-grown fruits, vegetables and cut herbs from farmer's markets and roadside stands to low-income seniors under the FDNP and to eligible individuals through the WIC program.

House Bill 2974

Increases minimum age to legally possess tobacco products to 21 years of age

House Bill 2974 would have increased the minimum age for tobacco possession from 18 years to 21 years of age. An individual under the age of 21 would be prohibited from buying, smoking, chewing, or otherwise possessing tobacco products unless: the individual: is in a private residence in the presence and has the permission of a parent or guardian or under the supervision of a person at least 21 years of age; or is attempting to purchase tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to persons under 21 years of age.

The measure would have designated the possession of tobacco by an individual under 21 as a Class D violation and distribution of tobacco products to a person under the age of 21 as a Class A violation, punishable by a fine up to $100.

The American Lung Association estimates that at least 4.5 million adolescents between the ages of 11 – 17 years are cigarette smokers and approximately 90 percent of adult smokers started smoking before the age of 21. Several states have enacted age-related tobacco legislation to limit the availability of tobacco products to a demographic that is vulnerable to the initiation of smoking behavior. In Alaska, New Jersey, and Utah, the minimum age for sale of tobacco products was increased to 19 years of age. House Bill 2974 would have made Oregon the first state in the nation to ban tobacco possession among individuals younger than 21 years of age.

House Bill 3274

Authorizes a state-operated medical marijuana facility

Currently, Oregon Medical Marijuana Program (OMMP) cardholders are required to provide the address of where his or her marijuana will be manufactured or produced, known as a "grow site." The program will only register one grow site per patient and will only register grow sites based in Oregon. A cardholder, or their designated primary caregiver, can collectively possess up to six mature plants, 18 seedlings or starts, and 24 ounces of usable marijuana. The patient can only give excess medical marijuana to another patient who is a cardholder, and a caregiver may transport medical marijuana that a patient is giving to another patient. The OMMP does not provide cardholders with information on how to obtain and/or grow marijuana, or starter seeds or kits.

House Bill 3274 would have directed the Department of Human Services (DHS) to establish and operate a marijuana production facility that produces all marijuana used by registry identification cardholders, and distribute marijuana produced at the facility to pharmacies for the purpose of dispensing to OMMP cardholders and designated primary caregivers. In addition to ensuring the facility is secure, the department would have been required to establish recordkeeping procedures for tracking medical marijuana products from the facility to the end user that are consistent with federal and state guidelines, and ensure compliance with federal Food and Drug Administration regulations for botanical pharmaceutical production. 92.5 percent of generated revenue must have been deposited into the Marijuana

Production Facility Fund (established to pay for operational costs), five percent to the county in which the facility is located, and 2.5 percent of the revenue to the municipality closest to the facility.

The measure would have exempted pharmacists who are compliant with the measure's provisions and related administrative rules from Oregon's criminal laws related to possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element. A tax of $98 would have been imposed on each ounce of usable marijuana provided to a cardholder or their designated primary caregiver. The tax was to be paid and collected in full when the usable marijuana is dispensed by the pharmacy; in turn, the pharmacy must hold the collected tax in trust until paid to the Department of Revenue.

Senate Bill 388

Establishes new limits for maximum allowable amounts of medical marijuana

Senate Bill 388 would have allowed medical marijuana cardholders to have no more than 24 ounces of usable marijuana, of which, no more than two ounces may be in the form of hashish and food or tincture that incorporates marijuana and hashish. Medical marijuana cardholders and primary caregivers for patients with medical marijuana cards would have been permitted to possess a four-month supply of food that incorporates marijuana or hashish and supply of tincture made from marijuana or hashish.

The measure would have reduced the amount of marijuana that the responsible party for a grow site can possess to 24 ounces, but would permit a responsible party to store marijuana for registered marijuana cardholders, who are unable to store it at their residences.

Also, Senate Bill 388 would have required the Department of Human Services (DHS) to develop an Oregon Medical Marijuana Asssociation (OMMA) manual. The manual would have described the rights and obligations of the registry identification cardholders, designated primary caregivers, and individuals responsible for grow sites. All applicants for a registry identification card would have been required to state in the application that they have read and understand the contents of the manual.

Housing

2009 SUMMARY OF LEGISLATION

House Bill 2135

Residential property smoking policies

House Bill 2135 requires that rental agreements include information on whether smoking is allowed, prohibited, or allowed only in specific areas of the rental property. The measure exempts owner-occupied mobile homes and houseboats.

Multi-unit housing is one of the few remaining indoor places in Oregon where nonsmokers are inadvertently exposed to secondhand smoke. According to the California Division of Occupational Safety and Health, tobacco smoke has been demonstrated to move through light fixtures, through ceiling crawl spaces, and in and out of doorways. The Public Health Division of the Department of Human Services reports that exposure to secondhand smoke is responsible for 800 deaths annually in Oregon, and can contribute to lung cancer, heart disease and respiratory disease.

A recent market study in the Portland metropolitan area showed that three-quarters of renters would prefer to live in housing that is smoke-free, but that only 20 percent of rental properties had a no-smoking rule. More than half of those surveyed indicated they would be willing to pay higher rent to live in a smoke-free building. In requiring landlords to disclose the smoking status of rental housing, House Bill 2135 will inform individuals signing rental agreements whether they may be exposed to secondhand smoke, in turn allowing renters to make informed decisions.

Effective date: January 1, 2010

House Bill 2613

Provision of utility services to tenants

House Bill 2613 specifies that a landlord may not charge tenants more for utilities or services than the service provider or utility charges the landlord. The measure was introduced in part as a response to a situation in Medford where a mobile home park landlord paid a commercial rate for electricity, but was required by rule to charge tenants the residential rate for electricity, which was higher.

Effective date: June 17, 2009

House Bill 3450

Requires rental properties be equipped with carbon monoxide detectors

Carbon monoxide is a deadly, colorless, odorless, poisonous gas. It is produced by the incomplete burning of natural gas and other materials containing carbon, including coal, wood, kerosene, propane, and gasoline. Carbon monoxide is found in combustion fumes produced by cars and trucks, stoves, lanterns, gas ranges and heating systems. Common sources of carbon monoxide poisoning include: cars, trucks, or other engines left running in garages; improperly installed or malfunctioning fuel-burning appliances in homes; and when fuel-burning heating systems and appliances are used during cold weather, when doors and windows are closed.

According to the Centers for Disease Control and Prevention (CDC) carbon monoxide is the leading cause of unintentional poisoning in the United States. The CDC estimates that carbon monoxide poisoning claims 500 lives and injures 20,000 annually and the Oregon Poison Center recorded 291 carbon monoxide poisonings, including four deaths, in 2008. Currently, 22 other states have requirements for carbon monoxide detectors in residences.

House Bill 3450 defines carbon monoxide sources and requires rented single or multi-family properties with one or more such sources to have properly functioning carbon monoxide detectors in all sleeping areas by April 1, 2011. In addition, the measure prohibits transfer of title for single family dwellings or multi-family housing containing carbon monoxide sources unless there are properly functioning carbon monoxide detectors for all sleeping areas.

Effective date: June 25, 2009

Senate Bill 772

Revises landlord-tenant laws related to manufactured dwelling parks and marinas

Senate Bill 772 makes numerous changes to the laws governing landlords and tenants in manufactured dwelling parks and marinas. It allows a landlord to convert the utility and service billing method for dwelling park tenants and prescribes the procedures for that conversion. It also requires that a landlord make the utility billing records from a preceding year available to a

tenant. The Oregon Housing and Community Services Department (OHCSD) is directed to adopt rules and appoint an advisory committee to assist in implementation of the registration and continuing education requirements for manufactured dwelling park landlords. The measure also specifies that landlords must register annually and assesses a $25 annual registration fee. It also requires that OHCSD create a civil penalty schedule for noncompliance and increases the maximum civil penalty for violation of the registration or continuing education requirements from $500 to $1,000, allowing a lien against the park if the civil penalty assessment is not paid within 90 days. Senate Bill 772 also allows for a temporary occupancy agreement between a landlord and a tenant and specifies the conditions, limitations and contents of that agreement. The measure expands the rights of tenants to place political signs in or on their rented spaces, and eliminates the right of a landlord to control the character of the sign.

Effective date: January 1, 2010

Senate Bill 952

Requires notice to tenants of properties in foreclosure

The number of foreclosures in Oregon has spiked during the last several years, concurrent with a nationwide increase in foreclosures. Nationally, the Mortgage Bankers Association estimates that one in five foreclosures involves a rental home. As an increasing number of investment properties go into foreclosure, it impacts the persons who are renters on those properties; many face eviction and possible homelessness as a result of such foreclosures. Tenants generally have lower incomes and fewer resources on which to rely than do homeowners when they lose their housing. In addition, foreclosure can impact neighborhoods by evicting paying tenants, and vacant properties can deteriorate due to neglect, vandalism and lack of maintenance, resulting in reduced values for nearby properties.

Current law does not take into account the interests of legitimate tenants in the foreclosure process. Senate Bill 952 specifies that tenants in good standing are to receive advance notice of foreclosure proceedings, and requires that such notices contain specific information about their rights as tenants. The measure also allows tenants with fixed-term leases to remain on the property following the foreclosure sale for up to 60 days, or until their current lease expires, except in cases where the purchaser of the foreclosed property intends to live on the property, in which case the tenant is guaranteed at least 30 days notice. Tenants receiving notice of foreclosure are allowed to apply any pre-paid security deposits toward ongoing rent obligations, thereby relieving the purchaser of the property of any obligation to return the security deposit. Finally, Senate Bill 952 clarifies that the new owner of the property, following foreclosure, does not become a "landlord" unless they accept rent from the tenant(s), enter into a new rental agreement, or fail to terminate the tenancy as provided by the measure.

Effective date: August 23, 2009

LEGISLATION NOT ENACTED

House Bill 2905

Establishes a Poverty Solution Fund

The community action agency network, established under the federal Economic Opportunity Act of 1964, is responsible for providing federal antipoverty programs in Oregon, including the Community Services Block Grant, Low Income Energy Assistance Program, State Department of Energy Weatherization Program and such others as may become available. The funds for these programs are distributed to the community action agencies by the Oregon Housing and Community Services Department (OHCSD) in consultation with the Community Action Directors of Oregon. The funds provide a variety of services, including emergency rent assistance, veterans housing and disaster relief, based upon the needs of the local community.

In areas not served by a community action agency, funds other than federal community services funds may be distributed to and administered by organizations within OHCSD to serve the antipoverty purpose of the community action agency network.

House Bill 2905 would have established a Poverty Solution Fund with the moneys appropriated to the Housing and Community Services Department, for distribution to the community action agency network to provide antipoverty services.

Human Services

2009 SUMMARY OF LEGISLATION

House Bill 2052

Procedures for establishing community residences for individuals under jurisdiction of Psychiatric Security Review Board

House Bill 2052 requires that public agencies inform a community's local public safety coordinating council when the agency intends to site a residence in that community for individuals under the jurisdiction of the Psychiatric Security Review Board (PSRB). The measure also amends the statutory duties of public safety coordinating councils to require that, in cases where such a residence is to be sited in the community, the council form a subcommittee to review related proposals from public agencies.

Governor Kulongoski's Public Safety and Human Services advisors convened the Psychiatric Security Review Board Siting Work Group in April 2008, consisting of members of the Governor's staff, legislators, and representatives from law enforcement, the judicial system, local governments, providers and consumers. As part of its findings, the work group noted the lack of sufficient local community involvement in the facility siting process, lack of data about PSRB and siting programs, and a lack of understanding between PSRB, providers and local law enforcement about how to manage and respond to on-site safety issues and incidents.

Effective date: January 1, 2010

House Bill 2442

Establishes the Quality Care Fund

The Department of Human Services (DHS) Seniors and People with Disabilities Division serves over 15,000 seniors and people with disabilities each month in nursing facilities and community-based care facilities, as well as an additional 5,000 children and adults with developmental disabilities in foster care or residential facilities.

In the fall of 2007 a report by the Oregonian detailed the high incidence of abuse and neglect in Oregon's long-term care system. The report estimated that one in five adults with developmental disabilities in the residential care system had been victims of serious cases of neglect or abuse since 2000, many more than once. Nationwide, 80 percent of adult women with developmental disabilities become victims of rape or sexual assault.

House Bill 2442 establishes a Quality Care Fund and designates moneys from the fund to DHS for training, technical assistance, quality improvement and licensing of long-term care facilities. Additionally, the measure creates reporting requirements for individuals receiving developmental disability services and notification requirements for cases when DHS substantiates an abuse allegation. It also requires criminal background checks for employees of facilities and for certain individuals paid directly or indirectly by public funds. Finally, the measure requires DHS to establish procedures for abuse investigations and increases fees and civil penalties for long-term care facilities, with additional revenues to be deposited in the Quality Care Fund.

Effective date: July 28, 2009

House Bill 3041

Establishes a pilot project for the purpose of assisting Oregon federal Head Start program providers to adopt and implement health literacy program

Health literacy can be defined as the ability of an individual to understand information given to them by health care providers, educational materials accompanying over-the-counter medications, or prescription bottle labels, and the ability to process this information to care for themselves, their families, those under their care, and to access the health care system in an appropriate and responsible manner. Parents of children in Head Start Programs often suffer from low health literacy, which can place additional pressure on the health care system.

House Bill 3041 allows the Oregon Department of Education (ODE) to establish a pilot project for the purpose of assisting federal Head Start program providers in Oregon with adopting and implementing a health literacy program that empowers consumers of health care to better communicate with health care professionals and to more effectively seek appropriate levels of care. Additionally, the measure allows ODE to select one or more providers to participate in the project and allows them to provide assistance by seeking contributions of funds and assistance from the U.S. Government and facilitate communication among the providers regarding the adoption and implementation of a health literacy program. Furthermore, the measure allows ODE to use funds for the administration of the pilot project and credit the funds to the pilot project. House Bill 3041 repeals the pilot project upon the convening of the next regular biennial legislative session.

Effective date: June 25, 2009

House Bill 3065

Allows for non-cash benefits for recipients of Oregon Supplemental Income Program moneys

House Bill 3065 allows the Department of Human Services (DHS) to provide non-cash benefits to individuals who receive assistance through the Oregon Supplemental Income Program (OSIP). The measure changes DHS's authority to administer the program in order to allow OSIP to operate more efficiently for individuals who receive OSIP benefits.

OSIP provides small cash payments or special need allowances to needy individuals who are 65 years of age or older, blind, or disabled. DHS provides cash payments through monthly or annual checks, most commonly in the amount of $1.70 per month or $20.40 annually; individuals who are blind receive an additional monthly payment of $25. The costs of printing, mailing, tracking and other administrative work related to the checks exceed the amount of program benefits received. There are approximately 200,000 OSIP checks issued biennially, at a cost of around $1.01 million in General Fund revenues. Many of the checks are never cashed.

House Bill 3065 would enable DHS to reduce its administrative costs by redirecting the cash benefits to other, more meaningful assistance such as Medicare prescription co-pay coverage, emergency assistance, or transportation services payments.

Effective date: January 1, 2010

House Bill 3471

Procedures for intercountry adoptions of children in state custody

The Department of Human Services (DHS), Children, Adults, and Families (CAF) Division provides child protective services, foster care services and adoption services through the Office of Safety and Permanency for Children for children who come into state custody because of a parent's conduct or inability to parent safely. In situations where children cannot be safely returned to the care of their parent, DHS tries to place children for adoption with a relative in Oregon, in other states, or in other countries.

Oregon does not place a large number of children in international adoptive placements; DHS will make international placements as required by federal law. Between 1999 and 2008, DHS placed 27 children for adoption outside the United States, most commonly with relatives.

House Bill 3471 requires specific safeguards be in operation with another country before Oregon places a child for adoption in that country. The measure requires that DHS enter into an agreement or arrangement with the United States Department of State to carry out the requirements in the Intercountry Adoption Act of 2000 and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

In addition, House Bill 3471 requires that DHS receive written reports from the country receiving the child from Oregon for adoption and requires specific minimum standards regarding visits by that country with the child, prospective adoptive parents, their home, and with other persons living with the child or other persons who have information about the child and may not be living with the child.

Effective date: June 24, 2009

Senate Bill 161

Licensing and regulation of hospice programs

The licensing of health care facilities and health care agencies is the statutory responsibility of the Health Care Licensure and Certification (HCLC) program in the Public Health Division of the Department of Human Services (DHS). Hospice agencies provide services to terminally ill individuals or those who have a life expectancy of six months or less, primarily in in-home settings. These outpatient hospice services have not been licensed by the state, but instead certified and accredited through two non-state organizations: the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and Oregon Hospice Association (OHA).

Concerns were raised after the passage of Senate Bill 16 (2007), which allowed a hospice program to be considered licensed by the state if it is certified by the Centers for Medicare and Medicaid Services and accredited by either the OHA or JCAHO, and that the state unconstitutionally delegated the government's authority to JCAHO or OHA because they are not governmental organizations. Senate Bill 161 addresses the constitutional concern by shifting the regulatory oversight of hospice agencies to DHS, within a state agency, where HCLC will be responsible for coordinating oversight.

Senate Bill 161 establishes the authority of DHS to license all hospice programs in the state and to adopt

rules regarding requirements, qualifications and fees for licensure of hospices. The measure directs DHS to conduct inspections at least once every three years and allows the agency to impose civil penalties on the facility if found to be in violation of the terms of conditions of licensure.

Effective date: July 23, 2009

Senate Bill 177

Classifications and regulation of social workers

The State Board of Clinical Social Workers regulates licensed clinical social workers (LCSWs) and clinical social work associates (CSWAs) who voluntarily become licensed as either LCSWs or CSWAs. Currently, the Board licenses about 3500 practitioners at the Master's level, and estimates that at least 50 percent of the practitioners with a Masters in Social Work are not regulated by the State. Those who chose to be licensed by the Board have title protection, permitting them to refer and advertise themselves as CSWAs or LCSWs. The system of voluntary licensure in Oregon permits a person to practice any form of social work, at any level, including clinical social work, which can involve assessments and therapy services, without licensure or penalties from the Board for not having a license. Unlicensed individuals are prohibited from holding themselves out as licensed by the Board and from using one of the two protected titles. This makes Oregon one of seven states in the nation that does not protect against the unlicensed practice of social work.

Senate Bill 177 creates additional title protections for non-clinical social workers by adding new voluntary licenses for non-clinical registered baccalaureate social workers (RBSWs) and licensed master social workers (LMSWs) and authorizes the Board to collect application fees and licensure/registration renewal fees from RBSWs and LMSWs. The measure exempts non-clinical practitioners who provide services and are licensed or certified by the State of Oregon. The measure also requires individuals practicing clinical social work to be licensed by January 1, 2011.

In addition, Senate Bill 177 expands sanction authority by the Board of Clinical Social Workers by allowing the Board to maintain jurisdiction over revoked licensees and increases civil penalty to a maximum of $3,000 per violation and $5,000 for title act/unlicensed practice violations. Finally, the measure changes the name of the State Board of Clinical Social Workers to the State Board of Licensed Social Workers.

Effective date: January 1, 2010

Senate Bill 287

Licensing of residential facilities

Residential facilities in Oregon serve people with physical and developmental disabilities, seniors, and people who receive mental health and addiction services and support. The licensing process for residential facilities, as currently defined in ORS 443.420, requires that an applicant: 1) must demonstrate an understanding and acceptance of applicable rules; 2) must be mentally and physically capable of caring for residents; and 3) must employ only individuals whose presence does not jeopardize the health, safety, and welfare of residents.

As the licensing agent for residential facilities, the Department of Human Services (DHS) is not authorized to consider prior or current operating history in other facilities in Oregon or in other states and can only revoke or suspend a license at one residential facility at a time, though the provider may be licensed for other facilities.

Senate Bill 287 establishes a fourth qualification for a person seeking initial licensure as a residential training or treatment facility or adult foster home by requiring that an applicant seeking licensure demonstrate compliance with the rules governing these facilities and provides DHS with the authority to deny, suspend, revoke or refuse to renew license for additional facilities licensed to a provider.

Effective date: January 1, 2010

Senate Bill 735

Authority of Oregon Prescription Drug Program administrator

The Legislative Assembly authorized the creation of the Oregon Prescription Drug Program (OPDP) with the passage of Senate Bill 875 (2003). The program launched in March 2005 and subsequently joined with Washington's prescription drug program in July 2006 to form the Northwest Prescription Drug Consortium. The program was expanded to all Oregonians by voters in November of that year, and in Spring of 2007 the Legislative Assembly opened the pool to all Oregon businesses, labor organizations and the uninsured. The program is administered by the Oregon Department of

Administrative Services.

All Oregon residents are eligible to join the discount part of OPDP if they are uninsured or underinsured; there are no age requirements. Businesses that offer employees a prescription drug benefit may also join the pool. Participants benefit from competitive pricing, a transparent pharmaceutical purchasing arrangement and financially backed performance guarantees.

Senate Bill 735 modifies the provisions of the administrator of the Oregon Prescription Drug Program to allow them to perform any of the functions of the program including, but not limited to, contracting.

Effective date: June 23, 2009

Senate Bill 911

Establishes rules on securing community housing facilities under the jurisdiction of the Psychiatric Security Review Board

Senate Bill 911 requires the Department of Human Services to adopt rules that provide minimum security, health and safety standards, emergency preparedness plan, training standards for staff, and ensure compliance with any orders of the court, when securing residential treatment homes or facilities for persons found by the courts to be "guilty except for insanity," and under the jurisdiction of the Psychiatric Security Review Board (PSRB). The Department is responsible for securing facilities that house individuals who, as a condition of their release, are required to live in a secure home located in various communities throughout Oregon. This measure is critical in creating an environment of trust between government and local communities, when placements of individuals under the jurisdiction of the PSRB are housed in Oregon neighborhoods.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2391

Education and assistance programs for vulnerable individuals

House Bill 2391 would have directed the Department of Human Services (DHS) to establish an education and assistance program aimed at seniors, persons with disabilities, volunteer caregivers and persons approaching retirement who may be at risk of becoming impoverished and/or relying on public assistance. The measure established program guidelines for providing information, counseling and services related to health care, long-term care, benefit and financial assistance programs, financial planning, and emergency and volunteer services. DHS was to report to the Legislative Assembly on implementation through January 2010, and was appropriated $30 million to implement the program.

While the nation's aging population is on the rise, Oregon's population is aging faster than the national average; by 2025, one-fifth of Oregonians will be over the age of 65. DHS estimates that 11,000 individuals lived in community-based care in 2008, with an additional 11,000 relying on some form of in-home care. Community-based care facilities, such as adult foster homes and assisted living facilities are moving away from accepting Medicaid due to lower rates of reimbursement, potentially leaving Medicaid clients requiring long-term care with no other option except to enter more expensive facilities.

House Bill 2391 was developed in response to a stakeholder work group formed following the passage of Senate Bill 1061 (2008). That work group recommended providing assistance to individuals prior to the need for Medicaid and was designed to be the first step in stabilizing community-based, long-term care.

Senate Bill 702

Classification of home care workers

Senate Bill 702 would have revised the definition of "home care worker" to clarify that the term also applies to individuals who are paid in whole or in part by the Department of Human Services (DHS), an area agency on aging or any other public agency, provided the

individual is registered with the Home Care Commission. The measure required that DHS keep and maintain the names and addresses of home care workers until July 1, 2013. In addition, the measure specified that DHS could not reduce the amount of funds available to a person with a disability to purchase home care services and products to offset any increased cost of home care services related to wage or benefit increases secured by home care workers through a collective bargaining agreement.

The Home Care Commission was created with the passage of Ballot Measure 99 (2000). The measure amended the Commission into the Oregon Constitution for the purpose of ensuring quality home care services for the elderly and the disabled. The Commission works to improve the quality of home care in Oregon by developing programs that provide training for care providers, providing clients and their family members with access to a registry of home care workers and by providing access to respite care.

Insurance

2009 SUMMARY OF LEGISLATION

House Bill 2433

Extension of health insurance benefit eligibility to former employees of small entities

House Bill 2433 extends, from six months to nine months, eligibility for health insurance benefits for former employees of entities with fewer than 20 employees. Sixty-five percent of the cost of the extension is to be subsidized through the federal American Recovery and Reinvestment Act (ARRA) of 2009. Employees of entities with 20 or more employees will receive the same extension under the Consolidated Omnibus Budget Reconciliation Act (COBRA). In order to qualify, the job loss must be involuntary and not as a result of gross misconduct; the former employer must also still be in business and still offering a group health plan, and the applicant must have a modified gross income of less than $125,000/year for full subsidy, or less than $145,000/year for partial subsidy.

Under current law, Oregonians who lose their jobs have two options to continue eligibility for health benefits under their group plan. If their former employer had 20 or more workers, they are eligible under COBRA; if their former employer had fewer than 20 workers, they are eligible under Oregon's continuation law. ARRA provides a 65-percent subsidy to extend coverage from six to nine months. Extension of benefits can be particularly important for individuals with an existing condition that disqualifies them from individual coverage.

Effective date: April 28, 2009

House Bill 2755

Requires a study of reinsurance alternatives for individual and small employer group health insurance markets

House Bill 2755 directs the Department of Consumer and Business Services (DCBS) and the Office for Oregon Health Policy and Research (OHPR) to conduct a study of reinsurance alternatives for individual and small employer group health insurance markets. The measure directs the agencies to submit a status report on the study by October 1, 2010 and to submit the report with recommendations for legislation to the Legislative Assembly by December 1, 2010.

Reinsurance is a means by which an insurance company can protect itself against the risk of losses. Individuals and corporations obtain insurance policies to provide protection for various risks. Reinsurers, in turn, provide insurance to insurance companies and to self-insured entities. The main use of any insurer that might practice reinsurance is to allow the company to assume greater individual risks than its size would otherwise allow, and to protect a company against losses. Reinsurance allows an insurance company to offer higher limits of protection to a policyholder than its own assets would allow. In protecting insurance companies from the higher losses, reinsurance provides a means for insurance companies to keep their premiums lower. The goal of studying a single-state reinsurance program or other mechanisms to spread the risk of the high-end health care costs is to reduce the overall costs of health insurance premiums in Oregon.

Effective date: January 1, 2010

Senate Bill 973

Revisions to life settlement insurance regulations

Senate Bill 973 revises life settlement insurance regulations. Life settlement agreements involve the sale of an existing life insurance policy before death for an amount that is generally more than the cash surrender value, but less than the net death benefit. The insured consumer agrees to transfer the policy to a third party for the benefit of an immediate payment to the insured. Senate Bill 973 defines the parameters and reporting requirements for life settlement providers, brokers, producers and agents. Senate Bill 973 prohibits, with limited exceptions, entering into a life settlement contract for five years after the issuance of a life insurance policy. The measure also prohibits a stranger-originated life insurance (STOLI) practice or plan. STOLI is the initiation or issuance of a life insurance policy for the benefit of a person who has no insurable interest in the insured at the time of policy creation. The insured consumer generally has no control over the policy.

Senate Bill 973 specifically prohibits a person convicted of a felony involving dishonesty or breach of trust from engaging in the business of life settlements. It requires a person engaged in the life settlement business to inform the Department of Consumer and Business Services (DCBS) of suspected or known fraudulent life settlement acts. The measure specifies numerous disclosure and recordkeeping requirements of life settlement providers, brokers, or investment agents. It also replaces a prohibition on related-party, life settlement transactions with a requirement that the relationship be disclosed, and limits the frequency of times an insured person

may be contacted for the purpose of determining the insured's health status.

Senate Bill 973 also requires that an insurance company notify a policy holder, in cases where the insured person is at least 60 years of age or older and the company receives notice of a request to surrender (either in whole or in part) an individual policy, when an owner requests an accelerated death benefit under an individual policy, or when the company sends an owner notice of a lapse in an individual policy (other than a term policy). The measure outlines required information to be included in the notice, such as the policy owner's right to seek advice from professional advisers regarding life insurance and financial planning. Senate Bill 973 also directs DCBS to develop public information designed to educate consumers on their rights as the owner of a life insurance policy.

Senate Bill 973 clarifies that the enforcement, penalty and private right-of-action provisions in the measure do not alter the period of policy incontestability and designates violation of the measure's provisions an unlawful trade practice.

Effective date: January 1, 2010

Judiciary

- Civil
- Criminal

Judiciary - Civil Law

House Bill 2264

Civil actions for defrauding state agencies

House Bill 2264 creates a civil cause of action for defrauding a state agency. The measure, which is intended to address problems ranging from contractors submitting fraudulent invoices to patients or providers submitting improper Medicaid claims, authorizes the Attorney General to file a civil action against a person who knowingly presents a false claim for payment. The state can recover all damages plus a penalty equal to $10,000 or twice the amount of damages, whichever is greater.

Funds for prosecuting these violations are to come from an existing Department of Justice Consumer Protection Account in the General Fund, and moneys recouped are continuously appropriated to that account. The law is modeled after the federal False Claims Act; 28 states have similar acts.

Effective date: January 1, 2010

House Bill 2272

Medical support clauses in child support orders

House Bill 2272 mandates that every child support order must include a medical support clause. The measure prohibits requiring a parent to provide health care coverage if the parent's disposable income is less than 150 percent of the federal poverty guidelines. It also requires the Department of Justice (DOJ) to develop a medical support notice form and clarifies that a last-issued child support judgment does not supersede an earlier support order unless it specifically states that it does. Finally, House Bill 2272 allows a party to appeal a support order if the party's income is equal to or less than Oregon minimum wage for full-time employment.

Under current law, whenever a child support order is entered or modified, a court or the Support Enforcement Division of the department issuing the order must order one or both parents to provide health care coverage. House Bill 2272 is designed to both clarify when and how health care coverage is to be provided and to better conform state law to federal requirements.

Effective date: January 1, 2010

House Bill 2303

Protections under the Servicemembers Civil Relief Act

House Bill 2303 allows a soldier, sailor, marine, member of the Air Force, or member of the National Guard or Reserves on active duty to notify a creditor or a person suing the servicemember that the individual is on active duty and protected by the Servicemembers Civil Relief Act (SCRA). The measure allows the service member to obtain attorney's fees and damages if the servicemember notifies a party at least 30 days prior to the commencement of legal action that the servicemember is protected by the SCRA. House Bill 2303 allows the defendant to avoid attorney fees by remedying within 20 days the violation before the commencement of a lawsuit. The meaure requires the servicemember to give the other party a general description of the violation. The measure applies only to conduct that occurs after the effective date of the Act. Actions under the measure are exempted from court-ordered arbitration.

The Servicemembers Civil Relief Act provides a wide range of protections for individuals entering military service and to those on or being called to active duty. The Act postpones or suspends certain civil obligations to enable servicemembers to devote their full attention to duty and to relieve stress on family members of deployed servicemembers. For example, a credit card company cannot charge a soldier on active duty more than six percent interest on credit card debt, nor may it assess penalties or late fees. However, some businesses ignore the SCRA and charge interest in excess of what the law allows. Soldiers in such cases are left with the option of retaining an attorney to enforce their rights under the SCRA, or paying what is not legally owed.

Effective date: May 8, 2009

House Bill 2584

Right of indirect purchasers to bring antitrust lawsuits

House Bill 2584 allows a plaintiff to bring an antitrust lawsuit if plaintiff is an indirect purchaser. The measure allows a Department of Justice lawsuit to be deemed superior to a private plaintiff's suit, if the department files an action within thirty days on behalf of the same class of people.

House Bill 2584 is a response to the 1977 U.S. Supreme Court case Illinois Brick Co. v Illinois, which restricted antitrust lawsuits to plaintiff's who had directly

purchased from the defendant. In 2001, Oregon, like 23 other states, expanded the ability to bring a lawsuit on behalf of indirect purchasers, but Oregon restricted that law to consumers represented by the Attorney General. The measure expands the ability to bring the lawsuit to any indirect purchaser, including businesses, not just consumers, and allows private plaintiffs to bring the suit subject to the Attorney General having priority if the Attorney General represents the same group of people.

Effective date: January 1, 2010

House Bill 2585

Repeals prohibitions on class actions for unlawful trade practices

House Bill 2585 repeals the prohibition on class actions for unlawful trade practices, the Truth in Lending Act, and similar lawsuits. It applies retroactively unless a judgment was entered before the date of enactment.

Oregon's Unlawful Trade Practices Act allows a plaintiff to recover minimum damages of $200 if a plaintiff can prove that they have been damaged as a result of willful fraudulent activities. The minimum amount, sometimes referred to as "liquidated damages" is established by statute because small damages are often difficult to quantify and a lawsuit based on proving the actual damages would cost more than a plaintiff could recover. There are other minimum damages allowed in law, for example, the federal Truth in Lending Act allows for minimum damages in lieu of proving actual damages.

Oregon Rules of Civil Procedure ORCP 32 K prohibited class actions for statutory minimum penalties. Class actions are lawsuits brought on behalf of a class of people and are often brought as a group because the harm to each individually is not great enough to pursue a lawsuit. ORCP 32 K is unique to Oregon and two other states: Iowa and North Dakota.

House Bill 2585 removes ORCP 32 K, thereby allowing class action suits on actions that are based on the minimum statutory damages, such as the Unlawful Trade Practices Act and the Truth in Lending Act. The House Judiciary Committee amended the original bill to require that plaintiffs prove members of the class have suffered an ascertainable loss as a result of reckless or knowing use of an unlawful practice.

Effective date: June 25, 2009

House Bill 2827

Extends statute of limitations for actions based on child abuse

Under current law, in order to bring an action for child abuse that occurred when the victim was under the age of 18, the victim must bring the action before turning 24 years old, or within three years of discovering the causal connection between the injury and the abuse. This can leave a victim who did not experience emotional fallout from abuse until years later without any civil recourse against the offender.

House Bill 2827 extends the statute of limitations for an action based on child abuse. The measure provides that an action must commence before the victim reaches age 40 or within five years from the date the victim discovers the causal connection between the injury and the abuse, whichever is longer. House Bill 2827 applies retroactively unless judgment entered.

Effective date: January 1, 2010

House Bill 3111

Award of attorney fees in unlawful trade practice actions

House Bill 3111 changes the award of attorney fees in unlawful trade practice actions from the prevailing party to the prevailing plaintiff. The measure allows a defendant to recover attorney fees if a court finds there was no objectively reasonable basis for bringing the lawsuit.

Under the Unlawful Trade Practices Act (UTPA), the Oregon Attorney General has broad powers to bring a lawsuit for actions such as employing unconscionable tactics in connection with the sale, rental or other disposition of real estate, goods or services, or in the collection or enforcement of an obligation, or in failing to deliver all or any portion of real estate, goods or services as promised. Private parties can sue for only the many actions listed in ORS 646.608 such as passing off real estate, goods or services as those of another. Current law states that a court may award reasonable attorney fees to the prevailing party. House Bill 3111 limits the attorney fee award to the prevailing plaintiff unless the court finds that plaintiff had no objectively reasonable basis for bringing the action.

House Bill 3111 recognizes that consumers bringing a case under the UTPA cannot afford to take the risk that they might have to pay the defendants attorney fees. Oregon, Alaska and Florida are the only three states

where consumers might have to pay attorney fees for cases brought in good faith.

Effective date: January 1, 2010

Senate Bill 277

Access to toilet facilities for persons with qualifying medical conditions

Senate Bill 277 requires a place of public accommodation to allow a customer with an eligible medical condition to use a toilet facility under certain conditions. The measure requires the person requesting the use of a toilet facility present a letter from a medical provider or national organization indicating that they suffer from the eligible medical condition. Public accommodations are shielded from liability for use of facilities. The measure designates violations as a Class D violation with a maximum fine of $90.

Almost two million Americans suffer from some form of inflammatory bowel disease. Senate Bill 277 is patterned after Illinois' Restroom Access Act, also known as Ally's Law. Ally's Law was enacted after 14-year old Ally Bain, a victim of Crohn's disease, testified before the Illinois Legislature about her experience when she was denied access to an employee restroom. Similar legislation has passed in eight states, including Texas and Minnesota, and is pending in at least 10 other states. Under the terms of the measure, "eligible medical condition" includes the use of an ostomy device or diagnosis of Crohn's disease, ulcerative colitis or any other medical condition that can cause a person to require access to a toilet facility without delay.

Effective date: January 1, 2010

Senate Bill 284

Increases statute of repose for product liability actions

The statute of ultimate repose is the date after which a lawsuit based on a product defect can no longer be brought. This is a different time frame than the statute of limitations which is based on the date of harm or the date of discovery of the harm.

Oregon's current law bars plaintiffs that are harmed by products that were bought more than eight years before the harm. Plaintiffs with such cases may bring the lawsuit in the state where the product was manufactured which often has a longer statute of repose.

Senate Bill 284 increases the statute of ultimate repose for product liability actions, including wrongful death, from the current eight years to either 10 years or the statute of ultimate repose of the state in which the product was manufactured or from which it was imported, whichever is later. Senate Bill 284 also clarifies that manufactured homes are not products and therefore not subject to this law. Physicians are also exempted unless they are involved in the design or manufacture of the product.

In response to testimony from school teachers who were harmed by defective halide or mercury vapor lights, the measure applies retroactively to remove any statute of repose for that group. In other cases, the measure applies to actions arising after January 1, 2010.

Effective date: January 1, 2010

Senate Bill 306

Increased demand limits

Senate Bill 306 increases the demand limit amount of small tort actions from $5,500 to $7,500, with an additional increase to $10,000 in 2012. The measure increases demand limit for small contract actions from $5,500 to $10,000 and changes the required notice to defendants from 10 days to 30 days for small torts and to 20 days for small contracts. It also adds information that a plaintiff must provide in the notice to the defendant in tort actions including medical records and property damage records if applicable. Plaintiffs must provide this documentation to insurer, if known, and must continue to provide such information until litigation. The measure applies to actions filed after the effective date of the act; however, the cause of action may be before, on or after the effective date.

The Legislative Assembly enacted ORS 20.080 and ORS 20.082 to encourage out-of-court settlements and to assist people with small claims in order to allow them to enforce valid claims without paying attorney fees. Currently, ORS 20.080 allows an attorney to make a demand of $5,500 or less to the at-fault party. If there is no offer, or a low offer, the attorney and his client may, within 10 days of the notice, file the case in court. If the jury awards any more than was offered by the at-fault party, the plaintiff wins and attorney fees can be assessed against the at-fault party.

Effective date: January 1, 2010

Senate Bill 311

Tiers for damage caps under Oregon Tort Claims Act

The Oregon Tort Claims Act was called into question in late 2007 by the case Clarke v OHSU, which held that the current caps on public liability were unconstitutionally inadequate in a case against the employees of Oregon Health and Science University (OHSU). An interim task force was appointed to work on this issue. Senate Bill 311 was the main result of the task force; two other bills, Senate Bill 302 and Senate Bill 305, raised ancillary issues primarily of concern to local governments that did not pass in the 2009 session.

Senate Bill 311 provides for two different tiers of damage caps, depending on the defendant. The larger limit is for the State of Oregon, Oregon Health and Science University, the State Accident Insurance Fund (SAIF) and the Oregon Utility Notification Center. The lower limits apply to all other public entities.

Tier One (includes State of Oregon, OHSU, SAIF and the Oregon Utility Notification Center)

Increases the per claim damage limits from the current $200,000 to $1.5 million. This number increases by $100,000 each year until 2015. Increases the per occurrence limits from the current $500,000 to $3 million. This number increases by 200,000 each year until 2015.

Tier Two (includes all other public entities)

Increases the per claim damage limit from the current $200,000 to $500,000 for all other public entities. This number increases by $33,333 per year until 2015. Increases the per occurrence damage limits to $1 million. This number increases by $66,666 per year until 2015.

Senate Bill 311 also increases all property damage limits from the current $50,000 per claim to $100,000 per claim and $500,000 per occurrence.

After 2015, the measure utilizes an escalator based on the Portland-Salem Oregon-Washington Consumer Price Index for All Urban Consumers up to three percent each year. An escalator for property damage begins in 2010.

Senate Bill 311 also removes the distinction between economic and non-economic damages. The measure creates a Tort Claims Task Force to revisit the issue of tort liability of public bodies to convene in the year 2014. It also allows direct appeal to the Supreme Court for challenges to the constitutionality of the damage limits.

Finally, Senate Bill 311 applies retroactively to causes of action against the State of Oregon, OHSU, SAIF and the Oregon Utility Notification Center from December 28, 2007.

Effective date: July 1, 2009.

Senate Bill 561

Codifies conflict laws related to torts

Senate Bill 561 makes Oregon only the second state to codify its conflict laws relating to torts. The measure creates statutory guidelines for deciding which state's law applies in tort and other non-contractual claims involving more than one state.

Across the country, the traditional common law rule of applying the law of the state where the tort occurred has given way to a variety of balancing tests to determine which state has more of an interest in the claim. Practitioners describe the state of current case law as "puzzling" and find it difficult to discern any bright-line rules.

The Oregon Law Commission drew on the Dean of the Willamette University Law School, Symeon Symeonides, for expertise in this area, along with plaintiffs and defense lawyers, to codify existing Oregon case law, filling in gaps where needed from other states and from prevailing jurisprudence. The statute includes general rules, special rules and some escape provisions where parties can demonstrate need for special application. In 2001 the Law Commission led a similar work group to codify Oregon's conflict laws relating to contracts, which is reportedly working well.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2802

Increased noneconomic damage cap

House Bill 2802 would have increased the $500,000 noneconomic damages cap on wrongful death and other statutorily created torts to $1.5 million. The measure indexed the cap based on the Oregon-Washington Consumer Price Index for All Urban Consumers starting in 2010. Applies to causes of action before, on or after the effective date. Effective 91 days after sine die.

ORS 31.710 currently contains a cap of $500,000 on noneconomic damages (such as pain and suffering) on any civil action, except for torts against public bodies under the Oregon Tort Claims Act and workers' compensation. The Oregon Supreme Court struck down the statutory cap on noneconomic damages in Lakin v. Senco Products, Inc. (1999) as it applied to common law claims for bodily injury, holding that the cap violated the right to a jury trial under the Oregon Constitution. The Lakin case did not affect wrongful death and other statutorily related torts.

Judiciary - Criminal Law

House Bill 2426

Increases penalties for driving while under the influence of intoxicants at higher levels

House Bill 2426 increases the minimum fine for persons convicted of driving under the influence of intoxicants (DUII) with a blood alcohol content (BAC) level of .15 percent or greater. The measure sets the minimum fine at $2,000.

The National Highway Transportation Safety Administration (NHSTA) provides grant funding to the Oregon Department of Transportation Safety Division's Impaired Driving Program. During the past few years NHSTA has revised its criteria for awarding grants; one of the new requirements is the implementation of a "high risk drivers" program, which specifies higher penalties for operating a vehicle with a BAC of 0.15 or above.

Effective date: January 1, 2010.

House Bill 2441

Convictions based solely on defendant confession

House Bill 2441 allows a conviction for a sex crime based solely on the defendant's confession if the victim is a vulnerable person and if the court finds the confession trustworthy. The measure requires the prosecution to file notice of intention to rely on confession alone within 60 days of arraignment, or defendant's entry of an initial plea, unless court finds good cause.

Under current law, confessions alone are not sufficient to prove the commission of a crime. The state must show other evidence of a crime such as physical evidence, a bruise on the victim, or testimony of the victim. However, the very young, the elderly and mentally disabled often lack the mental capacity to testify and often there is no physical evidence of a crime. Thus, even with a credible confession, there cannot be a conviction. House Bill 2441 allows for a conviction based solely on a trustworthy confession in sex crimes only.

Effective date: January 1, 2010

House Bill 2796

Prohibits setting aside convictions for criminally negligent homicide

House Bill 2796 prohibits setting aside a conviction for criminally negligent homicide.

In 2003 the Legislative Assembly reclassified criminally negligent homicide, ORS 163.145, from a Class C felony to a Class B felony. A person convicted of a Class C felony, other than criminal mistreatment or a sex crime, after three years from the date of the conviction, may ask the court to set aside the conviction. Class B felonies may not be set aside. House Bill 2796 prohibits a court from setting aside the conviction of person convicted of criminally negligent homicide when the crime was categorized as a Class C felony.

Effective date: January 1, 2010

House Bill 2874

Assertion of right to a speedy trial

House Bill 2874 allows victims to assert right to a speedy trial. The measure also provides, however, that a victim's right to speedy disposition of a case does not supersede a defendant's constitutional right to due process.

Defendants in criminal cases have a right to a speedy trial. House Bill 2874 grants victims the right to a speedy trial and provides that the remedy is to have a trial set with all practicable speed. However, the measure clearly states that the victim's right to a speedy trial does not impinge upon the defendant's constitutional rights, both under the U.S. Constitution and the Oregon Constitution, to a speedy trial or to due process.

Effective date: January 1, 2010

House Bill 3263

Eliminates statutes of limitations for certain crimes

In 2007, the Legislative Assembly took the first steps toward eliminating statutes of limitations in cases where DNA sample was taken at the time of the offense and, at a later point, the offender is identified on the basis of that sample. House Bill 3263 eliminates the statute of limitations for any of the following in the first degree: rape, sodomy, or unlawful sexual penetration of sexual abuse if the defendant is identified through DNA testing. The changes make it possible for a prosecution to be commenced at any time after the commission of the crime.

Effective date: January 1, 2010

House Bill 3271

Elevated penalties for harassment

House Bill 3271 elevates the penalties for harassment from a Class B misdemeanor to a Class A misdemeanor if: the perpetrator had a previous conviction for harassment and the victim is the same as in the original offense or a family member of the victim of the original offense; the victim is protected by a stalking order; the victim is under 18 years of age and is more than three years younger than the perpetrator; or the perpetrator threatened to kill the victim or a family member. The measure also clarifies that the crime occurs either in the county where the threat originated or was received.

In addition, House Bill 3271 creates the crime of aggravated harassment, which involves knowingly propelling saliva, blood, urine, semen, feces or another potentially dangerous substance at a staff member defined under ORS 163.165 (corrections officer, youth authority staff member or volunteer) or public safety officer (emergency medical technician, firefighter, parole or probation or police officer). The offense is punishable as a Class C felony.

House Bill 3271 also creates the crime of aggravated driving while suspended or revoked defined as causing the serious injury or death of another person while having a suspended or revoked license resulting from a criminal offense. The offense is designated a level seven on the sentencing grid.

Lastly, House Bill 3271 extends the amount of time a county or city has to seek reimbursement from a person committed to a local correctional facility from one year to six years.

Effective date: January 1, 2010

House Bill 3508

Revises Ballot Measure 57 (2008)

House Bill 3508 phases in the implementation of Ballot Measure 57 (2008), with full implementation postponed until January 1, 2012. The measure does not impact offenders that have already been sentenced. Measure 57 still applies to those committing aggravated theft or aggravated identity theft on the elderly, those who sell significant quantities of a controlled substance or those who sell to a minor. House Bill 3508 increases earned time from 20 percent to 30 percent for nonviolent offenders; the increase sunsets in four years. The measure also directs the Oregon Criminal Justice Commission to study the impact of increased earned time on public safety. Under the measure, judges are allowed to impose no more than 60 days of incarceration in jail upon a defendant who has violated his or her probation. A person's probation may be reduced for good behavior, but not to exceed 50 percent of the person's probation time. The measure reduces the term of active post-prison supervision and probation, and allows for an extension of post-prison supervision and a return to active supervision status. The measure streamlines the commutation process for inmates subject to a U.S. Immigration and Customs Enforcement Order who are incarcerated for a nonviolent felony and who have agreed not to object to deportation. The penalty for possession of a controlled substance is reduced from a Class B or Class C felony to an Class A misdemeanor if the amount possessed is under a gram and if the person is a first-time drug offender. Sunsets these provisions on July 1, 2011.

House Bill 3508 expands the offense of kidnapping I to include kidnapping a person under the age of 12 with the purpose of committing a Class A felony sex offense. It elevates assault in the third degree to a Class B felony if the offense was committed with a motor vehicle while the defendant was driving under the influence of intoxicants; such an assault is further elevated to a class B felony only if the conduct results in serious physical injury. The measure creates crime of felony strangulation and adds felony strangulation to the list of crimes in ORS 131.125 that have extended statutes of limitations.

House Bill 3508 states that after a decision by the State

Board of Parole and Post-Prison Supervision not to grant parole to an inmate, a subsequent parole hearing may not be held sooner than two years after denial and not later than ten years from that date if the prisoner is sentenced to life, sentenced as a dangerous offender, or is sentenced for a crime committed prior to November 1, 1989, unless the extended period would exceed the maximum sentence, less good time credits. House Bill 3508 allows an inmate to petition for an earlier hearing. The measure requires the board to issue a final order when denying an inmate a parole hearing within two years and to issue findings of fact and conclusions of law with the order.

House Bill 3508 requires the State Police to develop a targeted enforcement program using Department of Transportation accident data for the purposes of improving public safety. It appropriates $8,088,305 in order to hire 39 additional state troopers, 20 of whom will be hired in August 2009 and 19 in October of 2009.

Effective date: July 1, 2009

House Joint Memorial 22

Requesting passage of the Local Law Enforcement Hate Crimes Prevention Act

House Joint Memorial 22 condemns acts of violence committed against individuals because of their sexual orientation, gender identity or other personal characteristics and calls on public institutions to remain vigilant against such acts of violence. The measure also asks Congress to pass, and the President of the United States to sign, the Local Law Enforcement Hate Crimes Prevention Act to help state and local jurisdictions to investigate and prosecute bias-motivated violent crimes committed on the basis of race, color, religion, national origin, gender, sexual orientation, gender identity or disability.

The Local Law Enforcement Hate Crimes Prevention Act, also known as the "Matthew Shepard Act," was named for a student at the University of Wyoming who was tortured and subsequently murdered near Laramie, Wyoming in October 1998. Shepard was targeted by his assailants because of his sexual orientation. The Act was first introduced during the 107th Congress in 2001, and is currently under consideration by the 111th Congress.

Filed with Secretary of State on June 19, 2009

Senate Bill 107

Interstate compact for juvenile offender and runaway supervision

Senate Bill 107 joins Oregon to the new interstate compact for the supervision of juvenile offenders and runaways. The compact applies to juveniles and runaways traveling across state lines. It makes Oregon part of the Interstate Commission that will manage and regulate the interstate supervision of juvenile offenders.

Oregon is currently a member of an interstate compact that regulates the interstate supervision of juvenile offenders and juvenile runaways. Oregon has been a member of the compact since 1959; however, the compact is designated to expire in December 2009.

Effective date: August 4, 2009

Senate Bill 233

Enables crime victims to exercise constitutional rights

Senate Bill 233 creates the statutory framework for victims to exercise their constitutional rights as victims. These rights are set forth in Sections 42 and 43, Article I of the Constitution of the State of Oregon. The measure authorizes the Attorney General to adopt rules to establish non-judicial process to determine if violations have occurred and make nonbinding recommendations for achieving full compliance with victims' rights laws in the future.

By approving Ballot Measure 40 in 1996, Oregon voters enacted a comprehensive and far-reaching series of amendments to Oregon's Bill of Rights, particularly related to crime victims and criminal defendants. The measure was subsequently found to be unconstitutional by the Oregon Supreme Court on the grounds that it contained two or more amendments to the Constitution (Armatta v. Kitzhaber, 1998). Since then, the Legislative Assembly has referred seven individual amendments to voters related to crime victim rights; four have been approved, three rejected.

Effective date: May 26, 2009

Senate Bill 309

Electronic recording of interviews connected to crimes

Senate Bill 309 requires electronic recordation of a custodial interview conducted by a law enforcement agency in a law enforcement facility if the interview is in connection with certain crimes. The measure does not apply to statements made before a grand jury, in open court, a custodial interrogation conducted in another state in compliance with the laws of that state, a custodial interrogation conducted by federal law enforcement in compliance with the laws of the United States, a spontaneous statement of the defendant, or if good cause is shown for not electronically recording. Senate Bill 309 defines "good cause" to include refusal of the defendant to have the interrogation recorded, the equipment malfunctioned, or recording would jeopardize the safety of any person or the confidentiality of an informant. Unrecorded statements may be allowed into evidence, but the judge must give the jury instructions concerning the fact that the statement was not recorded. Senate Bill 309 requires the state to provide the defendant with an electronic copy of the statement, but not a written transcript of the tape. The measure allows the recordation into evidence in any pre-trial or post-trial proceedings. It defines law enforcement facility as a courthouse or a building where a police or sheriff's office is located. The measure does not apply to police departments of five or fewer sworn officers.

Effective Date: January 1, 2010

Senate Bill 310

Preservation of DNA evidence for profiles

As technology has improved, DNA has become an ever more important piece of evidence in criminal cases, both for conviction and exoneration. There are currently laws that provide for the collection and retention of DNA, as well as laws providing a framework for when and how DNA may be used. However, Oregon lacks a uniform provision requiring courts and law enforcement agencies to preserve physical evidence containing DNA so that it may be tested in the future.

Senate Bill 310 requires law enforcement agencies to preserve biological evidence in an amount sufficient to develop a DNA profile in cases involving aggravated murder, murder, manslaughter I and II, criminally negligent homicide, aggravated vehicular homicide, and sex crimes. The measure does not require that physical evidence be preserved if the evidence is of such a size as to make retention impracticable.

Effective date: June 24, 2009

Senate Bill 570

Record keeping requirements for scrap metal businesses

Senate Bill 570 requires scrap metal businesses to create and maintain certain records pertaining to the purchase and transfer of metal property. It requires payment for all metal property to be in the form of a check mailed to the seller's home address. The measure creates a process for scrap metal businesses to retain metal property suspected to be lost or stolen. It requires consignment and secondhand stores to comply with the measure's provisions. Immunity is provided for landowners in cases where an injury or damage occurs as a result of theft of metal property.

Senate Bill 570 creates the misdemeanor crimes of unlawfully altering metal property; making a false statement on a metal property record; unlawfully purchasing or receiving metal property and unlawfully possessing metal property. Scrap metal businesses must wait three business days before mailing payment for scrap purchased and must report to law enforcement within 24 hours any purchase of metal property that the person knows or has reason to know is the subject of theft.

Senate Bill 570 also requires auto dealers, towers and dismantlers to comply with recording requirements in the event they buy private metal property (catalytic converters not attached to a vehicle) or other metal property not attached to a vehicle. The measure adds forestry and logging equipment into the definition of "commercial metal property." Finally, the measure requires the information regarding an individual's criminal history be provided to scrap metal businesses in writing or electronically by law enforcement.

Effective date: January 1, 2009

Senate Bill 728

Classification of controlled substances

Senate Bill 728, formerly Senate Bill 285, directs the State Board of Pharmacy to classify marijuana as a Schedule II - V controlled substance. The measure also requires the State Board of Pharmacy to classify methamphetamine as a Schedule I controlled substance, except that if methamphetamine has a currently accepted

medical use, it will be classified as a Schedule II. Classification must occur no later than 180 days after effective date. The measure increases to a Class C felony the penalty for unlawfully manufacturing or delivering a Schedule IV controlled substance if the substance plays a substantial role in the death of any person.

Schedule I drugs have a high tendency for abuse and have no accepted medical use. This schedule includes drugs such as marijuana, heroin, ecstasy and LSD. Schedule II drugs also have a high tendency for abuse, but may also have an accepted medical use, and may produce dependency or addiction with chronic use. Schedule II drugs include cocaine, opium, morphine, amphetamines and methamphetamines. Schedule III drugs have less potential for abuse and a currently accepted medical use, may lead to moderate or low physical dependence or high psychological dependence; Schedule IV drugs have low potential for abuse, a currently accepted medical use, and little dependence; Schedule V drugs have low potential for use, a currently accepted medical use, and limited dependence potential.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2344

Law enforcement control of sexually explicit materials

Currently the state is required to provide discovery, such as photographs and video recordings, to the defense in all criminal cases. District attorneys and victims have the right to petition the court for a protective order regarding sexually explicit materials; however, this order does not prevent the materials from being reproduced as part of the discovery process. During that process, materials may be reproduced and given to defense attorneys, defense experts and the defendant. As a result, the victim's privacy may be impacted.

House Bill 3244 would have required the state to make sexually explicit materials "reasonably available" to defendants, defense attorneys and defense experts. "Reasonably available" meant providing those individuals ample opportunity to inspect, view and examine the materials, but no opportunity to reproduce them.

House Bill 2727

Prohibits the release of records of concealed handgun licenses

House Bill 2727 would have prevented the release of information identifying the holder or applicant for a concealed handgun license (CHL). The measure authorized disclosure pursuant to court orders or for criminal justice purposes. The exemption was to be placed into the public records statute ORS 192.502 and would have only been released upon a showing of clear and convincing evidence that the public interest requires disclosure. The measure allowed a CHL holder to request notification from the sheriff if there was a records request for the holder's permit. The custodian of records was to consider any information the holder provides prior to making the decision to release the holder's information.

Labor and Employment

2009 SUMMARY OF LEGISLATION

House Bill 2203

State eligibility for federal stimulus moneys

House Bill 2203 conforms ORS chapter 657 (unemployment) with the Federal Unemployment Tax Act (FUTA). The changes were necessary in order to qualify for the full amount of federal unemployment stimulus moneys available under The American Recovery and Reinvestment Act of 2009 (ARRA). Examples of statutory changes include changing the criteria for domestic violence which constitutes good cause to leave work and modifying the definition of "dislocated workers" who may be entitled to benefits. The measure also expanded benefit eligibility to claimants who had exhausted current extended benefits for one or more weeks of unemployment during the period from February 22, 2009 through December 26, 2009.

The measure also establishes that in cases of conflict between ORS chapter 657 and another ORS chapter, unemployment law would prevail, and clarifies the definition of "subject wages" necessary to re-qualify for unemployment benefits.

The enactment of House Bill 2203 made Oregon eligible for the remaining two-thirds of the $85 million available to the state from the federal stimulus provisions of the ARRA.

Effective date: May 21, 2009

House Bill 2298

Calculations related to donated leave

Oregon employers are required to grant leaves of absence to employees who are in the military and called into active service by the Governor. House Bill 2298 expands this requirement to include military members who are called into service by the Adjutant General with approval of the Governor. Examples of active duty ordered by the Adjutant General include support operations for approved counterdrug operations, such as carrying out federal asset forfeiture laws; serving on special duty such as court-martial and efficiency boards; and drill exercises.

Employees are able to receive donated leave from other employees to supplement any compensation received as a military member, but cannot receive more than the amount they would have earned in base salary during the same period. House Bill 2298 changes the statutory maximum cap to the employee's total compensation. The measure requires "total compensation" for state and local government employers to be calculated by including any amounts attributable to overtime hours that equal the average number of overtime hours for the same employee class (similarly situated employees whose positions have been designated by their employer in a policy or a collective bargaining agreement as having common characteristics), and determining the average number of overtime hours for an employee class based upon a reasonable expectation of the average number of overtime employees in that class would perform over the course of a calendar year.

Effective date: January 1, 2010

House Bill 2398

Establishes the Career Readiness Certification program

ORS 660.300 to 660.339 provides the general statutory framework and authority for workforce development issues in the State of Oregon. House Bill 2398 supplements this framework by establishing the Career Readiness Certification (CRC) program, which will certify workplace and college readiness skills programs by participating educational institutions and career centers.

Program services can be offered through public high schools, community colleges, local and regional career centers, and education service districts. Examples of services that a program must provide include assessment of proficiency levels of participants in work-ready skills; target instruction and remedial skills training to provide work-ready skills in which participants are not proficient; issuing a career readiness certificate to participants who demonstrate proficiency; and an online database that serves as a depository for data, provides employers with access to information to determine the proficiency level of individual participants and to locate certified individuals on a statewide or regional basis, and provides participants the opportunity for activities such as career exploration and job searches or to opt out of the database altogether.

Additional programs under the CRC include a summer work program and a program to make grants to pilot projects that promote hands-on experience and education in the fundamentals of architecture, the construction trades and engineering to high school juniors and seniors. Pilot projects are to be based upon collaborative efforts between local workforce development stakeholders, such as educational institutions and business and labor organizations. The summer work program is subject

to the availability of funds from the federal Workforce Investment Act, and must provide "meaningful summer work experience" for individuals between the ages of 14 to 24 and meet the requirements for funding under the Act. Funded programs must include representatives of the business community in the planning, implementation and evaluation process; can be for both private and public sector employment; and must be managed by local workforce investment boards that coordinate with regional state-sponsored youth work experience programs.

The Oregon Department of Community College and Workforce Development is directed to submit an annual report on program outcomes and recommendations for improving and funding the CRC to both the Governor and appropriate interim legislative committees by December 1st. The department is also directed to work in collaboration with the Oregon Employment Department and the State Workforce Investment Board to develop and implement a demand-driven, skills-based integrated workforce development system focused on skills and talent development.

Effective date: July 28, 2009

House Bill 2420

Expands list of diseases covered by firefighter presumption

Current workers' compensation law establishes a presumption of any disease of the lungs or respiratory tract, hypertension, or cardiovascular-renal disease for firefighters. In order to qualify for the presumption, the claimant must have completed at least five years of employment as a firefighter and must have taken a physical examination, either upon becoming a firefighter or subsequently after their employment, that failed to show any evidence of the affliction being claimed. Once the presumption is established, the burden is on the employer to prove that the disease is not work-related.

House Bill 2420 expands the types of cancer covered under the existing presumption to include brain, colon, stomach, testicular, prostate, throat, mouth, rectal, and breast cancers; multiple myeloma; non-Hodgkin's lymphoma; and leukemia. The measure covers non-volunteer firefighters, defined as one who performs firefighting services and receives either a salary or wages equal to or greater than Oregon's minimum wage, who or receives other compensation minus lodging/housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel (i.e. payments for on-call time).

Effective date: January 1, 2010

House Bill 2501

Base pay arbitration calculation for Oregon State Police troopers

While most collective bargaining units are allowed to strike after completing prior steps of the bargaining process in good faith and giving proper notification, some bargaining units are prohibited from striking and must resolve differences via binding interest arbitration under the state's Public Employee Collective Bargaining Act (PECBA). Oregon State Police (OSP) troopers are one of the groups of employees who are strike-prohibited.

Prior to the arbitration hearing, unresolved mandatory subjects submitted to the arbitrator in the parties' "last best offer" packages shall be decided by the arbitrator, who base their findings and opinions on statutory criteria. The fifth of these criteria is the "comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities." The definition of "comparable" is currently limited to communities of the same or near the same population within Oregon. House Bill 2501 requires the arbitrator to use the base pay for city police officers employed by the five most populous cities in Oregon (currently, Portland, Eugene, Salem, Gresham, and Hillsboro) when determining "comparable" compensation for OSP troopers.

Effective date: January 1, 2013

House Bill 2540

Revises statutes related to unemployment insurance for musicians

ORS 657.506 defines the treatment of musicians for the purposes of calculating and paying unemployment insurance (UI) taxes. The statute establishes that a person or organization that hires the services of a musician is considered the musician's employer, unless a written contract designates one or more of the musicians who sign the contract as responsible for filing UI tax reports and payments. The statute establishes that, without the clause in the written contract, the person or organization engaging the musician is responsible for paying the musician's UI taxes for performed services at the venue. The current law has caused confusion in part because of

the existence of third party booking agents and a lack of clarity of the status among musicians playing a particular engagement.

House Bill 2540 repeals the current statute regarding musicians and UI taxes, but does not exempt musicians from being subject to UI tax unless they are excluded under ORS chapter 657 as independent contractors. The measure also does not change the UI tax treatment related to musicians engaged by non-profit organizations, Native American tribes, and governmental agencies.

Effective date: April 28, 2009

House Bill 2744

Leave for spouse of a military member

Between 300 and 500 Oregon National Guard (ORNG) citizen-soldiers return on a monthly basis from service in Iraq or Afghanistan. Estimates are that the majority of the ORNG force is married. Oregon law does not currently provide for leave from employment for military spouses to allow them to spend time with their serving spouse prior to deployment or redeployment.

House Bill 2744 requires an employer with at least 25 employees to provide, during a period of military conflict, up to 14 days unpaid leave to an employee who is a spouse of a member of the armed forces, the National Guard, or military reserve, prior to the member being deployed or redeployed to active duty. The measure applies to half- or full-time employees, and establishes that the failure to grant leave or the discrimination against the spouse is an unlawful employment practice.

The measure is similar to legislation passed in Washington State in 2008, which provides either 15 days of unpaid leave to the spouse of an active military member who is either deployed or on leave for deployment; and extends the amount of time to 21 days for spouses of Washington Natural Guard or Reserve members.

Effective date: June 25, 2009

House Bill 2778

Identifying light duty jobs for injured state workers

Under Oregon's workers' compensation system, an injured worker must be reinstated to their former position if it still exists, the attending physician approves the worker to return to work, and the worker can fully carry out the responsibilities of that position without further injury. The right to reinstatement can be denied for reasons such as being eligible for, and participating in, vocational assistance and refusing a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

Statutes that generally apply to injured worker reinstatement and reemployment also apply to state employees. While Oregon has established policies that allow injured workers who work at state agencies to return to light duty assignments while recuperating, or to be reemployed in another suitable job if they cannot return to their job, these policies are not formally established in administrative rule.

House Bill 2778 directs the Personnel Division of the Department of Administrative Services to adopt, by rule, a process for identifying entry level and light duty assignments that an injured worker can perform. The measure only applies to the state's Executive Branch.

Effective date: July 1, 2009

House Bill 2826

Modifies allowable hours of work for minors

The Bureau of Labor and Industries (BOLI) has the statutory authority to regulate working conditions for minors under the age of 18 years working in Oregon. Minors are generally protected by the same employment laws that protect adults, including minimum wage and overtime laws. In most circumstances, a minor must be at least 14 years old to work in Oregon. There are no statutory limits on the number of hours that 16 and 17 year olds can work in a day, but they cannot work more than 44 hours per week. Minors age 14 and 15 years cannot work during school hours, and cannot work more than three hours on a school day or more than eight hours on non-school days.

Under the provisions of House Bill 2826, minors who are working in most types of jobs can work between the hours of 7:00 a.m. and 7:00 p.m., but can work as late as 9:00 pm between June 1st and Labor Day. Currently, time restrictions cannot be imposed for 14 and 15 year-olds in specific jobs, such as for delivering newspapers, or babysitting.

State and federal child labor laws have different requirements for different age groups of minors working in agriculture. The types of work that can be performed, as well as the amount of time they can work per day or per

week, vary upon such factors as whether they are working at the same farm that employs their parents, and if the work is performed during the school year or during a vacation period. BOLI has the statutory authority to issue a special permit for minors who are working more than ten hours per day and 60 hours per week during school vacations lasting more than one week. Prior to September 1995, employers needed to obtain special permits when hiring any minor. Currently, the employer verifies the age of every minor hired and applies each year for a single annual employment certificate, which covers all employed minors.

Effective date: January 1, 2010

House Bill 2963

Prohibits deputy district attorneys from striking

The final step in the collective bargaining process governed by the Public Employee Collective Bargaining Act (PECBA) depends on the type of work done by the employees in the bargaining unit. Most bargaining units are designated as strike-permitted. However, there are some bargaining units that are prohibited from striking and are required to use binding interest arbitration between the union and the employer as the final step in the process. Currently, this prohibition applies to emergency telephone workers (i.e. 9-1-1 operators); Oregon Youth Authority employees who have custody, control, or supervision of youth offenders; firefighters; police officers; guards at a correctional institution or mental hospital; parole and probation officers who supervise adult offenders; and employees of mass transit districts, transportation districts, and municipal bus systems are prohibited from striking. House Bill 2963 adds deputy district attorneys to this list.

Effective date: January 1, 2010

House Bill 3140

Expands length of eligibility for Workshare compensation

The purpose of the Employment Department's Workshare program is to provide an alternative to laying off employees who would be receiving full, rather than partial, benefits while allowing employers to retain workers who are available to return to full time work as needed. The program allows participating employers to reduce the weekly hours of work, with eligible employees receiving a percentage of unemployment insurance (UI) benefits equal to the percentage of the reduction in their weekly hours of work. Participating businesses must reduce the normal weekly hours of work and wages by at least 20 percent and no more than 40 percent, and the plan must cover at least three employees with the plan lasting no more than one year.

House Bill 3140 extends the length of time during which qualified workers can receive Workshare unemployment compensation from 26 weeks to 52 weeks.

Effective date: June 18, 2009

House Bill 3162

Prohibits discriminating or retaliating against whistleblowers

The Civil Rights Division of the Bureau of Labor and Industries (BOLI) is responsible for enforcing statutes that prohibit discrimination against employees based on, for example, membership in a protected class or filing a wage claim. Current law protects public employees from discrimination based on whistle blowing disclosures, but does not extend similar protection to private sector employees.

House Bill 3162 prohibits employers from discriminating or retaliating against any employee if the employee has, in good faith, reported anything the employee believes is evidence of a violation of a state or federal law, rule, or regulation.

Remedies for unlawful discrimination include filing a complaint with BOLI or filing a civil action with either a circuit court or federal district court; however, filing a civil action terminates the right to file a complaint with the bureau. A civil action must be commenced within one year after the occurrence of the unlawful employment practice, unless a complaint was timely filed with BOLI. In that circumstance, the civil action must be filed within 90 days after BOLI mails a 90-day notice to the complainant.

Effective date: January 1, 2010

House Bill 3256

Prohibits discriminating against servicemembers for fulfilling service obligations

Currently, protecting the employment rights of citizen soldiers is covered largely by federal law.

The federal Uniformed Services Employment and Reemployment Rights Act of 1994 provides some

protection to service members when they are required to meet their service obligations. In Oregon, certain forms of employment discrimination are prohibited under ORS chapter 659A; however, discrimination related to military service is not currently one of the protected areas.

House Bill 3256 establishes an unlawful employment practice of discriminating against a service member for cases where an employer discriminates against a service member for fulfilling his or her service obligation. Examples of discrimination include denying a public officer or employee the status or rights provided under current Oregon statute; denying a person initial employment, reemployment following leave taken for service in a uniformed service, retention in employment, promotion, or any other term or condition of employment because the person has applies for, performs or has performed in a uniformed service; or discharging, expelling, disciplining, or threatening a person for exercising or attempting to exercise rights to participate in a uniformed service.

House Bill 3256 specifies that an employer has not committed an unlawful employment practice if their actions are based on a bona fide occupational requirement reasonably necessary to normal business operations, and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

Effective date: January 1, 2010

House Bill 3300

Promoting "green jobs"

"Green jobs" have been broadly defined as jobs that increase energy efficiency, produce renewable energy, reduce environmental degradation, or provide supporting services related to these areas.

House Bill 3300 targets populations of workers already in "green" careers as well as workers in declining industries, such as timber and agriculture, veterans, and members of disadvantaged groups. The measure instructs the State Workforce Investment Board to develop a plan to promote the growth of "green jobs." The plan must identify high demand green industries and promote certain workforce development activities. The Board is directed to define "green jobs" and "green economy" and to submit a final plan to the Legislative Assembly by January 14, 2010.

House Bill 3300 also directs the Oregon Economic and Community Development Department to develop criteria for, and make recommendations about, promoting green industries, technology and innovation.

Effective date: August 4, 2009

House Bill 3345

Penalty for failure to make payment on disputed claim

ORS 656.262 outlines the method in which workers' compensation claims are processed and paid. One provision requires that if an insurer or self-insured employer unreasonably delays or refuses to pay compensation, or delays acceptance or denial of a claim, they are liable for an additional amount, which is up to 25 percent of the amount due to the injured worker plus any assessed attorney fees up to $2,000. House Bill 3345 increases the maximum liability to $3,000 and requires the amount to be adjusted annually by the same percentage increase as made to the average weekly wage, as well as for attorney fees in cases regarding certain medical service or vocational rehabilitation. The measure also increases the awarded maximum attorney fees from $1,000 to $2,500 for the appearance and active and meaningful participation by an attorney in finally prevailing against a responsibility denial.

House Bill 3345 also allows the Department of Consumer and Business Services to assess a penalty and attorney fees if payment is due on a disputed claim settlement and the insurer or self-insured employer has failed to make the payment within two business days after the claimant or claimant's attorney provided written notification of the required payment. The Department is directed to adopt a matrix for the assessment of the penalties and attorney fees via the rulemaking process, and to provide for penalties and attorney fees based upon a percentage of the settlement allocated to the claimant and allocated to the claimant's attorney as an attorney fee.

Effective date: January 1, 2010

Senate Bill 110

Death benefits paid in workers' compensation claims

Senate Bill 835 (2007) requested that the Workers' Compensation Management-Labor Advisory Committee (MLAC) study the adequacy of death-related benefits available to workers' families and dependents

under workers' compensation law. Senate Bill 110 is a result of that study's findings. The measure increases benefits paid for final disposition and funeral expenses in workers' compensation death claims from 10 times to 20 times the average weekly wage and specifies that the costs of final disposition and funeral expenses are to be paid by the workers' compensation insurer or self-insured employer. The measure also requires that if any part of the benefit is unpaid 60 days after claim acceptance, the unpaid amount must be paid to the workers' estate.

Senate Bill 110 also increases benefits to a child or dependent from the ages of 18 to 23 with no surviving parent to an amount equal to 4.35 times 66.6 percent of the average weekly wage, and clarifies that benefits are to continue until the child ceases to attend a higher education program, graduates from an approved institute or program, or until their 23rd birthday, whichever is earlier.

Effective date: January 1, 2010

Senate Bill 462

Alternate base year for unemployment insurance benefit calculations

Senate Bill 462 resulted from a package of changes sought by the federal government to modernize state unemployment laws. Congress encouraged states to modernize their unemployment programs by creating an "alternate base year;" making benefits available to victims of domestic abuse; extending eligibility to people with a history of part-time employment who are seeking part time work; and expanding benefits to people in job training. The federal American Recovery and Reinvestment Act of 2009 (ARRA) provided stimulus moneys to state unemployment programs, but conditioned support on passage of some of these modernizations, including an alternative base year.

Eligibility for unemployment benefits depends in part on the amount of a person's earnings during a "base year" as defined by statute. The base year is defined as the first four of the last five completed calendar quarters prior to the benefit year. The most recently completed calendar quarter is not included in the base year, and wages earned in that quarter are disregarded in determining eligibility for unemployment benefits. Senate Bill 462 creates an alternative base year, which includes the last four completed calendar quarters preceding the benefit. Under the measure, a person whose earnings calculated under the original base year definition are insufficient to qualify the person for benefits may have the earnings recalculated under the alternative base year definition to include more recent earnings, increasing the likelihood of qualifying for benefits.

Passage of Senate Bill 462 made Oregon eligible for $28 million, or one third of the $85 million available to the state from the federal stimulus provisions of the ARRA.

Effective date: July 1, 2009

Senate Bill 519

Rights of employees regarding employer-sponsored meetings and communications

Although current law protects employees from certain forms of discrimination, no law protects employees from being required by their employer to attend religious or political meetings, including meetings concerning union organization, or from being disciplined for refusing to do so.

Senate Bill 519 outlines specific employee and employer rights related to participating in employer-sponsored meetings or communications regarding religious or political matters. The measure exempts religious organizations by allowing the requirement of attendance or participation for the primary purpose of communicating the employer's beliefs, practices, or tenets. It also allows political organizations, including political parties and other organizations that substantially engage in political activities, to require employees to attend or participate in communications regarding their political tenets or purposes.

Senate Bill 519 maintains the provisions of ORS 260.432, regarding restrictions on political activities by public employees.

Effective date: January 1, 2010

Senate Bill 786

Accommodation of employee religious practices

Senate Bill 786 establishes the Oregon Workplace Religious Freedom Act. The measure requires employers to reasonably accommodate religious practices of employees and designates failure to do so as unlawful employment discrimination. Employees may wear religious clothing and take time off for a religious practice, using vacation time to do so when applicable. Employers must

reasonably accommodate unless accommodation causes an undue hardship. The measure lists factors to consider for hardship, such as the overall financial resources of the employer with respect and safety and health requirements, and clarifies that school districts do not commit an unlawful employment practice by prohibiting teachers from wearing religious clothing while teaching.

Effective date: January 1, 2010

MEASURES NOT ENACTED

House Bill 2430

Application of prevailing rate of wage

House Bill 2140 (2007) provided public agencies and other interested persons with clearer rules in determining when prevailing wage rates (PWR) must be applied in mixed-use (commercial/residential) construction projects and developments relying upon public-private financing arrangements. However, the measure did not fully clarify the application or exemption of PWR on mixed-use projects that predominantly provide affordable housing.

House Bill 2430 would have established that that prevailing wage rates must apply to the construction of the "podium" (a portion of or the entire structural frame constructed of metal, concrete, or reinforced masonry which serves as the ground floor or and base or support for the building's other floors), and "site work" (amenities or structure located near a building necessary to make a building accessible or habitable), as well as certain types of electrical work. Prevailing wage rates would have been exempted on the construction of the project's portions above the podium and to the entire project if the area available for commercial use in the project was less than 20 percent of the entire project's square footage.

House Bill 2430 defined "predominantly" as at least sixty percent, and maintained the current statutory definition for "affordable housing," which is housing that serves occupants whose incomes are not greater than sixty percent of the state or area median income, or if the occupants are owners, who incomes are not greater than eighty percent of the state or area median income.

House Bill 2503

Prohibits discrimination against participants in Oregon Medical Marijuana Program

House Bill 2503 would have prohibited employers from discriminating against a person in hiring, terminating, or from penalizing an Oregon Medical Marijuana Program (OMMP) cardholder, or if the cardholder had a positive drug test and the medical usage did not occur on the employer's property or premises or during the hours of employment. The measure would not have applied to persons employed in "safety-sensitive" positions, defined as those in which: the medical use of marijuana could affect the performance of the employee and endanger the health and safety of others; the duties of which involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; errors in judgment, inattentiveness, or diminished coordination, dexterity, or composure while performing the duties of the position could clearly result in mistakes that would endanger the health and safety of others; and those where the employee works independently or performs tasks of a nature where it cannot safely be assumed that mistakes could be prevented by a supervisor or another employee. Safety-sensitive positions would have included law enforcement officers and those who perform transit operations.

House Bill 2503 would also have established violations as an unfair employment practice. An employee who claimed to be aggrieved could have brought a civil action against the employer and filed a complaint with the Bureau of Labor and Industries alleging a violation . Enforcement would have been done in the same manner as outlined in statute regarding the enforcement of other unlawful employment practices.

House Bill 2633

Redefines "supervisory employee" under public collective bargaining law

Oregon's Public Employee Collective Bargaining Act (PECBA) establishes a collective bargaining process for Oregon's public employers and unions representing public employees. Employers covered by PECBA include, among others, the State of Oregon, cities, counties, school districts, community colleges, public hospitals, and special districts.

Supervisory employees are currently prohibited from collective bargaining. House Bill 2633 would have

narrowed the definition of a "supervisory employee" under PECBA to include individuals having independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees. The measure would also have clarified that the new definition did not apply to a public safety officer who merely assigns transfers or directs the work of other employees but does not have the authority to impose economic discipline on those employees.

House Bill 2699

Application of prevailing wage rates to property tax exemption of construction projects

The purpose of Oregon's enterprise zone system is to help attract private business investment into areas of the state that needs additional assistance for attracting businesses to locate or expand existing operations. There are currently 59 enterprise zones in Oregon, sponsored by cities, counties, ports and tribal governments. In exchange for locating or expanding in an enterprise zone, eligible business firms receive total exemption from property taxes normally assessed on new plant and equipment for at least three years in the standard program.

House Bill 2699 would have added a condition to the property tax exemption for certain types of construction or major renovation projects with a projected cost of at least $5 million, requiring prevailing wage rates to be paid in order to receive the exemption. The measure also clarified how the required fee for public works projects, as defined in prevailing wage rate law, is to be paid.

House Bill 2831

Collective bargaining units

House Bill 2831 represented the last proposed major change to the Public Employee Collective Bargaining Act (PECBA) since the enactment of Senate Bill 750 (1995). The measure would have expanded the classes of employees who could be included in a bargaining unit to include certain types of temporary and seasonal employees. The measure also would have modified the definition of a "supervisory employee" by stating that an employee's authority to exercise any of an enumerated list of typical supervisory functions does not require the conclusion that they are to be classified as supervisory employee.

House Bill 2831 also addressed the issue of a double ballot, which is required when faculty of an Oregon University System (OUS) institution wishes to organize. Currently, the Employment Relations Board (ERB) is required to place on the ballot only those labor organizations designated to be placed on the ballot by more than ten percent of the employees in the prospective bargaining unit. Once that takes place, two issues are placed on the ballot: for or against representation, and the labor organization(s) that have been designated to be placed on the ballot by more than ten percent of the employees in the prospective bargaining unit. If a majority of votes were cast against representation, the board certifies no representative for the unit. If the majority votes for representation, the ERB looks at the second issue of which labor organization receives the most votes and then designates that organization as the bargaining unit's representative. House Bill 2831 would have made the university faculty ballot process consistent with other bargaining units.

House Bill 2831 would have also prohibited public employers from hiring permanent replacements for employees engaging in a lawful strike, but did not prohibit hiring temporary replacements.

House Bill 2881

Medical review of drug tests required for employment

In order to qualify to participate in the Oregon Medical Marijuana Program (OMMP), an applicant must be an Oregon resident, have a qualifying debilitating medical condition, and have an established patient/physician relationship with an attending physician who must be either a medical doctor or a doctor of osteopathy licensed to practice in Oregon. The attending physician is required to state, in writing, that the patient has a qualifying debilitating medical condition and that medical marijuana may mitigate the condition's symptoms or effects. Debilitating medical conditions listed in the Attending Physician's Statement include cancer; glaucoma; HIV/AIDS; agitation due to Alzheimer's disease; and a medical condition or treatment for a medical condition that produces cachexia (general physical wasting and malnutrition), severe pain, severe nausea, seizures, and/or persistent muscle spasms.

House Bill 2881 would have established that if employees are required to submit a drug test for marijuana, the employer must designate a medical review officer to receive, review, and report drug test results. When a drug test is for either non-medical or pre-employment purposes and includes a screen for marijuana, the

laboratory would forward the test result to the employer's designated medical review officer; the laboratory would not be allowed to report marijuana test results to the employer, but could report results for any other substances. If an employee possesses an OMMP card, the medical review officer would have been required to consult with the employee to determine their pattern of marijuana use and the potential for impairment while "acting in the course and scope of employment." If the medical review officer determined that the employee's marijuana use poses an on-the-job risk to the safety of the employee or their co-workers, the medical review officer would have been required to report a positive test result to the employer. Likewise, if the medical marijuana use does not pose a risk, a negative test result must be reported to the employer.

House Bill 2497 and House Bill 3052

Expands ability of employer to prohibit use of medical marijuana in workplace

Washburn v. Columbia Forest Products, Inc. (2005) focused on whether marijuana use outside of the workplace is a reasonable accommodation for purposes of Oregon's disability discrimination laws. Robert Washburn sued his employer alleging that he was a disabled worker and that the company had failed to reasonably accommodate his disability. Washburn participated in the Oregon Medical Marijuana Program (OMMP) due to insomnia resulting from long-term injuries, which caused spasms in his leg and shoulder. Columbia Forest Products had a workplace drug policy which included regular drug testing; Washburn violated the policy when he positive for marijuana via urinalysis. The employer was asked to accommodate his condition by allowing a different type of drug test to be administered (blood test) to show impairment. Columbia Forest Products denied the request and terminated Washburn's employment. The Oregon Supreme Court reversed the Court of Appeals' decision and upheld the trial court's decision that mitigating circumstances are to be considered in deciding individually on a case by case basis, if a person qualifies as disabled under Oregon statutes. However, the court did not rule on whether allowing medical marijuana use is a reasonable accommodation.

House Bill 2497 and House Bill 3052 would have clarified that an employer is not required to accommodate the medical use of marijuana in any workplace regardless of where the use occurs; is not required to allow an employee or independent contractor to possess, to consume or to be impaired by the use of marijuana during working hours; and need not allow any person who is impaired by the use of marijuana to remain in the workplace. The measure would have allowed an employer to establish and/or enforce a policy to achieve or maintain a drug-free workforce.

Senate Bill 966

Family leave benefits insurance

Under the Oregon Family Leave Act (OFLA), employers of more than 25 employees are required to provide workers with job-protected leave to care for themselves or family members in situations such as childbirth, adoption, illness, and injury. Generally, workers are entitled to a maximum of 12 weeks of leave, with an additional 12 weeks for any qualifying OFLA purpose if a woman has used the previous 12 weeks for pregnancy disability leave and up to 12 additional weeks for sick child leave if an employee has used the full 12 weeks for parental leave.

Employees are entitled to use accrued paid vacation, sick, or other available leave towards family leave as it is unpaid. However, some employees who qualify for family leave are unable to take it because of financial constraints such as the unavailability of leave by their employer. Senate Bill 966 would have created an employee-financed insurance program that provides benefits to individuals desiring to take family leave for caring for an infant or newly adopted child or newly placed foster child under the age of 18, minors over the age of 18 if they are incapable of self-care because of a mental or physical disability, and family members with a serious health condition.

The measure would have required employers with 25 or more employees to withhold a premium not to exceed two cents per hour worked, up to a maximum of 40 hours per week, from the earnings of each employee. Employees who filed a claim for benefits must have qualified under the OFLA and had premiums withheld throughout their qualifying year. The employee would not have been eligible for benefits for any week they received paid family leave, but could elect whether to first use the paid family leave or receive benefits. Benefits would have been $300 per week for an employee who was working 40 hours per week, or a prorated amount for part-time employees; the benefits would have been taxable.

The Commissioner of the Bureau of Labor and Industries (BOLI) would have been required to administer the program and set a premium rate that maintained a balance of approximately twelve months of projected expenditures. The Commissioner would have also been authorized to reduce the premium if necessary. Family leave benefits would have been payable only to the extent that moneys were available in the Family Leave Benefits Insurance Account. The measure also would have allowed nonsubject employers to opt-in to the program beginning on July 1, 2013.

Senate Bill 966 would have established as an unlawful employment practice discrimination against an employee who has filed or communicated their intent to file a claim for benefits, and required BOLI to notify employer regarding the filing of a claim within five business days.

Land Use

2009 SUMMARY OF LEGISLATION

House Bill 2228

Oregon Transfer of Development Rights Pilot Program; Metolius transfer of development option to establish small-scale recreation community; Skyline Forest development

Transfer of development rights (TDR) programs have been used by many units of government around the country to transfer development from places where communities are trying to limit development to other places where communities are encouraging development.

House Bill 2228 authorizes the establishment of one or two small-scale recreation communities on forestland in conjunction with transfer of development opportunity from a Metolius resort site. The bill sets development standards for the communities and requires the owner to agree to certain conditions regarding the Metolius resort site. The measure also establishes the Oregon Transfer of Development Rights Pilot Program and authorizes the Land Conservation and Development Commission (Commission) to adopt rules establishing a process for selecting up to three pilot projects. The Department of Land Conservation and Development is required to report to the Legislative Assembly on the pilot program by February 1, 2013.

House Bill 2228 also authorizes the development of up to 282 residential units in Skyline Forest Sustainable Development Area. The actual quantity of residential units is dependent upon the number of acres conveyed to a land trust or state or federal agency. The measure requires that all development, except for access roads, utility lines, and up to five acres for maintenance and security facilities, be located on 1,200 contiguous acres. A conservation easement is required on the remaining undeveloped 1,800 acres with the primary purposes of minimizing fire risk, but allowing recreational uses.

House Bill 3313 further amends House Bill 2228.

Effective date: June 29, 2009

House Bill 2229

"Big Look" Task Force recommendations

House Bill 2229 provides a process for counties to undertake corrective remapping of rural lands to ensure sustainable development and update natural resource protections. It clarifies the regional problem-solving process by providing parameters, deadlines, and specific criteria to identify participants. House Bill 2229 also prioritizes dense urban development in high-growth areas and authorizes the Department of Land Conservation and Development to perform a complexity review to enable further improvements to Oregon's land use planning system in the future.

The 2005 Legislative Assembly created the Oregon Task Force on Land Use Planning. The Task Force was charged with performing a broad review of the land use planning program and making policy recommendations to the Legislative Assembly by February 1, 2009. Areas of concern included: the effectiveness of Oregon's land use planning program in meeting the current and future needs of Oregonians in all parts of the state; the respective roles and responsibilities of state and local governments in land use planning; and land use issues specific to areas inside and outside urban growth boundaries. House Bill 2229 implements some of the Task Force recommendations.

Effective date: August 4, 2009

House Bill 2929

Removal-fill program; study of single permit for removal of sand and gravel

House Bill 2929 authorizes the Department of State Lands (DSL) to apply for and receive private or federal grants, loans or other funds and Common School Fund moneys to conduct studies related to department work and to coordinate state and federal permitting issues related to removal and fill operations. The bill directs DSL to study the feasibility of creating a single permit for removal of sand and gravel from the waters of the state. DSL is directed to submit a report on study status to an interim legislative committee on or before March 1, 2010 and a final report on or before November 1, 2010.

Oregon's Removal-Fill Law (ORS 196.795 to 196.990) requires people who plan to remove or fill material in waters of the state to obtain a permit from DSL. DSL currently has 47 active commercial gravel mining permits for operations below ordinary high water. The United States Army Corps of Engineers and the Department of Environmental Quality also permit some, but not all, of these operations. The Department of Geology and Mineral Industries has regulatory jurisdiction over aggregate mining in floodplains and uplands.

Effective date: January 1, 2010

House Bill 3099

Exclusive farm use exceptions

House Bill 3099 modifies exclusive farm use (EFU) exceptions in Oregon land use laws. The measure removes outright exceptions for schools and greyhound kennels and modifies the exception for model aircraft uses to allow landowners to charge fees. A conditional exception for public and private schools that primarily serve the rural area where sited is added. Golf courses are prohibited on high-value farmland. The disposal of solid waste is removed from EFU exceptions.

Oregon's land use program places a major emphasis on maintaining commercial agriculture. EFU zoning limits development that could conflict with farming practices. The EFU designation is also intended to keep farmland from being divided into parcels too small for commercial agriculture. EFU lands are eligible for lower property taxes based on the land being farmed. All 36 counties in Oregon have applied EFU zoning to their agricultural land. Current law allows numerous exceptions, both outright and conditional, for uses of EFU-zoned land.

Effective date: January 1, 2010

House Bill 3225

Claims under Ballot Measure 49 (2007)

House Bill 3225 provides a process for Ballot Measure 49 claims to proceed that would otherwise be precluded; these are claims that were not previously determined based on merit. The measure establishes a $175 processing fee and sets a deadline for issuance of final orders by the Department of Land Conservation and Development (DLCD). The measure also allows DLCD to advance hardship cases and to use existing county records in making determinations.

In November 2007, Oregon voters approved Ballot Measure 49, which modified statutes created with the passage of Ballot Measure 37 in 2004. Ballot Measure 37 required providing compensation, in the form of direct payments or land use regulation waivers, to landowners whose property values were negatively affected by land use laws or regulations. Measure 49 replaced those compensatory remedies with provisions for a specific number of home site approvals. When Measure 49 passed, DLCD sent election notices to all eligible claimants who had filed claims under Measure 37. Claimants responded, indicating how they wanted to proceed under the law's new provisions, which resulted in 4,600 election forms being filed with the agency. As of April 1, 2009, over 500 final orders had been issued for these claims.

Effective date: July 28, 2009

House Bill 3298

Designation of Metolius Area of Critical State Concern

House Bill 3298 gives the approval of the Legislative Assembly to the Land Conservation and Development Commission recommendation that a portion of the Metolius River Basin be designated an area of critical state concern. The measure also approves the management plan with some changes, including a requirement that the Commission notify the governing bodies of Jefferson County and the Confederated Tribes of the Warm Springs Indian Reservation of any proposed amendments to the management plan. The measure describes the location and sets parameters for a small-scale recreational community. Any new development allowed by plan amendment may not result in negative impacts to the Metolius River or fish and wildlife resources. The county is prohibited from approving the siting of a destination resort in the Metolius Area of Critical State Concern.

The legislation that created Oregon's land use planning program, Senate Bill 100 (1973), authorized the designation of areas of critical state concern. Since its passage, areas considered appropriate for such designation, such as the Columbia River Gorge, have been protected instead through the use of special statewide land use planning goals, the federal government, and through other specialized state and federal designations. The Commission amended Goal 8 in 1984 to allow the development of destination resorts.

The Metolius River Basin is located mostly in Jefferson County with a small part in Deschutes County. In 2006, Jefferson County amended its comprehensive plan to make two sites available to destination resorts: The Ponderosa and The Metolian. The siting of a destination resort is an issue of statewide concern under ORS 197.440(4), and the action is pending appeal before the state's Supreme Court. On April 2, 2009, the Commission recommended to the Legislative Assembly that the Metolius River Basin be designated an area of critical statewide concern.

Effective date: July 15, 2009

House Bill 3313

Modification of siting authority for Metolius small-scale recreation community

House Bill 3313 makes the following amendments to Enrolled House Bill 2228 (2009): extends the time limit for the owner of a Metolius resort site to notify the Department of Land Conservation and Development of election to seek approval for a small-scale recreation community from 90 days to one year and extends the time limit from two to three years for applying to a county for similar approval. The measure specifies that a small scale recreation community authorized under House Bill 2228 must be sited on land that is either planned and zoned for forest use or for rural use and not subject to statewide land use planning goals relating to agricultural lands or forestlands. The measure increases from 200 to 320 acres the maximum tract size on which a small-scale recreation community under House Bill 2228 may be sited. The bill specifies that if the development standards of the county are dependent on the zoning of the site, the county shall apply the development standards for the county's most dense rural residential zone. The measure modifies the description of the Southern Conservation Tract and expands the types of development allowed in Skyline Forest Sustainable Development Area.

House Bill 3313 amends provisions of Enrolled House Bill 2228 which allow for the establishment of one or two small-scale recreational communities in conjunction with a transfer of development opportunity from a Metolius resort site.

Effective date: August 4, 2009

Senate Bill 763

Transfer of development rights program

Senate Bill 763 permits governmental units to establish transferable development credit (TDC) systems to allow intergovernmental transfer of development interests within and across jurisdictional boundaries. The bill requires that parties execute an intergovernmental agreement that includes the Department of Land Conservation and Development (DLCD) if a transfer involves different jurisdictions and different governmental units. TDC system requirements are established, including: the owner of land in a sending area must sever and sell development interests for use in a receiving area; the developer of land in a receiving area must purchase a TDC to be allowed a higher intensity of use; the type, extent and intensity of use must be determined by the administering governmental unit; and written notice of proposed transactions must be given to holders of recorded instruments that encumber sending areas for their approval or disapproval. The administering governmental units are assigned duties, including: designating sending and receiving areas; providing incentives to stimulate the use of TDC systems; keeping appropriate records; and providing periodic summaries to DLCD. Receiving areas must be within urban growth boundaries (UGB) or urban reserves with specific limitations. DLCD is directed to report to the 77th Legislative Assembly.

Transferable development credit (TDC) programs have been used by many units of government around the country to transfer development from places where communities are trying to limit development to other places where communities are encouraging development.

Effective date: June 24, 2009

LEGISLATION NOT ENACTED

House Bill 2227

Siting of destination resorts

House Bill 2227 would have allowed the Land Conservation Development Commission to study the state's destination resort siting policies and update resort siting requirements through the amendment of statewide land use planning goals and administrative rulemaking. The measure specified criteria for a development to qualify as a destination resort and removed some detailed requirements from statute that are duplicated in statewide planning Goal 8. The measure also prohibited counties from mapping lands as eligible for destination resorts under certain conditions. Destination resorts would have been required to avoid or mitigate adverse effects on transportation, and to provide for adequate firefighting services and workforce housing.

State land use planning law that allows the siting of destination resorts on farm and forest lands has not been updated in 25 years. Such laws have been criticized as outdated for failing to take into account contemporary concerns over issues such as water use, and for allowing resorts that function as rural residential subdivisions, rather than as lodging for temporary visitors as they were originally intended.

House Bill 2761

Soil capability assessments

House Bill 2761 would have allowed a landowner to obtain more information to determine whether land qualifies as agricultural land by asking the Department of Land Conservation and Development to arrange for a certified professional soil classifier to assess the capability of soil. The measure required that the Department review the assessment and charge the landowner a fee for the assessment and review.

Site productivity information is used to make land use decisions.

House Bill 3058

Removal-fill permit for linear facility siting; definition of "applicant"

House Bill 3058 would have changed the definition of "applicant" for purposes of the removal-fill permitting program to include persons other than landowners or their representatives when a person proposes a removal or fill activity for construction of a linear facility. A "linear facility" would have included any railway, highway, road, pipeline, communication line, power line or similar facility used for the transportation of people, goods or substances or the transmission of energy.

Oregon's Removal-Fill Law requires people who plan to remove or fill material in the waters of the state to apply for and obtain a permit from the Department of State Lands. The purpose of the 1967 law is to protect public navigation, fishery and recreational uses of the waters. The law currently requires an applicant for a permit to be a "landowner or person authorized by a landowner to conduct a removal or fill activity."

Transportation

2009 SUMMARY OF LEGISLATION

House Bill 2001

Jobs and Transportation Act

Oregon's state, county and city governments have faced significant shortfalls with regard to funding for transportation infrastructure maintenance and modernization. At the same time that commuter and freight traffic have increased with the growth of Oregon's population and economy, the revenues that are used to maintain and improve the state's highway system have failed to keep pace. Increased traffic congestion has also continued to hinder the movement of goods, negatively impacting the state's economy.

In 2007, Governor Kulongoski commissioned three committees, comprised of legislators, business leaders, local and state officials, transportation stakeholders, and environmental and land use experts to prepare recommendations on the development of a comprehensive transportation funding package. The resulting bill, House Bill 2120, referred to as the Jobs and Transportation Act, was later amended into House Bill 2001 following extensive work by several legislative committees.

House Bill 2001 implements a six-cent per gallon increase in gasoline and diesel taxes and increases weight-mile and flat fee truck taxes, in addition to increases in vehicle registration and titling fees. Revenues are distributed to the state (50 percent), counties (30 percent) and cities (20 percent) to provide additional funding for maintenance of the existing highway system and numerous modernization projects specifically named in the measure; the website for the Oregon Department of Transportation is to provide updated information on the status of these projects. House Bill 2001 also authorizes $100 million in lottery-backed bonds ConnectOregon III non-highway transportation projects. Local governments are prohibited from enacting new gas taxes and county registration fees for four years, except for an allowance for Multnomah County to institute a vehicle registration fee specifically to replace the Sellwood Bridge.

Other provisions of House Bill 2001 include: commissioning several task forces and studies, including congestion pricing in the Portland area, use of a least-cost planning model for decision making, hazardous materials safety on county roads, and setting registration fees based on vehicle road miles traveled; defining "medium speed electric vehicle" in the Oregon Vehicle Code; development of a plan to install electric vehicle charging stations at rest areas; guidelines for project selection criteria for the Statewide Transportation Improvement Plan; incorporation of environmental performance standards and practical design concepts in state highway construction and design; planning to reduce vehicle miles traveled and greenhouse gas emissions; co-location of state and local office facilities; and allowing large counties to enact vehicle registration fees without first submitting the ordinance to voters.

Effective Date: September 28, 2009

House Bill 2040

Extension of "move over" law to roadside assistance vehicles

Oregon enacted its "move over" law with the passage of House Bill 2176 in 2003. The measure created the offense of failing to maintain a safe distance from an emergency vehicle or ambulance stopped alongside a roadway while displaying warning lights. While prior law had required drivers to yield to approaching emergency vehicles (ORS 811.145) and prohibited drivers from interfering with emergency vehicles (ORS 811.150), the new law provided protection for law enforcement officers and emergency responders parked on the shoulder of a roadway from being struck by passing vehicles. The "move over" law specifies that a driver approaching a stopped emergency vehicle (including police, fire, ambulance and airport security vehicles equipped with lights and siren) must either slow down or, where possible, change lanes. Violations are punishable as a Class B traffic violation.

Emergency vehicles are not the only vehicles that respond to vehicles stopped at the sides of roadways. Operators of tow trucks and roadside assistance vehicles (which assist with battery, tire, or mechanical problems, deliver fuel, or provide lockout services) also respond to vehicles stopped at the sides of roadways and are also at risk when vehicles pass nearby at high speeds. House Bill 2040 expands ORS 811.147 to include roadside assistance vehicles equipped with warning lights.

Effective date: January 1, 2010

House Bill 2079

Mandates use of personal flotation devices on certain waterways

Current law (ORS 830.215) requires that all Oregon boats carry at least one U.S. Coast Guard-approved Type I, II, or III personal flotation device (PFD) in good and

serviceable condition for each person on board. Children age 12 and under, as well as boat guides must wear the PFD under the existing statute.

Every year since 1990, boating accidents and fatalities have occurred in Oregon. Oregon is host to diverse and potentially dangerous waters that stretch from the crest of the Cascades to the deserts of eastern Oregon, the valley of western Oregon and the coastal region. There have been a total of 1,701 boating accidents in Oregon since 1990, resulting in 234 fatalities. In 2007, only one of the nine boating fatalities wore a life jacket. The youngest was 22 years of age; the oldest 80; the average age was 52 years of age. According to the Oregon State Marine Board, 90 percent of the people who drown in boating accidents would have survived had they worn life jackets.

The cost to fund body recoveries comes from public agencies and is estimated to be from $1,000 to $5,000 per incident; in rare instances total costs can exceed $50,000. Additionally, when boating fatalities occur, the surrounding business community that depends heavily on the boating industry is also negatively affected. Aside from the economic impact to Oregon river communities, there is a human impact, immeasurable to both families and search & rescue personnel.

While the families are affected personally, search & rescue personnel also receive professional counseling to help them deal with the emotional trauma of body recoveries. Moreover, search & rescue personnel are volunteers first and under current laws are not covered for any indemnification or workers compensation and therefore work at their own personal risks. Search & rescue liability is a major concern for these volunteers when accepting the assignment of a body recovery.

House Bill 2079 mandates that all passengers wear a PFD on any section of waters rated class III and above rapids. Current law mandates the use of a life jacket in a class III and above rapids for the boat guides only.

Effective date: January 1, 2010

House Bill 2234

Disruptive behavior at rest areas

Highway rest areas provide motorists with opportunities to take breaks from driving and to use restroom facilities, so that they may return to the road refreshed and alert. Scenic overlooks provide similar opportunities while also providing opportunities to view landscapes and historical areas. These areas are managed by the Oregon Department of Transportation.

Some individuals use rest areas and scenic overlooks in ways that interfere with their intended uses. Disruptive behaviors, such as soliciting or camping, can create an inhospitable climate and discourage drivers from using the rest areas.

House Bill 2234 authorizes the Oregon Transportation Commission to adopt rules that create penalties for disruptive behaviors in rest areas and similar facilities. Law enforcement officers are responsible for issuing citations. The provisions of House Bill 2234 are similar to Oregon State Parks and Recreation Department regulations in state park campgrounds and day-use areas.

Effective date: January 1, 2010.

House Bill 2235

Removal of hazardous trees along state highways

House Bill 2235 authorizes the Oregon Department of Transportation (ODOT) to enter private property, prior to notifying property owner, to cut and/or remove trees that are hazardous to state highways. Similar statutory authority is currently granted to counties to address hazards on county roads, but not to ODOT. House Bill 2235 requires notification to the landowner as soon as practicable after the action is taken and allows the department to determine, by rule, the process for notifying landowners. The authority will be especially valuable during emergencies, such as ice storms, floods, or landslides.

Under previous practice, in cases of trees hazardous to highways on private property, ODOT maintenance crews obtain the landowner's permission before going onto the property. When landowners could not be identified or could not be reached, the department had no alternative but to leave the tree in its hazardous condition.

Effective date: January 1, 2010

House Bill 2377

Prohibits using a cell phone without hands free device while driving

With the passage of House Bill 2872 (2007), Oregon became one of 17 states to prohibit the use of cell phones and other mobile communication devices by persons under 18 years of age while they are operating a

vehicle. The violation is punishable by a maximum fine of $90 and is considered a secondary offense, meaning that an officer can only issue the violation if the driver has been pulled over for a separate suspected offense.

House Bill 2377 expands the prohibition on the use of cell phones and other mobile communication devices to drivers of all ages. The measure allows drivers to use a mobile communication device if they also utilize a hands-free accessory to allow them to use the device without holding it to their ear. The measure provides exceptions for public safety officers, persons operating a vehicle in the scope of employment, select use of devices that allow only for one-way voice communication, and use of radios for which the driver is licensed by the Federal Communications Commission. The fine for violations under House Bill 2377 is $90. However, the measure designates unlawful use of a mobile communication device as a primary offense, meaning that a public safety officer can stop and detain a driver solely because they are using a cell phone.

With the enactment of House Bill 2377, Oregon joins five other states (California, Connecticut, New Jersey, New York and Washington) plus the District of Columbia prohibiting talking on hand-held cell phones while driving.

Effective date: January 1, 2010

House Bill 2554

Amends definition of vulnerable user of a public way

The penalties for reckless driving provide additional penalties if the reckless driving contributed to an accident or to the serious physical injury or death of a vulnerable user of a public way. "Vulnerable user" had previously been defined to include pedestrians (including persons confined to wheelchairs), highway workers, animal riders, bicyclists, skaters and farm equipment without enclosed shells. Reckless driving that results in an accident increases the violation from a Class B (punishable by maximum fine of $360) to a Class A violation (punishable by a maximum fine of $720). If serious injury or death of a vulnerable user of a public way is involved, the penalty can include a fine of up to $12,500, community service, and loss of driving privileges.

House Bill 2554 expands the definition of vulnerable user of a public way to include any farm tractor or other implement of husbandry.

Effective date: January 1, 2010

House Bill 2562

Increases maximum allowable size for school buses

Previous statute limited the maximum allowable length for school buses and other single vehicles to 40 feet. However, the statute provided exceptions for road maintenance, mass transit, and recreation vehicles.

A newly designed model of the manufacturer of a large percentage of Oregon school buses measures 40 feet nine inches in length, nine inches longer than allowed under current law. The new design incorporates several safety features, including better visibility and ergonomic equipment for the driver. House Bill 2562 adds an exemption, allowing school buses up to 45 feet in length, consistent with the current statutory maximum for recreational vehicles.

Effective date: March 26, 2009

House Bill 3379

Waivers and extensions of Transportation Planning Rule

The Transportation Planning Rule (Oregon Administrative Rule 660-12) is designed to ensure that the state's transportation system supports a pattern of travel and land use in urban areas that minimizes traffic and air pollution and maximizes livability. The rule requires the Oregon Department of Transportation (ODOT), all 36 counties, and all cities with populations over 2,500 to adopt transportation system plans with a 20-year horizon.

Cities seeking to grow have sometimes experienced difficulty in meeting this requirement, particularly with regard to identification of funding for large-scale transportation projects and long-term transportation needs, resulting in an inability to provide for economic growth in some communities. House Bill 3379 stipulates that if a local government is unable to meet the funding requirement of the Transportation Planning Rule it may apply for an extension to meet the requirement, submit a plan for alternative funding methods, or apply to adjust traffic performance measures.

House Bill 3379 also requires ODOT to determine whether the Oregon Streetcar Project Fund, established by House Bill 5036 (2007), contains funds sufficient to purchase newly constructed streetcars and supply them to public transit systems in Oregon. The department is to present a report to the interim transportation committees by January 1, 2010. The measure also contains

a severability clause to ensure that if any part of House Bill 2001 (2009) is referred to the voters, the portions not referred take effect only if voters approve the portions referred to voters.

Effective Date: June 25, 2009

Senate Bill 34

Increased limit for transit tax

Oregon's mass transit payroll tax is administered by the Oregon Department of Revenue for two transportation districts only, the Tri-County Metropolitan Transportation District (TriMet) and the Lane County Mass Transit District (LTD). The TriMet district includes parts of the three Portland-area counties, Multnomah, Washington, and Clackamas. LTD serves the Eugene-Springfield area in Lane County. The transit tax is imposed directly on employers, for the amount of gross payroll paid for services performed within the TriMet or LTD district, including salaries, commissions, bonuses, fees, or other items of value paid to persons for services performed within the transit district.

The transit tax rate is limited in statute. Senate Bill 34 increases the limit, from seven-tenths to eight-tenths of one percent of wages paid, allowing transit district boards to increase the tax up to eight-tenths of one percent. The measure also requires any increase to be phased in over ten years, with a maximum 0.02 percent annual increment.

The TriMet budget, including buses, light rail, streetcar, and commuter rail services, amounted to about $800 million in FY 2008, with just over half coming from the transit tax. The LTD budget is about $75 million, with about one-third coming from the transit tax.

Effective date: January 1, 2010

Senate Bill 36

Tolling of intrastate bridges under Multnomah County jurisdiction

Senate Bill 36 provides explicit statutory authority to the Board of Commissioners of Multnomah County to establish and collect tolls for the use of bridges over the Willamette River that are either under the county's jurisdiction or are operated and maintained by the county.

Current statute (ORS 810.010) specifies that the Oregon Department of Transportation is the road authority for all state highways, including interstate highways, and that counties are the road authorities for all county roads outside the boundaries of incorporated cities. There are currently eleven bridges that span the Willamette River in Multnomah County: two (Fremont and Marquam) carry interstate highways; one carries a railroad; three (Steel, Ross Island and St. Johns) carry state highways; and five (Broadway, Burnside, Morrison, Hawthorne and Sellwood) are within the boundaries of the City of Portland but under the jurisdiction of the county. The Sauvie Island Bridge crosses a portion of the Willamette River known as the Multnomah Channel and is also under county jurisdiction.

The Sellwood Bridge has been identified as in critical need of replacement. It is the only direct link between Lake Oswego/southwest Portland and Milwaukie/southeast Portland and, as the only river crossing for miles in each direction, is the busiest two-lane bridge in Oregon. Constructed in 1925, the bridge was given a sufficiency rating of two on a 1-100 scale, and is currently weight-limited to vehicles under 20,000 pounds.

Effective date: January 1, 2010

Senate Bill 124

Penalty for operating a motorcycle without motorcycle endorsement

Motorcycle operators are required to have a driver's license with a motorcycle endorsement. To obtain the motorcycle endorsement, individuals under the age of 21 must complete a TEAM OREGON Basic Rider Training (BRT) Course. The course addresses such issues as effective turning, braking maneuvers, protective apparel selection, obstacle avoidance, traffic strategies, and maintenance. The cost of the course is about $200. Individuals over the age of 21 must pass a motorcycle endorsement knowledge test and pass an on-cycle driving test. The additional cost of a motorcycle endorsement averages about $10 per year.

According to Oregon Department of Transportation statistics, of 44,162 motor vehicle crashes reported in 2007, motorcycles were involved in 743, less than two percent. But of 455 traffic fatalities in those crashes, 51 involved motorcycles, more than eleven percent. While approximately half of Oregon's motorcycle operators have taken the class, about 80 percent of the 2007 fatalities had not taken the class. According to testimony received by the legislature, a large number of motorcycle operators cited for failure to have the

endorsement continue to operate motorcycles without the endorsement.

Senate Bill 124 increases the penalty for operating a motorcycle without a motorcycle endorsement from a Class B traffic violation, punishable by a maximum fine of $360, to a Class A traffic violation, punishable by a maximum fine of $720. The measure also directs the court to dismiss the fine if the operator completes the necessary training course and obtains a motorcycle endorsement within 120 days of sentencing.

Effective date: January 1, 2010

Senate Bill 536

Prohibits implementation of federal Real ID Act of 2005

Senate Bill 536 prohibits state agencies from expending funds to implement the federal Real ID Act of 2005 (P.L. 109-13) unless sufficient federal funds are allocated to cover estimated costs of implementation. The measure directs the Oregon Department of Transportation (ODOT) to analyze and report on the cost of implementation and to provide security measures sufficient to protect individual privacy and prevent unauthorized disclosure prior to issuing Real ID-compliant licenses and identification cards. Finally, the measure prohibits participation in any multi-state or federal shared database unless security measures are established that are sufficient to prevent unauthorized disclosures.

The federal Real ID Act, signed in May 2005, created national standards for driver licenses and identification cards to ensure acceptable documents for security checks at airports and federal facilities. While states are not required to comply with the law, and there are no monetary penalties for noncompliance, residents of states whose licenses fail to meet minimum standards by December 31, 2009, will not be able to use their state identification for federal identity purposes.

The United States Department of Homeland Security (DHS) estimates that nationwide implementation of the Real ID Act will cost $9.9 billion, of which $3.9 billion will be borne by state governments. Congress has appropriated $48.6 million to assist states with implementation; none of this funding has been allocated to Oregon, although ODOT has received federal grant funds for driver license improvements and to implement systems for verification of residency documents.

Senate Bill 1080 (2008) brought Oregon into compliance with many Real ID requirements, including requiring ODOT's Driver and Motor Vehicle Services Division (DMV) to verify applicants' Social Security numbers (SSNs) through the Social Security Online Verification (SSOLV) system, providing proof of U.S. citizenship or lawful presence in the United States, and a SSN (or proof of ineligibility for a SSN) to be eligible for an Oregon driver license, driver permit, or identification card.

With the passage of Senate Bill 536, Oregon becomes one of 15 states to pass a law prohibiting implementation of the Real ID Act. An additional 12 states have adopted resolutions denouncing the federal law.

Effective date: January 1, 2010

Senate Bill 546

Expands training course requirement for motorcycle endorsement

Currently, to obtain the motorcycle endorsement to an Oregon driver license, individuals under the age of 21 must complete a motorcycle rider education course -- currently the TEAM OREGON Basic Rider Training. The course addresses such issues as effective turning, braking maneuvers, protective apparel selection, obstacle avoidance, traffic strategies, and maintenance. Senate Bill 546 extends this requirement to all first-time motorcycle endorsement applicants effective January 1, 2010, and to all endorsements issued, by January 1, 2015, phased in according to age-group. The requirement would apply on or after January 1, 2011, to persons who are under 31 years of age; on or after January 1, 2012, to persons who are under 41 years of age; on or after January 1, 2013, to persons who are under 51 years of age; on or after January 1, 2014, to persons who are under 61 years of age; and on or after January 1, 2015, to all persons. The measure also requires driver license examinations to include questions pertaining to safe operation of vehicles around motorists.

According to Oregon Department of Transportation statistics, collisions involving motorcycles are particularly lethal. Of 44,162 motor vehicle crashes reported in 2007, motorcycles were involved in 743, less than two percent. But of 455 traffic fatalities in those 2007 crashes, 51 involved motorcycles, more than eleven percent.

According to TEAM OREGON statistics, about 90,000 motorcycle riders have taken the course since 1984, and since 2000 over half of all new driver license motorcycle

endorsements have been issued to course graduates.

Effective date: January 1, 2010

Senate Bill 579

Requires children to wear safety belts on certain all-terrain vehicles

Senate Bill 579 requires the parent, legal guardian, or person responsible for the safety of a child under the age of 16 to ensure that the child is properly secured with a safety belt or safety harness while operating or riding as a passenger on a Class I or Class II all-terrain vehicle on premises open to the public. ORS 801.400 defines "premises open to the public" to include "any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises," including forest roads and state park lands such as beaches and dunes.

The offense of failure to properly use seat belts is classified as a Class D traffic violation, punishable by a maximum fine of $90. The measure only requires that belts or harnesses be used if they are present on the vehicle.

Oregon law defines a Class I all-terrain vehicle as one with three or more wheels, weighing 800 pounds or less, and designed for off-road travel. Class II all-terrain vehicles are any motor vehicle weighing in excess of 800 pounds and capable of, designed for, and actually being operated off a highway over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; this includes street-legal vehicles, such as pickup trucks and all-terrain vehicles. Class III all-terrain vehicles are off-road motorcycles.

Under current law, youth riders of Class I all-terrain vehicles must wear helmets. There is no requirement to wear a helmet while in a Class II vehicle. Drivers and passengers in a street-legal vehicle must wear safety belts or harnesses while operating on the road; however, once the vehicle leaves the road safety belts are no longer required.

Effective date: January 1, 2010

Senate Bill 583

Requires children to wear helmets on certain all-terrain vehicles

Current statute requires the wearing of motorcycle helmets for drivers and passengers of Class I and Class III all-terrain vehicles. Exceptions are for licensed agriculture and forestry uses and for persons using vehicles on land they own or lease. Senate Bill 583 requires that drivers and passengers of Class II all-terrain vehicles who are under 18 years of age also wear motorcycle helmets. Senate Bill 583 adds an exception for registered Class II all-terrain vehicles with roofs or roll bars.

"Class II all-terrain vehicle" is defined at ORS 801.193 to be any motor vehicle that: 1) weighs more than a Class I all-terrain vehicle (800 pounds); 2) is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain; and 3) is actually being operated off a highway or is being operated on a highway for agricultural purposes.

Effective date: January 1, 2010

Senate Bill 689

Revises regulation of outdoor advertising signs

Outdoor advertising signs ("billboards") must have permits in order to be installed in locations visible from state highways. Oregon has a "cap and replace" sign permit system, with the number of permits capped at the 1977 level when the program went into existence. To get a permit to build a new sign, an owner must remove a permitted sign, trading the permits. "Banking" of permits is allowed; a banked permit is called a relocation credit. Currently, there are about 1,700 permits for existing billboards, with another 700 "banked" relocation credits.

The Legislative Assembly created the Sign Task Force with the passage of House Bill 2273 (2007), and directed it to examine the following issues: permitting of tri-vision signs; ownership, use and other issues regarding relocation credits; emerging technologies in the outdoor sign industry; increasing penalties for violation of outdoor sign regulations; just compensation related to required removal of outdoor advertising signs; and any other related issues deemed relevant. The task force was comprised of legislators, sign companies (both large and small), scenic interests, landowners, companies that advertise on outdoor advertising signs, the Attorney General's Office, and the Department of Transportation, which provided staff support.

Senate Bill 689 arises from recommendations of the Task Force. According to the Sign Task Force Report,

there are 216 outdoor advertising signs along scenic byways; about 25 of those are outside city limits. Of those, perhaps half (12 to 15) are in truly scenic areas, in existence prior to the particular highway's designation as a scenic byway, and therefore allowed to stay in the scenic byway due to "grandfathered" rights. The measure directs the Department of Transportation to administer an incentive program to encourage the voluntary removal of outdoor advertising signs from these areas by offering two relocation credits in exchange for removal of the qualifying sign. The measure also allows for the combination of relocation credits for small signs (those under 250 square feet) and increases the maximum fines for violation of outdoor advertising sign laws from $100 per day to $1,000 per day or the amount of gross revenues earned for the sign during the period the violation continues, whichever is greater.

Effective date: January 1, 2010

Senate Bill 894

Increased diversity of highway construction workforce

Women and minorities have traditionally been underrepresented, as a percentage of the state's population, at every level of involvement in public construction projects. State policy requires equal employment opportunities for all citizens. Different public entities have made various efforts to address this variance, with some success.

Senate Bill 894 requires the Oregon Department of Transportation to use one-half of one percent of federal funds received, up to $1.8 million, to increase diversity in the highway construction workforce. The department is to use federal funds, as well as funds from other agency sources that it might dedicate, to provide specified services to increase diversity and to report to the Legislative Assembly no later than December 1 of each even-numbered year on the performance outcomes specified in the measure.

Effective date: July 23, 2009

Senate Bill 937

Verification of disability for disabled parking permit renewal

Like other states, Oregon allows for special parking privileges for individuals with disabilities. Individuals who are certified by an authorized health care specialist as having a permanent or temporary disability are eligible for a Disabled Person Parking Permit. ORS 801.387 defines "person with a disability" as an individual who has severely limited mobility because of paralysis or loss of use of some or all of their legs or arms, affected by loss of vision or substantial loss of visual acuity or visual field, or any other disability that prevents them from walking without the use of an assistive device or that causes them to be unable to walk more than 200 feet. The Driver and Motor Vehicle Services Division (DMV) of the Oregon Department of Transportation issues several types of permits; some are temporary and valid for the length of time the physician deems necessary, not to exceed six months, while others are renewable when the individual renews their driver license.

Current law requires individuals seeking to renew their Disabled Person Parking Permit to sign a statement certifying that they are still qualified to hold the permit. As a result, an individual who has previously been assigned a disabled parking permit can retain the permit even if they no longer have the disability for which the permit was issued. Disabled parking permits are also sometimes sold, lost, stolen, borrowed, or inherited from a deceased relative or friend. Use of permits by those who do not need them can limit the number of disabled-only spaces available for those who truly need them, and can also reduce revenues collected by parking meters.

Senate Bill 937 requires that renewal of a Disabled Person Parking Permit include a signed statement from a licensed medical professional that the individual in question still qualifies for the permit.

Effective date: January 1, 2010

Senate Bill 944

Requires Lane County to form an area commission on transportation

Area commissions on transportation (ACTs) are advisory bodies chartered by the Oregon Transportation Commission (OTC) to address all aspects of transportation, including surface, marine, air, and transportation safety. ACTs focus primarily on the state system, but also consider regional and local transportation issues as they affect the state system, and work with other local organizations in relation to transportation issues. ACTs play a key advisory role in the development of the Statewide Transportation Improvement Program (STIP) by establishing a public process for area project selection priorities for the STIP.

There are currently ten ACTs: Northwest Oregon (Clatsop, Tillamook, Columbia, and western rural Washington counties, established 1999); Mid-Willamette Valley (Marion, Polk and Yamhill counties, 1997); Cascades West (Benton, Linn and Lincoln counties, 1998); South West (Coos, Curry and Douglas counties, 2000); Rogue Valley (Jackson and Josephine counties, 1997); Lower John Day (Gilliam, Sherman, Wheeler and Wasco counties, 1999); Central Oregon (Crook, Deschutes and Jefferson counties, 1998); South Central Oregon (Klamath and Lake counties, 1999); North East (Morrow, Baker, Union, Umatilla and Wallowa counties and the Confederated Tribes of the Umatilla Indian Reservation, 2002); and South East (Grant, Harney and Malheur counties, 2000).

Lane County and the Portland metropolitan area have elected not to establish ACTs. In Lane County, the Department of Transportation has worked with the Eugene/Springfield Metropolitan Policy Committee and the Lane County Board of Commissioners to coordinate transportation project planning and construction. Senate Bill 944 directs the Lane County Board of Commissioners to develop a proposed charter for an area commission on transportation, to submit the charter to OTC for review and approval by September 30, 2010, and to report to the interim legislative committees on transportation by October 31, 2010.

Effective date: January 1, 2010

Senate Bill 961

Re-establishes "Pacific Wonderland" registration plate; vehicle dismantler record requirements

To commemorate Oregon's 1959 centennial, historic "Pacific Wonderland" automobile registration plates were issued between 1959 and 1963. Senate Bill 961 re-creates the "Pacific Wonderland" vehicle registration plates to commemorate Oregon's sesquicentennial (150th anniversary). Senate Bill 961 limits the issue of "Pacific Wonderland" registration plates to 25,000 with a surcharge set at $100. Proceeds will go to the Oregon State Capitol Foundation for an Oregon History Center to be established at the Capitol.

Senate Bill 961 also clarifies and reorganizes statutes regulating vehicle dismantlers and their record-keeping requirements. The purpose of regulating motor vehicle dismantlers is to ensure an audit trail to reduce the trade of stolen vehicles and parts. Oregon's regulation of dismantlers dates from the 1983 legislative session. Senate Bill 961 expands the authority of the Oregon Department of Transportation to discipline dismantlers for violations of statutes or rules regulating dismantlers.

Effective date: January 1, 2010

LEGISLATION NOT ENACTED

House Bill 2385

Prohibits smoking in motor vehicle while children present in vehicle

House Bill 2385 would have created the offense of smoking in a motor vehicle when a person under age 17 is also in the vehicle. Conviction for a first offense was to be punishable as a Class D traffic violation with maximum fine of $90, with the second conviction a Class C traffic violation ($180 maximum fine) and third and subsequent convictions Class B traffic violations ($360 maximum fine).

Currently, there are four states that have laws prohibiting smoking with children in a vehicle. Arkansas and Louisiana laws prohibit smoking if there is at least one child in a safety seat present in the vehicle (under six years of age and under 60 pounds); both states' laws took effect in August 2006. Maine prohibits smoking with a passenger under the age of 16 in the vehicle (effective October 2008) and California prohibits smoking in a vehicle if there is a minor under the age of 18 present in the vehicle (effective January 2008). Puerto Rico and several local governments nationwide also have similar laws and ordinances.

House Bill 2690

Permits bicycle riders to proceed through certain intersections without stopping

Vehicle operators, including cyclists, are required to stop when approaching an intersection controlled by a red flashing signal or stop sign. Failure to comply is designated as a Class B traffic violation, punishable by a maximum fine of $360. Drivers are considered to be not in violation if they are following the directions of a police officer, operating an ambulance or other emergency vehicle, properly executing a turn at a red light, or driving in a funeral procession led by a funeral lead escort vehicle.

House Bill 2690 would have permitted bicycle operators

to treat stop signs and flashing red signals as yield signs, allowing them to roll through the intersection after yielding the right of way to other vehicles at the intersection. Under the measure, cyclists would not have needed to stop for stop signs or flashing red lights if they did any of the following after slowing to a safe speed: proceeding through the intersection; turning right or left onto a two-way street; or turning in the direction of traffic on a one-way street. The authorization would not have applied in cases where executing the maneuver is in disobeyance of directions of a police officer, results in an accident, or fails to yield right of way to a pedestrian in an intersection or crosswalk.

Idaho is the only state with a law similar to House Bill 2690. That state enacted its law in 1982; as a result, a cyclist yielding rather than stopping at a stop sign or flashing red signal is said to be executing an "Idaho-style stop." Proponents of the Idaho-style stop assert that stopping and starting at controlled intersections, particularly in residential areas where traffic is lighter, requires effort on the part of the rider that is not warranted by the safety risk and serves as a disincentive for some potential riders to choose cycling as a transportation option.

House Bill 2884

Pursuit authority for motor carrier enforcement personnel

The Motor Carrier Transportation Division (MCTD) of the Oregon Department of Transportation (ODOT) is responsible for regulating commercial vehicle registration and compliance programs in Oregon. The department operates at 87 fixed weigh stations throughout the state, including six ports of entry, as well as at dozens of portable scale sites to ensure that trucks stay within weight and size limits. MCTD weighed over two million trucks in 2008 and processed nearly 1.5 million additional trucks that were weighed and checked electronically.

ORS 810.530 authorizes weighmasters and motor carrier enforcement officers to arrest and issue citations in a manner similar to law enforcement for a number of offenses. However, this authority does not allow MCTD staff to pursue and detain commercial vehicles that leave a weigh station without permission or that fail to stop at a weigh station when required to do so.

House Bill 2884 would have authorized weighmasters and motor carrier enforcement officers to use warning lights and other signals to stop and detain commercial motor vehicles. The measure also required ODOT to provide training to MCTD staff on how to safely stop and detain vehicles, and to report to the Legislative Assembly on the effectiveness of the program.

House Bill 2902

Creates the Non-motorized Vehicle Transportation Fund

Oregon derives most of its revenues for use in transportation projects from sources such as vehicle registration fees, motor fuel taxes and weight-mile taxes. These moneys are deposited into the State Highway Fund and used for the construction, reconstruction, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas. Article IX, section 3a of the Oregon Constitution limits the use of moneys from these funding sources to the types of projects listed above, meaning that other types of transportation modes, including rail, air and public transit are ineligible to use State Highway Fund moneys.

Projects designed to allow for non-motorized travel, such as bicycle lanes, trails and sidewalks, can be constructed using State Highway Fund moneys only if they are constructed in a highway right of way. Supporters of urban trails and non-motorized corridors assert that such options provide benefits that include reduced road congestion, inexpensive commute options, improved health, and reduced greenhouse gas emissions, that warrant the cost of investment.

House Bill 2902 would have created a Non-motorized Vehicle Transportation Fund and authorized the issuance of lottery-backed bonds to generate moneys to provide grants and loans for urban trail and non-motorized corridor construction projects. Projects were to be selected by the Oregon Transportation Commission from a list of projects otherwise ineligible to receive moneys from the State Highway Fund, with at least 10 percent of bond proceeds required to be spent in each of Oregon's five transportation regions.

House Bill 2971

Doubles bikeway/walkway share of State Highway Fund moneys

The Legislative Assembly adopted Oregon's "Bike Bill" in 1971. The law requires that the Department of Transportation, cities and counties spend at least one percent of their share of State Highway Fund revenues (derived primarily from motor fuel taxes, vehicle registration

fees and weight-mile taxes) on walkways and bikeways within highway rights of way. These features must also be included as part of road construction projects, except where there is no need, where doing so would be cost prohibitive compared to need, or where inclusion of such features would be unsafe.

At its current one-percent level, the total share of State Highway Fund revenues dedicated to walkways and bikeways is approximately $5.9 million. House Bill 2971 would have increased the required allotment for these features from one percent of the State Highway Fund to two percent, increasing the total allocation to $11.8 million per year. The measure retained the current provision that a city is not required to make the expenditure if two percent equaled $250 or less, and counties were not required to make the expenditure if two percent equaled $1,500 or less.

Veterans

2009 SUMMARY OF LEGISLATION

House Bill 2178

Veterans' service officers on college campuses

Federally accredited veterans' service officers (VSOs) are advocates who work to ensure that veterans receive the maximum amount of benefits earned as a result of their military service. They provide medical, legal and military research to develop evidence to prove veteran's eligibility for United States Department of Veterans' Affairs (VA) benefits; are subject matter experts in the exacting and complex VA laws, regulations, and rules; and, protectors of both veterans' rights and of taxpayers against fraud. In 2007, the federal VA paid $1.12 billion to Oregon in the form of disability compensation, pensions, health care benefits, and education benefits claims.

During the 2007 interim, the Governor's Task Force on Veteran's Services launched a VSO pilot-program at the Portland State University, resulting in 113 interviews, 110 claims completed, and direct-contact with over 300 student-veterans. In 2008, Congress overhauled the Montgomery G.I. Bill, and beginning August 1, 2009, the New GI Bill (Post 9/11 GI Bill) will provide: full tuition and fees, monthly housing stipend, and $1,000 yearly stipend for books and supplies. Guard and Reserve members must serve 36 months to receive the full benefit.

House Bill 2178 creates a Campus Veterans' Service Officer Program within the Oregon Department of Veterans' Affairs. The measure assigns federally-accredited VSOs to the Oregon University System and to community college campuses, and directs colleges and universities to provide office space for related services to veterans.

Effective date: July 22, 2009

House Bill 2303

Protections under Servicemembers Civil Relief Act

House Bill 2303 allows a soldier, sailor, marine, member of the Air Force, or member of the National Guard or Reserves on active duty to notify a creditor or a person suing the service member that the service member is on active duty and protected by the Servicemembers Civil Relief Act (SCRA). The measure specifies that the servicemember may seek attorney fees and damages if they notify a party at least 30 days prior to the commencement of legal action that the service member is protected by the SCRA. House Bill 2303 also allows the defendant to avoid attorney fees by remedying, within 20 days, the violation before the commencement of a lawsuit. The servicemember must provide the other party with a general description of the violation. Actions under House Bill 2303 are exempt from court-ordered arbitration.

Effective date: May 8, 2009

House Bill 2510

Veterans' preference in public employment

Since the Civil War, the nation's military veterans have been given some degree of preference in appointments to federal jobs. The benefit was codified in various provisions of Title 5 of the United States Code with the passage of the Veterans Preference Act of 1944, providing preference over non-veterans in hiring from competitive lists of eligible and also in retention during reductions in force. In 2007, Oregon established a 15-year cap and directed the Bureau of Labor and Industries (BOLI) to enforce the provision with the passage of Senate Bill 822. The provision of the measure provides that a non-disabled veteran is eligible for veterans preference for public employment positions if the application is made within 15 years of discharge or release from the Armed Forces. BOLI's Civil Rights Division has enforced the provision at unexpected significant legal costs due to lack of definition for civil service positions. Proponents of the measure assert the need to extend this limited benefit to a lifetime to reflect today's more transient job market.

House Bill 2510 eliminates the 15-year cap on claiming the veterans preference for competitive merit-based recruitment positions, providing a lifetime veterans preference benefit. The measure also clarifies existing statutory definitions to facilitate BOLI enforcement. BOLI estimates that there are 23,000 veterans currently eligible for the veterans preference, and that the measure would expand that number to approximately 179,000. Veterans preference does not guarantee a job, nor is it an affirmative action-type system. The system provides points to be used in the hiring preference to ensure that the veteran is competitive when applying for civil service sector positions.

Effective date: January 1, 2010

House Bill 2571

Veterans' educational benefits

One of the top recommendations for the Governor's Task Force on Veterans' Service report issued December 2008 is to waive "out-of-state" tuition for veterans seeking access to education. The report recognized that veterans using the Montgomery G.I. Bill, vocational rehabilitation, or state education benefits are being charged out-of-state tuition rates. House Bill 2571 is similar to the Ohio G.I. Promise, which changes residence requirements at that state's 36 colleges and universities to allow all veterans, their spouses and dependents to attend Ohio colleges and universities at in-state tuition rates.

House Bill 2571 provides out-of-state veterans tuition reductions commensurate with the New G.I. Bill Yellow Ribbon Program, equivalent to 50 percent of out-of-state tuition costs. Provisions of House Bill 2571 become operable upon enactment of a new federal G.I. Bill, estimated for August 2009. The Post 9/11 G.I. Bill will provide full tuition and fees, a monthly housing stipend, and $1,000 yearly stipend for books and supplies. Guard and Reserve members must serve 36 months to receive the full benefit. Unlike the previous Montgomery GI Bill, service members are pro-rated for 90 days, 180 days, or 24 months of service. Also unlike the Montgomery G.I. Bill, in which benefits expire after 10 years of service, the New G.I. Bill will allow veterans to use this benefit for up to 15 years after honorable discharge.

Effective date: July 28, 2009

House Bill 2718

Women veterans' health care needs

Women veterans are the fastest growing segment of the veteran population, second only to elderly veterans. More than 200,000 women have served in the wars in Iraq and Afghanistan, representing 11 percent of all veterans from those conflicts. Women comprise 15 percent of active duty military, Guard and Reserves, and there are currently 1.8 million women veterans.

The Governor's Task Force on Veterans' Services Final Report (December 2008) found that a significant number of female combat veterans health care needs are not being met by the Veterans Administration (VA) health care system. The report found that military sexual trauma (MST) and specific (non-coed) inpatient or residential mental health/post-traumatic stress disorder (PTSD) treatment facilities are not available in the Pacific Northwest. The report further concluded that the twelve beds focused on women veterans west of the Mississippi River are insufficient.

House Bill 2718 creates an eight-member Task Force on Women Veterans Health Care to study the health care needs of women, including the identification and treatment of trauma, mental health and substance abuse. The Task Force is directed to submit its findings and recommendations to the Governor no later than October 1, 2010.

Effective date: July 14, 2009

House Bill 3470

Defines "veteran" in Oregon Constitution

House Bill 3470 defines the term "veteran" for purposes of section 3, Article XI-A of the Oregon Constitution. The measure defines veteran as a person who meets any of the following qualifications:

1) Served on active duty with the U.S. Armed Forces for more than 90 consecutive days before January 31, 1955 and was discharged or released from duty under honorable conditions;

2) Served on active duty with the U.S. Armed Forces for more than 178 consecutive days after January 31, 1955 and was discharged or released from duty under honorable conditions;

3) Served for 178 days or less and discharged from active duty under honorable conditions and has a rating from the U.S. Department of Veterans Affairs;

4) Served at least one day in a combat zone and was discharged from active duty under honorable conditions;

5) Received a combat, expeditionary or campaign ribbon or medal for service and was discharged from active duty under honorable conditions; or

6) Is receiving a nonservice-connected pension from the Veterans Administration

House Bill 3470 is the companion measure to House Joint Resolution 7, which is necessary in order to connect the definition of veteran in statute to the language in the constitutional amendment changing the

eligibility requirements for a home loan from the Oregon War Veterans' Fund. The definition of veteran only takes effect if the amendment to the Oregon Constitution by House Joint Resolution 7 is approved by voters at the 2010 General Election.

Effective date: January 1, 2011

House Joint Memorial 4

Urges Congress to establish and fund a comprehensive "Soft Landing" for National Guardsmen and Reserve Soldiers

Currently, Oregon National Guard or Reserve citizen-soldiers deployment training involves a four to six month "train up" mobilization schedule designed to prepare them for the rigors and complexities of the wars in Iraq and Afghanistan. However, National Guard and Reserve members can go from active military duty to civilian life in less than a week when coming off deployment. Redeployment training can involve briefings on acclimating to the civilian world and recognizing signs of stress to visits to the medical, dental and chaplain offices. Redeployment training does not involve the soldier's family and is the last period of active duty for service members before returning home to their loved ones. Often, citizen soldiers may deny they have a known medical condition that may hinder their return to their families and consequently forego their earned medical care. The Governor's Task Force on Veterans' Services determined that the current redeployment system back to the citizen soldiers' communities provides too short a readjustment period for veterans who have been exposed to combat operations and who may, as a result, be suffering from physical or emotional disabilities such as traumatic brain injury or post-traumatic stress disorder.

House Joint Memorial 4 urges Congress to establish and fund a comprehensive reintegration program that maintains National Guardsmen and Reservists on Title 10 Orders for an orderly transition "soft landing" of between 90 and 120 days after deployment. Such a program would provide a system for soldiers and families to gradually readjust to civilian life, ensuring accessible medical care, time for combat decompression, and reunification family time under the auspices of Title 10 Orders.

Filed with Secretary of State March 31, 2009

House Joint Memorial 8

Urges the creation of a postage stamp honoring Japanese Americans service during World War II

On December 7, 1941, Japan's navy conducted a military strike against the U.S. Naval Base at Pearl Harbor, Hawaii. Following the attack, the loyalty of Japanese Americans was questioned and Federal Bureau of Investigation agents and police began arresting Japanese American community leaders in Hawaii and the mainland. In the western parts of the U.S. more than 120,000 persons of Japanese ancestry were forcibly relocated from their homes, businesses and farms to concentration camps. During the course of World War II, over 22,500 Japanese American soldiers and officers served in the 100th Infantry Battalion/442nd Regimental Combat Team, which became the most decorated U.S. military unit for its size and length of service during the war, collecting 21 Medals of Honor, eight Presidential Unit Citations, and 9,486 Purple Hearts. Japanese-Americans also served with distinction in the Military Intelligence Service (MIS) as translators of captured enemy documents, interrogators of enemy prisoners of war and persuaders of enemy surrender. MIS linguists and administrative personnel also helped in the drafting of the new Japanese Constitution at the end of the war.

House Joint Memorial 8 expresses support to commemorate the accomplishments, selflessness, caliber and service of the soldiers of the 100th Infantry Battalion, 442nd Regimental Combat Team and MIS military unit during WWII. The measure urges the Board of Governors of the U.S. Postal Service and Citizens Stamp Advisory Committee to create a postage stamp to commemorate Americans of Japanese descent who served in these units during and after World War II.

Filed with Secretary of State June 11, 2009

House Joint Resolution 7

Proposing an amendment to the constitution relating to Oregon Veterans' Home Loans

House Joint Resolution 7 refers to voters, for their approval or rejection at the November 2010 General Election, a proposed amendment to the Oregon Constitution to make the Oregon Veterans' (ORVET) Home Loan a lifetime benefit and to expand the eligibility of the program to veterans as defined in Oregon law.

The amendment, if approved, would change eligibility

requirements for ORVET home loan program by making five modifications: removal from the Oregon Constitution of the word "war" as it pertains to the Oregon War Veterans' Fund; elimination of the 30-year eligibility restriction; allowance for a spouse of a qualified veteran who was either missing in action or a prisoner of war, but who never resided in the state to qualify if he or she is the sole survivor to qualify; use of the term "veteran" as defined by ORS 488.225; and inclusion of school or training only as part of active duty training.

Currently, the Oregon Constitution restricts ORVET home loans to veterans who have served within the past 30 years. Once a veteran has been out of the active-duty service more than 30 years, their constitutional eligibility expires. The Governor's Task Force on Veterans' Services 2008 Final Report recommended that ORVET home loan program be aligned with the federal Department of Veterans Affairs home loan lifetime benefit. In addition, the Oregon Constitution defines veteran, for eligibility for ORVET home loan program, as someone who has 210 days of active duty service, while state law defines veteran as someone who has served more than 178 days of active duty service. This inconsistency is an important distinction for those individuals who have been deployed for more than 178 days, but less than 210 days.

House Joint Resolution 7 requires passage of House Bill 3470, which defines veteran for purposes of section 3, Article XI-A of Oregon Constitution.

Filed with the Secretary of State on June 24, 2009

Senate Bill 96

Standardizes the definition of veteran in Oregon Revised Statutes

Currently, there are six different definitions of "veteran" in the Oregon Revised Statutes. Senate Bill 96 creates one common definition that is consistent with ORS 408.225. The measure does not impact the Oregon Constitution's definition of war veteran or the War Veteran Fund.

The six existing definitions of the term veteran relate to: property tax exemptions; the troopers-to-teachers program; veteran preference in state employment; state aid to veterans for medical issues; hepatitis education; and emergency grants. Senate Bill 96 clarifies the various current definitions and eliminates the confusion for veterans seeking benefits and referrals and for state agencies providing these services.

Effective date: January 1, 2010

Senate Bill 98

Establishes a Task Force on Veterans Transportation to assist veteran's access health care facilities

Access to medical care continues to be one of the most important issues facing veterans, especially in rural areas of Oregon. The major veterans health care facility is located in Portland, with smaller clinics located in regions throughout Oregon. Senate Bill 98 establishes a Task Force on Veterans Transportation to study methods for the creation of a statewide transportation plan that will focus on access and transportation to medical care. The Task Force is to present its recommendations to the Legislative Assembly by October 1, 2010.

The Governor's Task Force on Veterans' Services Final Report (December 2008) rated as its top transportation recommendation the study of existing transportation networks and strategic partnerships to create a cohesive veterans transportation system. The Oregon Department of Veterans' Affairs indicates that only 80,000 veterans, out of a total of 350,000 veterans statewide reenrolled with the U.S. Veterans Affairs health care system. While Oregon has many existing transportation districts, local bus lines, medical transportation and community volunteer programs, none are connected routinely or purposely provide services to veterans who are unable to drive to their medical appointments.

Effective date: May 26, 2009

Senate Bill 449

Establishes that US Highway 97 in Oregon be known as the World War II Veterans Historic Highway

U.S. Highway 97, known as the Dallas-California Highway, crosses the State of Oregon beginning at the California state line and ending at the Washington state line, running through Deschutes County. It is also designated a Blue Star Memorial Highway paying tribute to the U.S. armed forces. Senate Bill 449 does not change the highway's Blue Star designation, but does allow the highway to be known as World War II Veterans Historic Highway.

During World War II, U.S. Highway 97 served eight critical military training sites in what was the largest military training exercise in the Pacific Northwest, known

as Oregon Maneuver, involving more than 100,000 citizen-soldiers directly impacting the six counties along US 97. Senate Bill 449 prohibits the Oregon Department of Transportation from using public funds for the installation and maintenance of the highway markers; however, it allows the Department to accept funds from veterans and other groups to create, install and maintain the markers.

Effective date: January 1, 2010

Senate Bill 479

Opportunities for disabled veterans in public contracting

Oregon's Public Contracting Code allows contracting agencies to promote affirmative action goals, policies or programs for disadvantaged or minority groups, and to require contractors to subcontract services or materials to a certified emerging small business. The code also prohibits a bidder or proposer who competes for or is rewarded a public contract from discriminating against a subcontractor that is minority or women-owned or is an emerging small business enterprise.

Senate Bill 479 extends these provisions to businesses and enterprises that are owned, controlled by, or that employ service-disabled veterans.

Effective date: June 4, 2009

LEGISLATION NOT ENACTED

House Bill 2035

Expands tuition waivers for family of deceased and disabled veterans

House Bill 2035 would have expanded post-secondary institution tuition waivers at Oregon University System institutions to community colleges for children, spouses and unremarried surviving spouses of deceased or 100 percent disabled members of the Armed Forces of the United States. The measure removes the September 11, 2001 provision emphasizing that a veteran is a veteran, regardless of war-era served.

House Bill 2035 was to be an expansion of Senate Bill 1066 (2008). Approximately, 4,887 Oregonians rated 100 percent disabled would have qualified their spouses or children for tuition waiver (FY07). According to the Chronicles of Higher Education, community colleges now educate about 45 percent of undergraduates nationwide. The measure was similar to legislation considered in Washington State, California and Idaho. A similar measure, Senate Bill 595, which focused specifically on removing the 9/11 provision, was signed by the Governor (June 4, 2009).

House Bill 2348

Education of children of military families

House Bill 2348 would have added Oregon to the Interstate Compact on Educational Opportunity for Military Children, a growing state-membership body focused on removing barriers to educational success imposed on children of military families because of frequent moves due to the deployment of their parents.

Since September 11, 2001, military deployments have become more frequent for service members in the Guard and Reserves as a consequence of those branches transitioning to an operational reserve from a strategic reserve. This is increasingly common in the conflicts in Iraq and Afghanistan with the important role played by the National Guard and Reserve, whose families frequently do not live near military bases. Oregon does not have large and active military posts in contrast to its northern neighbor, Washington (Fort Lewis), but does maintain a roster of 6,500 Oregon National Guard members.

Water

2009 SUMMARY OF LEGISLATION

House Bill 2080

Use of gray water for irrigation of lawns and gardens

House Bill 2080 authorizes the Department of Environmental Quality to issue permits for the use of gray water for the irrigation of lawns and gardens.

Gray water is waste water from domestic sources such as baths, showers, kitchens and laundries. To promote water conservation, the Oregon Building Codes Division recently approved the use of certain gray waters for flushing toilets as an alternate method in the state plumbing code. Under current law, the use of gray water for irrigation of lawns or gardens is prohibited.

Effective Date: June 12, 2009

House Bill 3369

Water Supply Funding Loan and Grant Programs; Integrated State Water Resources Strategy

House Bill 3369 directs the Water Resources Commission (WRC) to establish standards for borrowers obtaining loans from the Water Development Loan Fund (WDLF). The measure also establishes the Water Investment Grant Fund and authorizes WRC to establish application guidelines that give priority to projects to recharge aquifers in limited and critical ground water areas and those designed to deliver greatest environmental public benefit. The measure establishes required criteria for the Water Resources Department (WRD) to approve loan or grant application. Senate Bill 5505 (2009) authorizes the state to issue $10 million in general obligation bonds to provide loans for projects in the Columbia River Basin by water developers that are not municipalities or municipal water providers.

House Bill 3369 also directs WRD, in cooperation with the Departments of Environmental Quality and Fish and Wildlife, to develop an integrated state water resources strategy to meet in-stream and out-of-stream water needs, and to update the strategy every five years. Senate Bill 5535 (2009) appropriates $283,000 to WRD for two positions to develop the strategy.

The Water Development Loan Fund is authorized by Section I, Article XI of the Oregon Constitution. The fund was established in 1977 to serve a broad range of eligible borrowers in all regions of the state by providing low-cost, long-term, fixed-rate financing incentives to promote projects to achieve the state's long-term water management goals. Eligible projects include: drainage, irrigation, community water supply (in communities with a population of less than 30,000), fish protection, watershed enhancement, and multipurpose projects.

Oregon is one of two western states without a formal water supply plan. Oregon's surface water is nearly fully allocated during summer months and ground water is showing declines in quantity and quality in some areas. In 2007, the Legislature allocated funds to WRD to begin collecting data to increase the state's ability to forecast water demands, as well as identify opportunities for conservation and water storage. This effort, known as the Oregon Water Supply and Conservation Initiative, began in 2007 and began producing data in 2008.

Effective date: August 4, 2009

Senate Bill 195

Wave energy pilot projects

Senate Bill 195 exempts wave energy projects from certain minimum existing standards of development if a project generates less than five megawatts of electricity, is within Oregon's Territorial Sea, and an application is submitted to the Department of State Lands by December 31, 2009. The bill requires that the project have a license under the Federal Power Act that provides for adaptive management to prevent or mitigate unexpected adverse impacts. A project must be constructed and operated under an agreement with multiple state agencies. A task force consisting of representatives of each local government and any federally recognized Indian tribe affected by a wave energy project may assist in the development of an agreement.

House Bill 2925 (2007) exempted wave energy projects from provisions regulating hydroelectric projects if the projects generated five megawatts or less, were located in Oregon's Territorial Sea, and did not require a license under the Federal Power Act. Senate Bill 195 would continue to include wave energy projects under the hydroelectric licensing statutes but exempt them from ORS 543.017 that places standards on any action the Water Resources Commission (WRC) takes on the development of hydroelectric power. This includes a requirement that the WRC not approve any action that would result in a net loss of wild game, fish or recreational opportunities.

Effective Date: June 18, 2009

Senate Bill 739

Testing wells for arsenic

Senate Bill 739 requires that upon accepting an offer, the seller of any real estate that includes a well that supplies ground water for domestic purposes must have the well tested for arsenic. The measure authorizes the Department of Human Services (Department) to adopt rules requiring additional tests for specific contaminants in specific areas of public health concern. A seller must submit the test results to the Department and to the buyer within 90 days of receipt.

As many as 600,000 Oregonians rely on home wells for their drinking water. Since 1989, state law has required that when a property with a well that supplies groundwater for domestic purposes is sold, the well must be tested for nitrate and total coliform bacteria and the results reported to the Department. Senate Bill 739 adds arsenic to the list of chemicals that must be tested for and requires that the results be reported to the buyer in addition to the Department. The United States Environmental Protection Agency, through the federal Safe Drinking Water Act, has long regulated allowable levels of arsenic in public drinking water systems. Exposure to low levels of arsenic in drinking water over long periods of time increases the risk of internal organ cancers.

Effective Date: January 1, 2010

Senate Bill 788

Exempt ground water use recording fee; new and increased water-related fees

Senate Bill 788 requires the Water Resources Department (WRD) to collect a $300 fee for recording one or more of the following exempt ground water uses: watering any lawn or noncommercial garden not exceeding one-half acre; single or group domestic purposes in an amount not exceeding 15,000 gallons a day; or any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day. The bill directs the deposit of fee revenues into the WRD Operating Fund to be used for ground water studies, monitoring, and administration and enforcement. Land owners are required to provide a map to WRD showing location of a well on a tax lot within 30 days of well completion. The measure applies to wells completed on or after July 23, 2009.

Senate Bill 788 also adds and increases other water-related fees until July 1, 2013. A budget note in Senate Bill 5551 (2009) directs the department to work with interested parties to evaluate the adequacy and equity of the new and increased fees and report to the appropriate interim legislative committees and as part of its 2011 and 2013 budget requests.

Under Oregon law, "all water within the state from all sources of water supply belongs to the public." In general, a person must obtain a water use permit before using water from any source. However, there are exceptions called "exempt ground water uses." These uses are exempt from applying for a water use permit, but must use water beneficially and without waste. An exempt use is subject to the same privileges and restrictions as any water right permit or certificate and has a priority date. Oregon has over 230,000 existing exempt use wells and approximately 3,800 new exempt wells are drilled each year.

During the 2007 – 2009 biennium, WRD recovered an average of 28 percent of its costs related to customer transactions. Senate Bill 788 will increase cost recovery to about 50 percent.

Effective Date: July 23, 2009

LEGISLATION NOT ENACTED

House Bill 2098

Oregon territorial sea mapping project

House Bill 2098 would have appropriated non-General Fund moneys derived from the settlement of territorial sea damages in New Carissa Trespass case (State of Oregon vs. Taiheiyo Kaiun Co., Ltd.), allocating approximately $1,289,000 to Oregon State University for the Oregon territorial sea mapping project from the Department of State Lands 2009-2011 budget proposal. Currently, Oregon's territorial sea is five percent mapped. The area of focus extends three nautical miles from the coast and comprises approximately 950 square nautical miles. Areas along the west coast presently are charted based on 19th and 20th century technologies, which provides challenges to understanding marine and habitat science, coastal erosion and rising sea levels, navigation and safe commerce, tsunami inundation forecasting, and wave energy development. By comparison, the State of Washington is 13 percent mapped, California 65 percent, and the entire eastern coast 100 percent sea mapped.

Measures Vetoed by the Governor

2009 SUMMARY OF LEGISLATION

House Bill 2472

Business Energy Tax Credit Program

House Bill 2472 would have established grounds for mandatory denial of preliminary certification for tax credits for projects exceeding $5 million that fail to meet certain criteria. The measure required affected applicants to have applied for all required state and local licenses and permits, to not be in arrears on any tax owed to the state or local governments, and to keep the facility in continuous operation for at least five years after it is placed in operation. The Department of Energy would have been prohibited from issuing a final certification unless all necessary permits and licenses had been issued and allowed them to require the other conditions to be met to issue or revoke a final certification. The measure made electric vehicle manufacturers eligible for the credit. The measure also reduced the project cost cap from $20 million to $10 million and the credit percentage from 50 percent to 35 percent for renewable projects with installed capacity greater than 10 megawatts. The lower cap and percentage would have applied to completed applications received on or after July 1, 2009; all other provisions wer to be applicable to preliminary certifications issued on or after June 1, 2009.

The Business Energy Tax Credit program was created in 1979 for recycling, energy conservation, and renewable energy projects.

Governor's Veto Message

I am returning Enrolled House Bill 2472 unsigned and disapproved.

House Bill 2472 rolls back the Business Energy Tax Credit (BETC) by reducing the cap from $10 million to $3.5 million. The roll-backs in Enrolled HB 2472 go too far and would adversely impact Oregon's growing renewable energy sector, resulting in fewer jobs and less clean, renewable energy sources.

There is little if any dispute that since expanding the program in 2007, the BETC has proven to be one of the most effective tools for Oregon's efforts to accelerate the growth of our green economy. The BETC has aided the renewable energy industry, which in turn has provided much needed jobs while transitioning the state towards cleaner, renewable energy sources. Oregon now leads the nation in the percentage of jobs related to green energy, according to a recent Pew Charitable Trust report. I cannot support a bill that would scale back our support for one of the few growing sectors of our economy at a time when encouraging new economic opportunity is so critically important.

I understand that the underlying intent of Enrolled House Bill 2472 is to create additional revenues for the General Fund. At the same time, it would expand the BETC to include electric vehicle manufacturing which I support. I supported the A-Engrossed version of HB 2472, which would have established a $7.5 million BETC for large projects and continued the current BETC level for smaller projects up to 20 megawatts. Unfortunately, the final version of the bill went too far and I can not support the current version of the bill.

I agree with those who state that, while the BETC has been a very successful tool for growing our green economy, the time has come to examine the incentive levels. I am convinced, however, that we must first gather the facts concerning the BETC program and then apply those facts to the underlying economics of renewable energy projects before we make adjustments that may risk endangering a successful program. I have signed House Bill 2180, which directs the Oregon Department of Energy, to conduct an economic analysis on renewable energy projects that qualify for the BETC. Once we obtain the facts, we will be able to apply those facts to a better understanding of the state's return on the investment in the BETC program.

In addition, I am directing the Oregon Department of Energy to tighten the administrative rules that govern the BETC. I've asked them to clarify issues related to multiple projects and multiple BETC applications, and to establish further conditions for the approval of BETC applications as they relate to Oregon permitting and licensing laws, cost overruns, taxes owed to the state, length of operation of facilities, and enhanced accountability for jobs created and sustained.

I have also signed HB 2067, which schedules the BETC program for sunset review by the legislature in 2012. When the legislature convenes in January of 2011, we will have the facts and the analysis by the Department of Energy to give the legislature a better understanding of the role of the BETCs in Oregon's economy and the state's return on its investment. This factual analysis will assure that Oregon spends BETC dollars as effectively as possible, saves revenue and keeps Oregon on the forefront of renewable energy development.

I am also committed to supporting the development of the electric vehicle industry, the next generation of clean vehicles in Oregon. I will continue to work with state agencies and the legislature to develop policies to encourage the

manufacture of electric vehicles and battery technology, so that we can grow this emerging technology.

House Bill 2940

Renewable Portfolio Standards – Biomass and Municipal Solid Waste Facilities

House Bill 2940 would have allowed electricity generated from a facility using biomass that became operational before January 1, 1995 to comply with Oregon's renewable portfolio standard (RPS) if it was located in Oregon and met requirements for a qualified facility under federal Public Utility Regulatory Policies Act of 1975. The measure would have limited the amount of generating capacity from facilities eligible to receive renewable energy certificates (RECs) to 100 megawatts per calendar year which may not be used to comply with the RPS until January 1, 2015. The measure also would have authorized a facility generating electricity from direct combustion of municipal solid waste, operational before January 1, 1995 and located in Oregon, to comply with the RPS for up to 11 average megawatts generated annually after January 1, 2015.

House Bill 2940 would have authorized the Public Utility Commission to allow full recovery of costs by public utilities in prudent energy investments related to hydrogen power stations. The measure modified the type of electricity generated from hydrogen gas that may be used to comply with the RPS to include electricity generated by hydrogen power stations using anhydrous ammonia as a fuel source.

The Oregon RPS requires that all utilities and electricity service suppliers (ESSs) serving Oregon include in their portfolio of power sold to retail customers a percentage of electricity generated from qualifying renewable energy sources. The percentage of qualifying electricity that must be included increases over time, with all utilities and ESSs obligated to include some renewably generated electricity in their portfolio by the year 2025. House Bill 2940 allows biomass electricity generating facilities and municipal solid waste facilities, operational before January 1, 1995 to comply with RPS after January 1, 2015.

Effective date: January 1, 2010

Governor's Veto Message

I am returning Enrolled House Bill 2940 unsigned and disapproved.

Enrolled House Bill 2940 would decrease the value of Oregon's Renewable Portfolio Standard (RPS) by including additional sources of generation not accounted for in the original standard at the expense of new renewable generation projects. The RPS is a great economic generator, and already has produced great environmental benefits. I cannot support reducing the standard and thereby, the economic and environmental benefits.

I am sympathetic to the original goal of HB 2940 – to create additional economic opportunity for biomass facilities in Oregon that were built prior to 1995. I also acknowledge the efforts of the proponents of HB 2940 to attempt to mitigate some of the bill's adverse impacts to the RPS. Unfortunately, those efforts were inadequate to prevent diminishing the RPS. The correct approach to prevent a depreciation of the RPS is to make a targeted expansion (increase) to the RPS to account for the additional renewable resources generated by biomass facilities built prior to 1995. Such targeted expansion would benefit both the goals of the RPS and Oregon's biomass industry.

The bill was amended several times, adding various generation sources into the RPS. This ad-hoc approach even resulted in the inclusion of municipal solid waste, which many experts do not consider to be a renewable resource. In fact, the legislature expressly excluded municipal solid waste from the RPS just two years ago. Adding municipal solid waste to the RPS is a step backward and one I cannot support.

The RPS is a tremendous success story for Oregon. It has helped to stimulate billions of dollars of investment in this state, during one of the worst economic times in a century. The RPS has helped to make Oregon the leading state in the nation in green jobs and renewable energy. Oregon's utilities are ahead of schedule in integrating the renewable resources required under the RPS at no appreciable added cost to Oregon ratepayers.

We must maintain the growth and momentum in our renewable energy sector at this critical juncture, not just slow it. In that context, I hope to work with legislators and stakeholders to develop consensus on how to expand the number of megawatts required to be generated from renewable energy resources under the RPS, while also addressing in a more comprehensive way, concerns from individual renewable resource sectors that seek to become eligible for the RPS.

Senate Bill 545

Relating to pathogens in fish hatcheries

The Oregon Department of Fish and Wildlife (ODFW) has the statutory responsibility for the health of fish in state waters. The department's fish health staff conduct regular examinations of hatchery and naturally reared fish in order to identify potential threats and develop strategies to prevent or control disease issues. In 2008, ODFW conducted 1,994 fish examinations at state and private hatcheries, and 111 examinations on naturally reared fish from 30 sites.

Senate Bill 545 would have directed ODFW to study fish hatcheries, impacts of pathogens on fish and hatchery operations, and financial pro forma statements that compare state-owned hatchery costs with the cost of purchasing Desert Springs Trout Farm. The measure directed the Legislative Fiscal Office to assist with computing costs, and also directed the department to submit a report to the Legislative Assembly on or before February 1, 2011.

Governor's Veto Message

I am returning Enrolled Senate Bill 545 unsigned and disapproved.

This bill requires the Oregon Department of Fish and Wildlife (ODFW) to conduct a study of fish hatcheries related to pathogens and the Desert Springs Trout Farm and to report to legislative interim committees.

I believe this bill is unnecessary and would impose an administrative and unfunded financial burden on ODFW.

Fishing, and hatchery trout production to support fishing, is very important to the State of Oregon and ODFW. Ensuring that hatchery trout production is economical, effective and healthy is a high priority of the agency and is as important to me as it is to the bill's sponsors. Therefore, by letter, I will direct ODFW to continue to assess ways to improve the efficiency, quality and health of its hatchery trout program, including assessment of the cost and benefits of acquiring the Desert Springs Trout Farm. This ongoing assessment does not require a statute and will help set the stage for future agency and legislative considerations.

Senate Bill 580

Relating to the Columbia River Crossing Project

The Columbia River Crossing (CRC) Project is an effort to develop a replacement to the existing Interstate 5 bridge over the Columbia River to relieve congestion, improve safety and freight mobility, and to increase travel options on the interstate while meeting the needs of nearby communities. The CRC is a bridge, transit and highway improvement project spanning five miles of I-5 from State Route 500 in Vancouver, Washington, to Columbia Boulevard in Portland. In July 2008, local project partners selected as the locally planned alternative (LPA) a 12-lane replacement bridge with light rail, pedestrian and bicycle lanes. The current preliminary capital cost estimate of implementing the LPA is between $3.1 and $4.2 billion, measured in year-of-expenditure dollars; design and construction are scheduled to take place between 2010 and 2017.

The Oregon and Washington departments of transportation (ODOT and WASHDOT, respectively) anticipate that tolling will need to be part of any funding plan for the CRC project. Several factors will be taken into account when determining the exact cost of the toll, including the cost of the approved project, the amount of revenue provided by other sources, the types of activities funded by the toll, and public opinion. The Draft Environmental Impact Statement analyzed four different "build" alternatives with sample toll amounts for study purposes only, allowing for potential revenue and traffic reduction estimation. The one-way toll amounts, measured in 2017 dollars (when the bridge is scheduled to open) ranged from $1.31 to $3.28, with vehicles traveling during non-peak hours paying a lower toll.

Senate Bill 580 would have directed ODOT to collaborate with other governmental units at the state, federal and local level to implement tolling on I-5 and I-205 bridges spanning the Columbia River. The department is to submit a proposed rate structure that includes congestion pricing to the Oregon Transportation Commission by January 1, 2011.

Governor's veto message:

I am returning Enrolled Senate Bill 580 unsigned and disapproved.

SB 580 directs the Oregon Department of Transportation to make every effort to implement tolling on the I-5 and I-205 bridges across the Columbia River and

mandates development of a toll rate by January, 2011, that would allow for congestion indexing. Though I agree with some of the sentiments of the legislation, I believe that it is premature to mandate these decisions legislatively.

I am pleased by our progress on the Columbia River Crossing, working in partnership with the State of Washington on this bi-state project. SB 580 imposes an artificial deadline that is not helpful and ultimately could be detrimental to the progress we've made.

Governor Gregoire and I jointly named the Project Sponsors Council (PSC) and empowered them to advise the departments of transportation on project development. PSC will make recommendations after considering technical information, receiving input from advisory groups and reviewing public comments. The PSC will make recommendations on the completion of environmental work, project design and timeline, financing, and sustainability efforts including construction techniques and compliance with greenhouse gas emission reduction goals.

I believe that tolling should and will be part of this project. In fact, I don't believe that the project can happen without some tolling. However, mandating the date that toll rates must be set usurps the work of the PSC. The broad portfolio of issues that must be integrated into the final recommendations of the Oregon and Washington Departments of Transportation should not be subject to a date imposed on the Oregon side of the river. We should not jeopardize the cooperative spirit with Washington State.

I appreciate that the proponents of the legislation want to help move the project forward. Unfortunately, I don't believe this legislation accomplishes that goal.

Senate Bill 897

Relating to public employee retirement

Senate Bill 897 would have allowed members of Tier One, Tier Two, and the Oregon Public Service Retirement Program (OPSRP) who were within two years of their earliest retirement date to request that Public Employees Retirement System (PERS) verify their retirement data and establish a minimum benefit threshold upon retirement.

Currently, PERS members' employment data is not verified until retirement and members have limited opportunity to verify the data prior to retirement. The extent of exposure to any employment data is on the member's annual statement, which does not contain all the elements, and in years past, has contained inaccurate data or status because of poor or erroneous reporting and computer system limitations. A member can request an estimate, but ORS 238.455 (6) states that no member shall have any right to a benefit based on an estimate. After retirement, the member receives a Notice of Entitlement under ORS 238.450 and can dispute the data used to calculate the benefit, but that right to dispute the data occurs only after the member has committed to retirement. If a mistake is discovered in employment data, PERS can reduce benefits after retirement, without consideration of the source of the error.

Under Senate Bill 897, a member would have been able to request verification of data elements critical to determining retirement benefits: creditable service time, average final salary, account balance, and unused sick leave. Members would have had 60 days to dispute the accuracy of the data provided to them by PERS and data elements would have been subject to limited adjustments thereafter, in particular earnings or losses credited to an account balance or for sick leave used or accrued. At the time of retirement, creditable service and average salary would be increased based on the member's employment history between the earlier verification and actual retirement, but benefits would not have been less than the amounts provided in the pre-retirement verification.

In addition, the measure modified eligibility for one of the five members of the PERS Board. The position reserved for a public employee in an appropriate bargaining unit was to be filled with a public employee or a PERS member who is retired from a position in an appropriate bargaining unit. Further, Senate Bill 897 would have allowed retired members of the OPSRP, their spouses, and eligible dependents to participate, at their own expense, in the PERS Health Insurance Program. Currently, only Tier One and Tier Two retirees and their families are eligible to participate.

Governor's Veto Message

I am returning Enrolled Senate Bill 897 unsigned and disapproved.

SB 897 requires the Public Employee Retirement System to provide verification of member benefits, and then guarantee that level benefits regardless of their accuracy.

I am well aware that legal challenges are pending in the courts related to these data verification and guarantee provisions. My standing policy has been to allow

matters pending in our appellate courts to run their course. Once a final decision has been rendered by the appropriate appellate court, the Executive and Legislative branches then have the opportunity to determine what statutory changes are needed, if any. That policy applies here.

In addition, the PERS Board has been unanimous and adamant in their opposition to the data verification and guarantee provisions on the principle that every agency should be allowed to correct errors. The variety of PERS tiers, options and criteria are truly complex. No other benefit program guarantees calculation and prohibits later correction of an error that has not been previously disclosed. This is particularly important for PERS because under SB 897 calculation errors that result in overpayment to a retiree cannot be corrected; PERS may only correct errors that result in underpayment to the retiree.

PERS is already committed to updating and improving its data systems to reduce and eliminate data errors. Given that the data verification and guarantee provisions in SB 897 would not be implemented until July 2011, I believe we should allow PERS continue its work on data system enhancements before mandating data guarantees.

One of the reasons why PERS experienced tremendous cost overruns early in this decade was the Legislature's piecemeal approach to amending PERS's statutory framework. I believe that any reform of PERS must be measured and thoughtful, so that we can avoid returning to the flawed approach of the past.

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