

# **2010 Summary of Legislation**



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# Agriculture & Natural Resources



## **Senate Bill 1055**

### *Wineries in exclusive farm use zones*

Exclusive farm use (EFU) zoning is applied by counties to lands they have designated for agricultural use. The EFU statute permits a wide range of uses, including wineries that meet particular criteria.

Senate Bill 1055 authorizes wineries as outright permitted uses in EFU zones under specified conditions and limits the gross income from the sale of incidental items and services to not more than 25 percent of gross income. The changes to the statute sunset on January 1, 2013.

*Effective date: March 23, 2010*



# Business & Commerce



## **House Bill 3644**

*Economic gardening; Task Force on Stage Two Business Development*

The economic gardening concept, created in Littleton, Colorado in 1987, seeks to create jobs by supporting existing companies in a community. Economic gardening connects entrepreneurs to resources, encouraging the development of essential infrastructure and providing entrepreneurs with needed information.

House Bill 3644 establishes the Task Force on Stage Two Business Development and Economic Gardening. The Task Force is charged with identifying and assessing Oregon's business development services, collaborating with state and local governments, and making recommendations to the Seventy-sixth Legislative Assembly on the following subjects: program areas in which Oregon University System programs may choose to participate; criteria for stage two, high-growth businesses; key metrics and outcomes to measure if the state were to create an economic gardening program; and how an economic gardening program may fit with efforts to support development of the state's minority, women, and emerging small businesses.

*Effective date: March 23, 2010*

## **House Bill 3654**

*Mortgage Insurance Company Liability*

Current law prohibits a mortgage insurance company from writing new business if the insurer's total liability exceeds 25 times its capital, surplus, and reserves. The intent of the prohibition is to ensure that mortgage insurance companies maintain a sound

financial structure and adequate reserves to meet financial obligations. Current economic conditions, however, are driving higher claims rates, potentially putting companies at risk of not being able to write new business, even though they are sufficiently capitalized to meet policyholders' claim obligations.

House Bill 3654 authorizes the Director of the Department of Consumer and Business Services to adjust the risk-to-capital ratio at the request of a mortgage insurer. The measure lists factors the Department may consider when reviewing the request, including: the insurer's size; the insurer's diversification; the nature and extent of its reinsurance program; the quality of the insurer's assets and portfolio; the adequacy of its reserves; and an independent actuarial opinion as to its historical and projected position, its capital contributions, and other related criteria.

*Effective date: March 10, 2010*

## **House Bill 3700**

### *Use of credit union depositories*

House Bill 3700 authorizes credit unions to receive public funds deposits in the same manner as banks.

Existing law allows both banks and credit unions to receive public funds deposits up to the amount that is insured, respectively, by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Insurance Fund (NCUIF). Banks may receive in excess of the FDIC-insured amount if they have sufficient collateral, as overseen by the State Treasurer. House Bill 3700 allows the same collateral arrangements and oversight for credit

unions, enabling them to receive public funds deposits in excess of NCUIF-insured amounts.

Like banks, participating credit unions will cover the costs of administration. House Bill 3700 allows the State Treasurer to accept moneys from credit unions that wish to participate in the program and continuously appropriates those moneys to the State Treasurer for initial expenses. Currently, banks that receive public funds deposits share the risk and are required to collateralize and cross-collateralize the public funds they have on deposit. Under House Bill 3700, credit unions would as well.

Under House Bill 3700, at least five credit unions would need to agree to participate before any could participate. If there is lack of participation among a sufficient number of credit unions, the State Treasurer has authority to terminate the program. The operative date of House Bill 3700 is January 1, 2013.

*Effective date: March 29, 2010*

## **Senate Bill 1017**

### *Loans for economic development*

Senate Bill 1017 temporarily decreases the restrictions on Department of Business Development loans to Oregon businesses. The measure increases the maximum amount of Oregon Business Development Fund (OBDF) loans to more than 50 percent of project costs if the applicant has been denied by two or more lenders and has no other available financing. The measure increases the maximum business development loan authority of the Director of the Department from \$100,000 to \$250,000. The measure



also expands eligibility for entrepreneurial development loans to include all existing businesses that grossed less than \$500,000 the previous year and appropriates \$3 million from the General Fund for business development projects

The provisions of Senate Bill 1017 are temporary; previously existing provisions go back into effect on July 1, 2011.

*Effective date: April 1, 2010*

## **Senate Bill 1039**

### *Alcoholic liquor licenses for private clubs*

Senate Bill 1039 allows all types of for-profit clubs to qualify for full on-premises alcoholic liquor sales licenses provided they meet the membership and food service requirements and other requirements that may be established by Oregon Liquor Control Commission (OLCC) administrative rule. The measure also simplifies statutory language relating to nonprofit private clubs (i.e. civic or fraternal organizations such as the Elks and the Eagles) to eliminate outdated provisions defining what is required to be a non-profit organization. Instead, the OLCC has authority to set these requirements by rule.

*Effective date: March 4, 2010*

## **Measures Not Enacted**

### **House Bill 3604**

#### *Creates Task Force on Regional Contract Preferences*

House Bill 3604 would have established a Task Force on Regional Contract Preferences to study how Oregon could, via public contracting, encourage the construction industry to hire regional labor and make use of regionally produced construction materials, as well as remove barriers that prevent reductions in atmospheric carbon emissions. The Task Force would have been charged with devising a methodology for analyzing the sources and extent of atmospheric carbon emissions from construction activity and the means for reducing atmospheric carbon emissions. The Task Force would also have recommended pilot projects necessary to demonstrate the feasibility of its findings and recommendations.

House Bill 3604 specified that membership was to be comprised of representatives from the construction industry. The Task Force would have been required to submit a report and possible recommendations for legislation to the legislative committees related to business, labor and transportation, no later than June 30, 2011.



# Consumer Protection



## House Bill 3624

*Regulation of appraisal management companies*

Appraisal management companies (AMCs) are business entities that administer a network of certified and licensed appraisers to fulfill real estate appraisal assignments on behalf of mortgage lending institutions and other entities. AMCs recruit, qualify, and verify licensing of appraisers, and negotiate fees and service level expectations within a network of third-party appraisers. AMCs also provide administrative duties, such as order entry and assignment, tracking and status updates, pre-delivery quality control, and preliminary and hard copy report delivery.

The importance of appraisal management companies was greatly increased with the creation of the Home Valuation Code of Conduct (HVCC) on May 1, 2009. AMCs were designated by HVCC to provide a buffer zone between real estate appraisers and mortgage and real estate professionals. However, many of the problems that the AMCs were designed to address, such as pressure on appraisers, have persisted, while others, such as lower pay and shorter timelines for appraisers, have begun to occur.

House Bill 3624 requires AMCs to register with the Department of Consumer and Business Services (DCBS) and specifies that financial institutions and insurance companies, or their affiliates, may not provide appraisal management services without first registering with the department. The measure requires AMCs to file a surety bond with DCBS and prohibits AMCs from attempting to influence appraisals, altering completed appraisal reports, or placing certain requirements on independent

contractor appraisers. DCBS is authorized to impose civil penalties on AMCs and is directed to establish a dispute resolution process between AMCs and persons for whom they have arranged an appraisal.

*Effective date: March 23, 2010*

## **House Bill 3656**

### *Sales of foreclosed property*

When a home buyer does not qualify for a single loan to cover the price of a home, there is an alternative way to structure financing called an “80/20” loan, where the purchase price is secured by two trust deeds. House Bill 3004 (2009) provided homeowners with protection from being sued by the holder of the second mortgage after a property is sold at foreclosure for a deficiency on the first loan. Recent court cases, however, have permitted the junior creditor to sue for remaining deficiencies after a foreclosure sale.

House Bill 3656 stipulates that in cases where a second home loan was created as part of the same purchase or repurchase transaction as the one on which the foreclosure action was taken, and when the second loan is owed to, or was originated by, the beneficiary of the foreclosure or its affiliate, the holder of the second loan cannot sue for any remaining deficiency.

*Effective date: March 10, 2010*

## **House Bill 3689**

### *Construction liens in connection with residential property*

A construction lien is a security interest in real property, securing the payment of a debt involving the property by the homeowner to a construction contractor who performs work on the property or an entity that supplies materials that are used in repairs or improvements to the property. Under Oregon law, the following entities may file a construction lien: a general contractor who performs work for the owner of a commercial or residential property; a person who performs work to improve the property (e.g., a subcontractor); a person who supplies or transports materials to improve the property (e.g., a building supply store); a person who rents equipment to improve the property; trustees of an employee benefit plan that receives contributions allocated by labor performed on an improvement; and certain persons who perform work related to construction activity, such as architects, land surveyors and engineers.

In certain cases, a homeowner who retains a general contractor to perform an improvement on their property may pay that general contractor in full for the work performed, only to find later that the general contractor failed to pay in full a subcontractor who performed work on the project or a supplier that provided materials used in the project. As a result, the homeowner can face a lien on the property despite having paid the agreed-to price in full. This typically occurs when the general contractor goes out of business between collecting payment from the homeowner and paying the entities that performed work and supplied the materials.

House Bill 3689 addresses this issue by stipulating that unlicensed contractors may

not file or perfect a lien against a homeowner's property, and that materials suppliers may not file or perfect a construction lien if they provide supplies to an unlicensed contractor performing work on the project. To assist suppliers with checking licensure status, the measure authorizes the Construction Contractors Board to notify them of the licensure status of subcontractors. The measure also specifies that contractors who fail to perform work for which they have contracted without refunding any deposit made by a homeowner may be placed on probationary status by the Board.

*Effective date: March 18, 2010*

## **House Bill 3706**

### *Expansion of Unlawful Trade Practices Act*

The Unlawful Trade Practices Act (UTPA) (ORS 646.605 to 646.656) is Oregon's primary consumer protection law. It is designed to protect consumers from businesses that, among other things, fail to deliver all or a portion of goods or services as promised, that cause a likelihood of confusion or misunderstanding about products or services, that use deceptive representations or designations, that represent goods as meeting standards they do not, or that make false or misleading representations about products or services.

House Bill 3706 makes loans and extensions of credit subject to the UTPA by including such products in the definition of "real estate, goods or services," and including mortgage bankers, mortgage brokers, loan originators, and consumer loan businesses in the definition of "state-regulated lenders."

*Effective date: March 23, 2010*

## **Senate Bill 1002**

### *Increased insurance coverage for annuities*

An annuity is an investment product in which an insurance company pays a consumer income at regular intervals in return for a premium payment made in a lump sum or over a contractual period. The maximum guaranteed amount for annuities in Oregon has been \$100,000 since 1991; since that time, some insurance companies have begun to issue annuities in excess of \$100,000.

Senate Bill 1002 increases annuity coverage by the Oregon Life and Health Insurance Guaranty Association from \$100,000 to \$250,000. With the passage of Senate Bill 1002, Oregon's covered limit will match that of the Federal Deposit Insurance Corporation, as well as the \$250,000 level recommended by the National Association of Insurance Commissioners.

*Effective date: March 4, 2010*

## **Senate Bill 1025**

### *Radon in buildings*

Radon is a radioactive, colorless, odorless gas. It is present in soil and air and, consequently, present at some level in most buildings. Radon is classified as a known human carcinogen. The United States Environmental Protection Agency (EPA) has established standards for reasonable levels for human exposure. A number of states and local jurisdictions outside of Oregon have adopted building codes requiring radon-resistant new construction.

Senate Bill 1025 directs the Building Codes Structures Board (BCSB) and the Residential and Manufactured Structures Board (RMSB)

to adopt radon mitigation standards for the design and construction of new public buildings and new residential buildings that are identified in Oregon's Structural Specialty Code as Group R-2 and R-3. Group R-2 covers residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature. Group R-3 covers residential occupancies that are permanent in nature and limited in the number of dwelling units.

Senate Bill 1025 mandates that the BCSB and RMSB consider radon mitigation standards recommended by the EPA. The measure specifies that the standards apply in the following counties: Baker, Clackamas, Hood River, Multnomah, Polk, Washington, and Yamhill. It also gives the boards authority to apply the standards to other counties if, after consultation with the Oregon Health Authority, the boards deem it appropriate due to local radon levels. Senate Bill 1025 also requires the Real Estate Agency to provide radon information to potential buyers of one- and two-family dwellings.

*Effective date: March 18, 2010*

## **Measures Not Enacted**

### **Senate Bill 1001**

#### *Unlawful consumer contracts*

Senate Bill 1001 would have made the application of an automatic renewal provision in a consumer contract an unlawful trade practice unless the provision complied with notice requirements. Senate Bill 1001 would also have made charging an early termination fee for cancellation of a consumer contract an unlawful trade practice unless the charging of the fee complied with notice and express consent requirements. The measure required clear and conspicuous disclosure of automatic renewal and early termination fee provisions at the time the initial contract offer is made. Automatic renewal provisions could be triggered at the end of a contractual period. Under these provisions, a consumer would not have needed to expressly consent to an additional contract period after the initial contract term had ended and a consumer would not receive notice that the automatic renewal provision has been triggered. Under Senate Bill 1001, automatic renewal provisions in consumer contracts could not be applied without clear and conspicuous notice of those provisions, and the applicable cancellation procedure, to the consumer.

Senate Bill 1001 also restricted early termination fees (ETF), making the charge of an ETF an unlawful trade practice unless notice is given to the consumer and the consumer provides express consent. Early termination fees are fees charged to a consumer when the consumer terminates the contract before the contractual term ends. The fees are sometimes charged pro rata, varying with the amount of the contractual term remaining. Some businesses assess an ETF as a straight fee, with no reduction for

the amount of the contractual period that has been satisfied or the amount a consumer may have already paid under the contract.

Senate Bill 1001 would have excluded insurance, certificates of deposit, certain rental agreements, certain lease-purchase agreements, and certain service contracts from the definition of consumer contract, effectively exempting those types of contracts from the measure's provisions. Contracts for services subject to federal communications law would also have effectively been exempt if those contracts contained month-to-month automatic renewal provisions and if they contained clear and conspicuous disclosure of any early termination fees at the time of initial contract.





# Education



## House Bill 3660

### *Virtual public schools*

House Bill 3660 was introduced at the request of the Online Learning Task Force that was appointed pursuant to Senate Bill 767 (2009). The Task Force was charged with ensuring that Oregon provides appropriate access to online learning through public charter schools.

Oregon charter school law allows students from other districts to attend public charter schools, if space is available, without the consent of the sending district. Until the advent of online education, geography and school capacity generally limited the number of out-of-district students in public charter schools. In an effort to address this change, Senate Bill 1071 (2005) added a limitation to public charter school law requiring that at least 50 percent of students enrolled in a virtual charter school reside in the district in which the school is located.

Senate Bill 767 prohibited virtual schools, with some exceptions, from increasing the number of students receiving online instruction until July 1, 2011. House Bill 3660 permits the State Board of Education to determine whether to grant a waiver from the 50 percent residency requirement for certain existing virtual charter schools prior to July 1, 2011 thereby enabling existing virtual charter schools to plan for operations for the 2011-2012 academic year in a timely manner.

House Bill 3660 also directs the State Board of Education to develop a proposed governance model for virtual public schools and to conduct reviews of funding for online education and participation rates of students with special needs in virtual public schools. The Board is to present the proposed

governance model and its preliminary findings on funding to the appropriate legislative committees by September 1, 2010. Appropriate legislative committees are separately directed to determine whether statutes governing public charter schools should generally continue to govern virtual public charter schools.

The measure requires that virtual public schools utilize the same budget and accounting systems as other public schools, as well as licensure of their school administrators. Virtual charter schools must also provide written notice to each student's resident and sponsoring school district upon enrollment and withdrawal from the school. Additionally, advertisements or promotional materials for virtual public schools must clearly state that each school is publicly funded.

*Effective Date: March 18, 2010*

## **House Bill 3686**

### *Teachers wearing religious clothing*

Oregon law has prohibited teachers from wearing religious dress while engaged in the performance of teaching duties since 1923. House Bill 3686 repealed that prohibition, found in ORS 342.650, as well as ORS 342.655, which authorized school boards to sanction teachers for violating ORS 342.650.

House Bill 3686 also amended the Oregon Workplace Religious Freedom Act, Senate Bill 786 (2009), which requires employers to reasonably accommodate the religious practices of employees. House Bill 3686 added each employee's sincerely held religious belief to the Act's criteria for determining whether an employer commits a

discriminatory employment practice by imposing an occupational requirement that restricts the ability of an employee to wear religious clothing. It also added the obligation of a school district, education service district (ESD), or public charter school to maintain a religiously neutral work environment to the factors for determining whether a reasonable accommodation by an employer, under the Act, requires significant difficulty or expense. Lastly, it specified that a reasonable accommodation imposes an undue hardship on the employer if the accommodation constrains the legal obligation of a school district, ESD, or public charter school to maintain a religiously neutral school environment or to refrain from endorsing religion.

*Effective Date: July 1, 2011*

# Elections and Ethics

## Measures Not Enacted

### House Bill 3638

*Employment of legislators following legislative service*



ORS 244.045 prohibits former members of the Legislative Assembly from receiving money or other consideration for lobbying, from the time their legislative service ends until the adjournment *sine die* of the next regular legislative session following their departure.

House Bill 3638 would have similarly prohibited former members from accepting positions in state government for a year after leaving office, except in cases where the hiring process was open to and competitive with the public.



# Energy



## **House Bill 3613**

*Moratorium on leasing for oil, gas or sulfur in the Oregon territorial sea*

ORS 196.405 defines “territorial seas,” the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law. The 2007 Legislative Assembly adopted a prohibition on leasing in the territorial sea for purposes of exploration, development, or production of oil, gas, or sulfur that sunset on January 2, 2010 (Senate Bill 790, 2007). Exemptions were provided for scientific research, academic research and geologic survey activities. The Governor may also countermand the prohibition in cases where an oil embargo is substantially affecting the nation’s supply of oil.

House Bill 3613 prohibits leasing for exploration, development, or production of oil, gas, or sulfur in the territorial sea until January 2, 2020.

*Effective date: March 4, 2010*

## **House Bill 3633**

*Marine Renewable Energy Resource Study*

Oregon’s territorial sea has been identified as a favorable location for siting renewable energy facilities for research, demonstration, and commercial power development. These facilities may vary in the type and extent of the technologies employed and will require other related structures, equipment or facilities to connect together, anchor to the seafloor, and transfer energy to on-shore substations.

House Bill 3633 establishes that community-based renewable energy projects include

marine renewable energy resources that are developed in accordance with the Territorial Sea Plan or that are located on structures adjacent to the coastal shore lands. The measure requires the Department of Land Conservation and Development to conduct a study to look at how to best develop commercially viable marine renewable energy resources. House Bill 3633 establishes the Marine Renewable Energy Resources Study Fund to receive donations and contributions from public and private entities. The measure is repealed if contributions to the Fund do not reach a level sufficient to pay for the study by the 61st day after the adjournment of the 2010 special session.

*Effective date: March 18, 2010*

## **House Bill 3649**

*Use of certified low-impact hydroelectric power facilities to comply with renewable portfolio standards*

The Renewable Portfolio Standard (RPS) requires that all utilities and electricity service suppliers serving Oregon must include, in their portfolios 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 varies over time, with all utilities and suppliers obligated to include some renewably-generated electricity in their portfolio by the year 2025. Renewably-generated electricity is tracked by renewable energy certificates that can be bought, sold, or banked.

The Low Impact Hydropower Institute certifies hydropower facilities that operate in accordance with objective scientific environmental standards in eleven areas:

general eligibility, settlement agreements, river flows, water quality, reservoir levels, fish passage and protection, watershed protection, threatened and endangered species protection, energy efficiency, cultural resource protection, and recreation.

House Bill 3649 allows pre-1995, non-utility-owned, certified low-impact hydroelectric power facilities to qualify for compliance with the RPS. The measure allows up to 40 average megawatts of electricity per year to be used to comply with the RPS without regard to the number of certified facilities or the generating capacity of those facilities.

*Effective date: January 1, 2011*

## **House Bill 3674**

*Renewable energy sources used to comply with a renewable portfolio standard*

House Bill 3674 allows electricity generated from facilities using biomass that became operational before January 1, 1995 to comply with Oregon's Renewable Portfolio Standard (RPS) beginning on January 1, 2026. To qualify, facilities must be located in Oregon and meet requirements of the federal Public Utility Regulatory Policies Act of 1975. House Bill 3674 allows the resulting renewable energy credits to be banked, March 4, 2010, for use on or after January 1, 2026.

House Bill 3674 authorizes facilities generating electricity from direct combustion of municipal solid waste to comply with the RPS for up to 11 average megawatts generated annually after January 1, 2026. To qualify, owners or operators of a pre-1995 biomass facility must file information on total generating capacity

with the Western Renewable Energy Generation Information System or another regional system that is designated by the Oregon Department of Energy by January 1, 2011.

In addition, House Bill 3674 allows up to nine megawatts per year of electricity generated by direct combustion of municipal solid waste, by generating facilities that became operational after January 1, 1995, for the purpose of complying with the RPS. The measure also authorizes the Public Utility Commission to allow full recovery of costs by public utilities investing in hydrogen power facilities, including “hydrogen hubs,” with electricity generated by power stations using anhydrous ammonia as a fuel source.

The RPS requires that all utilities and electricity service suppliers serving Oregon’s load include in their portfolio of power sold to retail customers a percentage of electricity generated from qualifying renewable energy sources. ORS 469A.020 defines qualifying renewable electric energy facilities, for purpose of complying with the RPS, as facilities’ operational or improved efficiency on or after January 1, 1995. The percentage of qualifying electricity that must be included increases over time, with all utilities and electricity service suppliers obligated to include some renewably-generated electricity in their portfolio by the year 2025.

*Effective date: March 4, 2010*

## **House Bill 3675**

### *Energy Efficiency and Sustainable Technology Loan Program*

The 2009 Legislative Assembly directed the Oregon Department of Energy (ODOE) to establish and administer a loan program to provide low-cost loans to individuals for projects to increase energy efficiency in homes and small businesses. The program – known as the Energy Efficiency and Sustainable Technology Loan Program, or “EEAST” – authorizes ODOE and the Public Utility Commission 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 3675 clarifies that the authorization of the ODOE Director to delay or suspend the EEAST program does not apply to the pilot program, unless the Director determines that available financial resources in the Loan Offset Grant Fund are insufficient to allow operation of the pilot program. The measure authorizes the director to establish a base efficiency package fee for EEAST and requires that the fee not exceed 10 percent of the estimated economic benefit for the package. The measure also specifies that the current limit of \$40,000 for an EEAST loan is for residential dwellings served by a single meter and does not apply to other buildings such as multifamily housing and mixed-use structures. The measure requires all investor-owned utilities to establish an on-bill financing system and permits a city, county or metropolitan service district to be a project manager. Finally, House Bill 3675 requires that the EEAST program begin no later than June 30, 2011.

*Effective date: March 23, 2010*

## **House Bill 3693**

### *Biodiesel additives*

The renewable fuel standard (RFS) adopted by the 2007 Legislative Assembly required biodiesel and ethanol in Oregon's motor fuels. House Bill 3463 (2009) activated the RFS to require that diesel fuel be blended with a minimum of two percent by volume of biodiesel. Recently, the Department of Agriculture received some complaints of biodiesel gelling in very cold weather.

House Bill 3693 authorizes the sale of diesel fuel that otherwise meets the requirements of the state's biodiesel fuel standards but to which substances have been added to prevent the congealing or gelling of the fuel. The measure applies to fuel sold or offered for sale from October 1 of any year to February 28 of the following year, and sunsets on March 1, 2011.

*Effective date: March 10, 2010*



# Environmental Quality



## **House Bill 3606**

*Electronic waste recycling program for televisions*

The Legislative Assembly created a statewide collection, transportation, and recycling system for the recycling of certain electronic devices in 2007. This program – known as Oregon E-Cycles – requires manufacturers to provide free recycling for televisions and desktop and portable computers. Manufacturers must either pay a recycling fee to participate in the State Contractor Program (SCP) or join a manufacturer-run program that pays its own costs. Under the original statute, the cost of participating in the SCP was calculated differently for television manufacturers than other electronic manufacturers. Television manufacturers paid based on market share; other electronic manufacturers paid based on return share. This method of calculation led some television manufacturers with a higher market share to leave the state program.

House Bill 3606 specifies that the total recycling weight assigned to all television manufacturers in the state is allocated based on respective market share. Fees for television manufacturers in the SCP continue to be based on market share. The measure does not affect other types of covered devices.

*Effective date: March 10, 2010*

## **Senate Bill 1059**

*Greenhouse gas emission reductions*

House Bill 2186 (2009) created the Metropolitan Planning Organization Greenhouse Gas Emissions Task Force to evaluate alternative land use and

transportation scenarios that would meet community growth needs while reducing greenhouse gas emissions. On January 11, 2010, the Task Force submitted a report with its recommendations and a proposed legislative concept, Senate Bill 1059.

Senate Bill 1059 requires the Department of Land Conservation and Development (DLCD), with assistance from the Oregon Department of Transportation (ODOT), to develop guidelines to aid in achieving greenhouse gas emission reduction goals established in ORS 468A.205. It also requires the two departments to develop a toolkit to help local government planners address the emission reduction goals. DLCD, in consultation with the Oregon Transportation Commission and Metropolitan Planning Organizations, is required to adopt rules identifying reduction targets for each Metropolitan Planning Organization. The rules must address equitably allocating reductions across metropolitan planning areas. The Portland area Metropolitan Planning Organization is excluded from the requirements. Senate Bill 1059 also requires DLCD and ODOT to make a joint report to the 2011 Legislative Assembly on financing issues for local governments to meet the planning scenarios, as well as another report in 2013 on the progress made in developing the statewide strategy, scenario guidelines and toolkit.

*Effective date: March 18, 2010*

## **Measures Not Enacted**

### **Senate Bill 1009**

*Prohibits plastic grocery bags*

ORS 459A.695 requires retail establishments that offer plastic bags to customers to also offer paper bags as an alternative and inform customers that a choice is available. Senate Bill 1009 would have repealed this law and prohibited the use of plastic bags as checkout bags in Oregon effective January 1, 2012.

### **Senate Bill 1032**

*Ban on Bisphenol A*

Bisphenol A (BPA) is a chemical used primarily in the production of polycarbonate plastics and epoxy resins. Polycarbonate plastics have many applications, including food and drink packaging, impact-resistant safety equipment, and medical devices. Epoxy resins are lacquers used to coat metal products such as food cans, bottle tops, and water supply pipes. Some dental sealants and composites may also contain BPA.

Senate Bill 1032 defined a “child’s beverage container” to mean an empty baby bottle or cup, including a spill-proof cup, designed to be filled with liquid intended primarily for consumption by a child less than three years of age. The measure would have prohibited a person from willfully or knowingly manufacturing, distributing, selling, or offering for sale in Oregon any commercially available child’s beverage container made with BPA. Violation was designated as an unlawful trade practice under ORS 646.608. The measure required manufacturers of a child’s beverage container made with BPA to make reasonable efforts to notify anyone who distributes, sells, or offer for sale such

containers of the prohibition at least 90 days before July 1, 2011. Manufacturers would have been required to recall prohibited containers and adequately reimburse a retailer or consumer for the costs of the container and the cost to comply with the recall.



# Government



## **House Bill 3617**

*Continuing special districts after incorporation*

Current law stipulates that whenever the entire area of a rural fire protection district, a water district, a park and recreation district, a highway lighting district, a county service district, a special road district, a road assessment district, or a sanitary district or authority becomes incorporated in or annexed to a city, the district is extinguished and the city is charged with all the liabilities, obligations and functions of the district.

House Bill 3617 permits existing special districts or county service districts, in areas that become entirely incorporated, to continue to provide services if the continuation is approved by voters in an incorporation election. The measure also allows cities, following such incorporation, to cause special districts or county service districts to be extinguished under certain circumstances.

*Effective date: March 10, 2010*

## **House Joint Resolution 101**

*Proposing constitutional amendment for higher education institutions' bonded indebtedness*

House Joint Resolution 101 refers to voters, for approval or rejection at the May 2010 Primary Election, a proposed amendment to Article XI-F(1) and XI-G of the Oregon Constitution to allow the State of Oregon to issue bonds to finance any type of facility used by the Oregon University System (OUS).

Currently, Articles XI-F(1) and XI-G limit the use of funds from bonds to new

construction or improvements of existing buildings. In addition, the Constitution requires projects financed with bonds authorized by Article XI-F(1) to be entirely self-supporting through revenues, gifts, grants, or building fees and that they be matched by revenue from the General Fund.

If House Joint Resolution 101 is approved by the voters, community colleges and public universities would be able to use the proceeds of general obligation bonds for education to purchase existing buildings or land. In addition, the amendment would allow funds used to support community college or public-university projects to come from funding sources other than General Fund revenues and matching funds could include gifts and grants of money to the state for the OUS projects.

*Filed with the Secretary of State: February 24, 2010*

## **Senate Bill 996**

*Expansion of public employees' Whistleblower Law*

Oregon's Whistleblower Law restricts the ability of public employers to prohibit employees from responding to an official request regarding state or local government, issued by either a legislator or legislative committee staff acting under the direction of a legislator. It also prevents discrimination or retaliation against employees for disclosing any information that they reasonably believe is evidence of a violation of state, federal, or local laws, rules, and regulations, as well as mismanagement, "gross waste of funds," abuse of authority, or substantial and specific danger to public health and safety. Senate Bill 996 extends these protections to conversations between

public employees and elected local government officials, including elected auditors.

Violations of the Whistleblower Law are considered unlawful employment practices enforced by the Bureau of Labor and Industries (BOLI). Remedies for unlawful discrimination include filing a complaint with BOLI or filing a civil action in either circuit or federal district court.

*Effective date: March 4, 2010*

## **Senate Joint Resolution 41**

*Proposing constitutional amendment to require annual sessions of Legislative Assembly*

Senate Joint Resolution 41 refers to voters, for approval or rejection at the November 2010 General Election, an amendment to the Oregon Constitution to require that the Legislative Assembly meet for annual legislative sessions. The measure limits sessions in odd-numbered years to not more than 160 calendar days, and even-numbered years to not more than 35 calendar days, with the possibility of an extension of either session by five days with the consent of two-thirds of members of each chamber.

Currently, 45 state legislatures meet annually. The remaining five states—Montana, Nevada, North Dakota, Oregon and Texas—hold session every other year. Of the states that meet for annual legislative sessions, 32 have established constitutional or statutory limits on the length of each session.

The constitutional amendment proposed by Senate Joint Resolution 41, if approved, would amend Article IV, Section 10 of the

Oregon Constitution by amending the requirement that “the sessions of the Legislative Assembly shall be held biennially at the Capitol of the State commencing on the second Monday of September, in the year eighteen hundred and fifty eight, and on the same day of every second year thereafter, unless a different day shall have been appointed by law.” Approval of the measure would permit the Legislative Assembly to designate in statute when the Legislative Assembly is to convene each year. Current statute (ORS 171.010) establishes that “the sessions of the Legislative Assembly shall be held at the capital of the state and shall commence on the second Monday in January of each odd-numbered year.”

Approval of Senate Joint Resolution 41 would also allow the Legislative Assembly to hold a pre-session organizational session, prior to convening, which would not be subject to the limits on the number of calendar days for a legislative session. The scope of the organizational session would be limited to the introduction of measures, election of legislative officers, and adoption of chamber rules. The Legislative Assembly would be prohibited during this organizational session from final consideration or reconsideration of a measure vetoed by the governor.

*Filed with the Secretary of State: February 25, 2010*

## **Senate Joint Resolution 48**

*Proposing amendment to the constitution to allow the state to incur general obligation bonds to finance state owned or operated property*

Senate Joint Resolution 48 refers to voters, for approval or rejection at the November 2010 General Election, a proposed amendment to the Oregon Constitution to create Article XI-P to allow the State of Oregon to incur general obligation indebtedness to finance or refinance costs associated with real or personal property that is, or will be, owned or operated by the State of Oregon.

The constitutional amendment would authorize the creation of bonded indebtedness notwithstanding the constitutional limitations in Section 7, Article XI of the Oregon Constitution, which prohibits the state from incurring debt, except under specified circumstances. This new kind of general obligation bond would permit the state to incur indebtedness to finance costs of acquiring, constructing, remodeling, repairing, equipping, or furnishing real or personal property that is, or will be, owned or operated by the state, including facilities and systems or infrastructure related to real or personal property.

If Senate Joint Resolution 48 is approved by the voters, the resulting general obligation bonds would not be backed by property tax but by the full faith and credit of the state and its taxing authority. Additionally, the total bond principal under the proposed section is limited to one-one hundredth of the real market value of the property in the state.

*Filed with the Secretary of State: February 25, 2010*

## Measures Not Enacted

### **Senate Bill 1050**

#### *Public subsidies for structures on real property*

Senate Bill 1050 would have required that public bodies doing real-property improvement and maintenance projects buy American, requiring that state and municipal funds appropriated for construction and maintenance use only iron, steel, and manufactured goods produced in the United States. Senate Bill 1050 provided exceptions for goods not produced in the United States in sufficient quantities or for those for which buying American would increase costs by more than 25 percent. The measure was meant to extend policies now in place for expenditure of federal stimulus funds, such as those from the American Recovery and Reinvestment Act of 2009.

According to rules and regulations published in the Federal Register (Vol. 74, No. 60 Tuesday, March 31, 2009), “Buy American” prohibits the use of funds appropriated or otherwise made available by the Act for any project for construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The federal law requires that this prohibition be applied in a manner consistent with United States obligations under international agreements, and it provides for waiver under three circumstances: when iron, steel, or manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; when inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the contract by more than 25 percent; or when applying the domestic preference would be inconsistent with the public interest.



# Health Care



## **House Bill 3626**

*Pilot Program for providing vision screenings in schools*

Vision screening programs in schools assist in identifying students with visual impairments. Visual problems can and do affect the physical, intellectual, social and emotional development of children. Some studies indicate that vision problems affect nearly 13.5 million children. Rates for vision problems increase as children age. Nearly eight percent of young children ages 0 - 5 experience eye problems, while a quarter of adolescents 12 - 17 are reported to have eye problems.

House Bill 3626 directs the Oregon Department of Education to establish a pilot program to provide vision screenings to the greatest number of students practicable in grades 1 through 8 and to report back to the next regular session of the Legislative Assembly on the results of the program. The measure establishes guidelines for the vision screenings and allows the Department to enter into a contract for implementation of the program.

*Effective date: March 23, 2010*

## **House Bill 3639**

*Creation of Primary Care Services Program*

In response to current health care workforce shortages and in an effort to increase the supply of health care practitioners, additional mechanisms and incentives have been implemented to recruit, retain, and attract individuals into health care professions. Examples of such incentives are tax credits and loan repayment programs.

House Bill 3639 changes the name of the Rural Health Services Program to the Primary Care Services Program, which is tasked with providing loan repayments to providers of primary care under certain circumstances. The measure changes the administering agency of the program from the Oregon Student Assistance Commission (OSAC) to the Office of Rural Health (ORH) at the Oregon Health and Science University, and also transfers records and property related to duties, functions and powers of the program. The measure also establishes guidelines and application procedures for participation in the program, and expands eligibility to naturopathic physicians and urban practice sites that meet certain criteria. It also modifies annual loan repayment amounts. Provisions implementing transfer of the program from OSAC to the ORH and establishment of the Primary Care Services Fund are operative as of July 1, 2011.

*Effective date: March 10, 2010*

## **House Bill 3642**

*Collective supervision of physician assistants*

Currently, Oregon law governing physician assistants establishes a ratio between physicians and physician assistants. With multiple forms of access to health care being implemented, and with health care professionals working longer hours, the current physician to physician assistant structure is reportedly problematic.

House Bill 3642 allows a supervising organization of physicians to collectively supervise physician assistants. The measure maintains the current supervision methodology and creates a second

supervision pathway for physician organizations.

*Effective date: March 10, 2010*

## **House Bill 3659**

*Creation of Temporary High Risk Pool Program*

House Bill 3659 establishes a Temporary High Risk Pool Program to be administered by the Oregon Medical Insurance Pool (OMIP) Board. The measure authorizes the Oregon Health Authority to seek approval from the United States Department of Health and Human Services for federal funding for the program. The measure becomes operative upon receipt of federal approval and sunsets on January 2, 2016.

The OMIP is the state's high-risk health insurance pool. Created in 1990, the program spent about \$180 million in 2009, and currently insures about 15,000 Oregonians who fall into one or more of the following three categories: those who are unable to obtain commercial medical insurance because of pre-existing health conditions; those who are eligible for portability coverage but have no access to commercial Oregon portability plans; and those who are eligible for an 80 percent Federal Health Coverage Tax Credit because they lost their employment due to foreign trade or their company declared bankruptcy and they fall under the Pension Benefit Guarantee Corporation. OMIP enrollees cover about 50 percent of the program's medical and drug claim costs through premium payments, with the remaining cost covered by an assessment on commercial insurance companies doing business in Oregon. Oregon is one of 34 states with a high-risk pool.

The national health reform legislation recently enacted by Congress is looking to state high-risk pools as an interim measure to make health insurance available to uninsured individuals until broader market reforms can take effect. The federal law contains provisions that require the United States Secretary of Health and Human Services to establish a Temporary National High Risk Pool Program. It is anticipated that this program will utilize the existing state high-risk pools, while creating them in states that do not currently have one.

*Effective date: March 10, 2010*

## **House Bill 3663**

*Eye treatment for minors*

Currently, if a person under 18 years of age makes an appointment to see an optometric physician, the provider or provider's staff may not conduct an examination, diagnose, or treat the patient without the presence or consent of a parent or guardian. ORS 109.640 does allow primary care providers such as hospitals, physicians, nurse practitioners, and dentists to diagnose or treat minors without the consent of a parent or guardian. An optometric physician is trained to diagnose signs of ocular, neurological, and systemic health problems, and treat vision disorders. Additionally, an optometrist may be certified to use topical and nontopical therapeutic pharmaceutical agents by the Oregon Board of Optometry, to treat eye diseases and injuries, and to prescribe therapeutic drugs and perform other procedures such as foreign body removal.

House Bill 3663 changes the current 18-years age requirement to 15 years of age or older to consent, without parent or guardian

consent, to be diagnosed and/or treated by an optometrist who is acting within scope of practice for optometrists. The measure stipulates that parent or guardian consent is still required when a minor is receiving contact lenses for the first time.

*Effective date: January 1, 2011*

## **House Bill 3664**

*Oregon Health Plan coverage for youth aging out of foster care*

Today, children who are in foster care receive their medical coverage through the Oregon Health Plan (OHP). Upon reaching 19 years of age, they are no longer eligible for this coverage. A Medicaid option, known as the Chafee option, allows states to extend Medicaid to former foster children up to the age of 21 years. Currently, there are 21 states that use the Chafee option to provide health care coverage to former foster youth.

House Bill 3664 creates a new category of eligibility for individuals under 21 years of age who, at 18, were in foster care or under state-assumed financial security, for medical assistance through the OHP Plus program. The measure adds this new categorically needy group of individuals between the ages of 18 to 21 years to the Health Care for All Oregon Children program. The measure also directs the Oregon Health Authority to submit an amendment to the state's Medicaid plan by March 31, 2010.

*Effective date: March 18, 2010*

## **House Bill 3665**

*Prohibits capping of noncovered dental services*

Nationally, a number of companies that sell dental benefit plans have required, as part of their contract with dentists, that these dentists give a discount for services to that plan's enrollee for services not covered by the plan.

House Bill 3665 prohibits dental service contracts from requiring a discount on an amount that a provider can charge an enrollee of the plan for noncovered services. The measure sunsets January 2, 2015.

*Effective date: March 18, 2010*

## **Measures Not Enacted**

### **House Joint Resolution 100**

*Proposing constitutional amendment to establish right of access to effective, medically appropriate, and affordable health care*

Proponents of House Joint Resolution 100 asserted that polls indicate a large percentage of the public recognizes health care as a fundamental right. The measure would have referred to voters for approval or rejection an amendment to the Oregon Constitution declaring the right of all Oregonians to have an equal opportunity to lead healthy and productive lives. It would also have established an obligation of the state to ensure that every legal resident of Oregon has access to effective, medically appropriate, and affordable health care as a fundamental right.

### **Senate Bill 1010**

*Surgical technologist registration*

Health care facilities employ or contract with surgical technologists to prepare an operating room or sterile field for surgical procedures by preparing sterile supplies, instruments and equipment using sterile techniques, passing instruments, equipment or supplies, sponging or suctioning an operative site, preparing and cutting suture material, transferring fluids or drugs, holding retractors and assisting in counting sponges, needles, supplies and instruments.

Surgical technologists are required to meet educational, training and certification requirements in order to practice in Oregon. A health care facility may employ or contract with a person as a surgical

technologist who does not meet the educational, training, and certification requirements only after petitioning the Department of Human Services for a waiver. The Department may grant a waiver only if it finds that the health care facility has demonstrated that it has made a diligent and thorough effort to employ or contract with surgical technologists who meet the requirements set forth above.

Senate Bill 1010 would have established practicing standards and registration requirements for surgical technologists, and directed individuals practicing as surgical technologists to register with the Oregon Health Authority (OHA) beginning on January 1, 2012. The measure would have prohibited employers from hiring or contracting with unregistered surgical technologists except in medically underserved communities under certain conditions. The measure also contained a grandfathering clause allowing individuals to register without meeting all the registration criteria if they worked as a surgical technologist for two of the three years prior to January 1, 2012. Beginning on January 1, 2013, the measure would have required surgical technologists to annually complete 15 hours of continuing education approved by a national organization approved by the OHA.



# Housing

## Senate Bill 1013

### *Rights of tenants of foreclosed properties*



Senate Bill 1013 clarifies current law related to the rights of tenants in foreclosed properties. It states that the requirement to provide notice to a tenant of a foreclosed property applies only to a tenant in a residential property. Senate Bill 1013 revises the required notice to be provided to tenants of a foreclosed dwelling, but allows for delayed implementation of those notice revisions to give the industry time to make the changes to existing forms. It also adds a provision cross-referencing two current statutes relating to the application of prepaid rents or security deposits to alleviate potential conflict or confusion.

Prior to passage of Senate Bill 952 (2009), once a property was foreclosed the tenants were given a 30-day notice of intent to remove tenants in preparation for sale of the property. Senate Bill 952 amended notice requirements to give tenants additional notice of foreclosure proceedings and provided new requirements for the return of a tenant's prepaid rent or security deposit. Federal laws passed in 2009 also provide new protection for tenants in foreclosure. The interplay and application of these laws from 2009 necessitated the clarifications in Senate Bill 1013.

*Effective date: March 4, 2010*





# Human Services



## House Bill 3618

*Definition of 'home care worker' for purposes of Workers' Compensation*

In 2000, voters approved an amendment to the Oregon Constitution to create the Home Care Commission. The Commission is responsible for ensuring the quality of home care services funded by the Department of Human Services (DHS) for seniors and people with disabilities. Many providers of services in programs such as the Client Employed Provider Program, Oregon Project Independence, the Spousal Care Program, and some personal care services providers are covered by the Commission. Care providers serving people with developmental disabilities and medically fragile children typically are not regulated by the Commission.

House Bill 3618 modifies the definition of "home care worker" to provide Workers' Compensation insurance to these workers beginning January 1, 2011, and includes workers who receive compensation from DHS, area agencies on aging, or other public agencies that: 1) are hired by an elderly person, a person with a disability or by the parent/guardian of such a person; 2) receives pay from DHS to provide care; 3) is funded in whole or part by other public agencies; and 4) provides hourly or live-in home care services. The measure requires the other public agencies to collect names and other information pertaining to those individuals before October 1, 2010 and requires DHS to keep and maintain the information until July 1, 2013. House Bill 3618 also requires the Commission to create an eight-member Developmental Disabilities and Mental Health Committee and outlines the committee's duties.

*Effective date: March 29, 2010*

## House Bill 3623

### *Human trafficking hotline*

According to a 2009 report by the United States Department of State Trafficking in Persons, the United States is a transit and destination country for trafficking in persons. It is estimated that 14,500 to 17,500 people, primarily women and children, are trafficked to the United States annually. Experts on this issue note that poverty and lack of economic opportunity make women and children potential victims of traffickers associated with international criminal organizations. They may also be vulnerable to false promises of job opportunities in other countries. Many of those who accept offers of employment or transportation from ostensibly legitimate sources find themselves in circumstances where their documents are destroyed, they or their families are threatened with harm, or they are bonded by a debt that they likely cannot repay. While women and children are particularly vulnerable to trafficking for the sex trade, human trafficking is not limited to sexual exploitation. It also includes persons who are trafficked into 'forced' marriages or into bonded labor markets, such as sweat shops, agricultural plantations, or domestic service.

House Bill 3623 allows a nonprofit organization to supply to the Oregon Liquor Control Commission (OLCC) informational materials regarding human trafficking. The measure specifies the form of such materials and circumscribes that information therein may pertain only to human trafficking. The OLCC is required to include the materials with each license renewal notice sent before January 1, 2012, if the materials are supplied by a nonprofit organization. The measure also allows the OLCC to determine whether the materials are offensive or inappropriate

and, if so, to not include them in the mailings.

*Effective date: March 18, 2010*

## House Bill 3625

### *Designates May as Maternal Mental Health Awareness Month*

The World Health Organization states that “maternal mental health problems pose a huge human, social and economic burden to women, their infants, their families, and society and constitute a major public health challenge. Although the overall prevalence of mental disorders is similar in men and women, women’s mental health requires special considerations in view of women’s greater likelihood of suffering from depression and anxiety disorders and the impact of mental health problems on childbearing and childrearing, too.” Mothers with severe untreated psychiatric disorders lasting two months or more affect their children in various ways. Evidence-based studies find that babies of these mothers suffer lower birth weights, smaller head circumferences, higher preterm rates, near twice the normal stillbirth rate, more Caesarean sections, and more complications in pregnancy and delivery. Additionally, these children may experience problems including: cognitive and language delays; poorer social, behavioral, and emotional health; greater risk of drug, alcohol, or tobacco use; and more psychiatric problems as they grow into their teens. Only 11 percent of women affected by perinatal mood disorders receive treatment. In Oregon, 23 percent of women report symptoms of depression during and/or after pregnancy.

House Bill 3625 recognizes May as Maternal Mental Health Awareness Month and encourages the Early Childhood Council, health care providers, parents, and other stakeholders to increase understanding and awareness of the mental health needs of pregnant and post-partum women and their families.

*Effective date: March 4, 2010*

## **Senate Bill 991**

### *Emergency respite services for families*

Most state child welfare agencies are authorized to rescue children who have suffered blatant abuse or neglect. With the changing economy, many families are experiencing financial crisis, unemployment, and homelessness, which creates difficult situations for families with children.

Safe Families for Children (SFFC) is a network of host families and mentors that

extend the community safety net by assisting parents who are experiencing a short-term emergency or a longer-term crisis. Host families are screened and trained and serve without compensation. The SFFC network is a voluntary, non-coercive alternative for at-risk families, allowing the parents to work out problems without fear of losing custody of their children. SFFC currently operates in 18 areas throughout the United States.

Senate Bill 991 defines respite services and exempts providers of parental respite services from regulation by the Department of Human Services. The measure establishes that providers of respite services are mandatory child abuse reporters and that mandatory reporting requirements cover organization staff but not volunteers. In addition, the measure requires the organization involved with placement of children to enter into a reciprocal agreement with Employment Department Child Care Division (CCD) and requires that respite service providers be enrolled in the CCD Central Background Registry.

*Effective date: March 10, 2010*

## Measures Not Enacted

### **House Bill 3692**

#### *Establishes Oregon Traumatic Brain Injury Strategic Partnership Advisory Council*

According to the Brain Injury Association of Oregon, Inc., at least 6.5 million Americans live with the effects of a traumatic brain injury (TBI), an injury to the brain caused by a direct blow to the skull, often as a result of an accident or assault. Using data from the Centers for Disease Control and Prevention, it is estimated that 20,000 Oregonians sustain a TBI each year, with another 259,000 individuals unidentified but living with the results of the injury because they are treated and released from an emergency room or by a physician without follow-up. Many of those living with the results of a TBI have a wide range of

cognitive, behavioral, and emotional deficits.

House Bill 3692 would have created a nine-member Oregon TBI Strategic Partnership Advisory Council. The measure would have required the Department of Human Services (DHS) to contract with an expert to provide a preliminary report on a comprehensive, statewide plan to address the needs of individuals with TBI including reporting on the development of an information and referral network, statewide registry, and services, and encouraging and facilitating collaboration between public and private programs. The measure would have required DHS to provide funding to the contractor for programs that facilitate existing support groups, and would have designated a \$5 fee from traffic citations to fund the program and establish an Oregon Brain Injury Trust Fund.

# Insurance



## **House Bill 3631**

*Prohibits treating injuries from sexual violence as preexisting condition*

According to the Attorney General's Sexual Assault Task Force, approximately one in six Oregon women will experience sexual assault in their lifetime. Although sexual assault is a medical emergency, only a minority of victims seek immediate medical care after an assault. About 16–18 percent of rapes are reported to law enforcement. The Task Force reports that recent studies have shown that 37 percent of health care costs may be the result of sexual assault, which includes mental health care, disease processes that are the result of drugs, nicotine and alcohol addiction, heart disease and hypertension.

House Bill 3631 defines sexual violence and prohibits insurers from treating injuries from sexual violence as preexisting conditions for coverage, underwriting, or rating purposes.

*Effective date: March 18, 2010*

## **Senate Bill 1003**

*Exemptions for association health plan retention rate requirements*

In 2007, the Legislative Assembly enacted House Bill 332, which increased group health insurers' flexibility in selling association and trust health benefit plans to small group employers. The measure established criteria and protections to keep these groups insured under these plans. One requirement of the measure was a 95 percent or better retention rate for all association plans for two consecutive years. Failure to meet the requirement resulted in an association losing its plan and businesses

within that plan going into the general market. With the downturn in the economy, some associations have reportedly been struggling to maintain a 95 percent retention rate, and some have failed altogether.

Senate Bill 1003 allows the Department of Consumer and Business Services (DCBS) to grant an exemption from the 95 percent retention rate requirement for association health plans pursuant to administrative rules adopted by the DCBS director.

*Effective date: March 18, 2010*

## **Measures Not Enacted**

### **House Bill 3632**

*Pay or play system of employer-based health insurance coverage in Oregon*

Employer-sponsored health insurance is the primary source of health insurance in the United States, covering 61 percent of nonelderly people. “Pay or play” requirements build on the current employer group market by encouraging employers to offer coverage and penalizing those that do not by requiring them to pay into a pool to help subsidize the cost of coverage for the uninsured.

House Bill 3632 would have directed the Oregon Health Authority (OHA) to study the viability of implementing a pay or play system of employer-based health insurance coverage in Oregon. The OHA was to report the results of the study to the Legislative Assembly no later than December 31, 2010. Had a determination been made that such a system would be viable, the OHA was instructed to include policy options and recommendations for implementing the system.

# Judiciary



## **House Bill 3601**

### *Implied consent hearings for driving under the influence arrests*

House Bill 3601 allows implied consent hearings to be conducted by telephone or another electronic communications device unless an in-person hearing is requested. The measure allows any officer involved in the investigation to present evidence and argument at the hearing. Previously, only the officer signing the citation could present evidence and argument at an implied consent hearing.

If a person is arrested for driving under the influence of intoxicants and fails or refuses to submit to a sobriety test, the person's driving privileges are suspended. A person whose driving privileges have been suspended may request a hearing with an administrative law judge to determine the validity of the suspension. A hearing must be requested within 10 days of the arrest or 10 days of notice of suspension. Previously, the hearings were held in-person and were required to be held within 100 miles of the arrest site. The final order must be issued no later than 30 days from the date of arrest.

The Department of Motor Vehicle reports that in 2009 there were 4,459 requests for hearing and 3,984 hearings were held.

*Effective date: January 1, 2011*

## **House Bill 3634**

### *Crime victims' rights*

Section 42, Article I of the Oregon Constitution grants to victims of crime the right to: (1) be present and informed in advance of all critical stages of the

proceeding held in open court when the defendant is present; (2) obtain information about the conviction, sentence, imprisonment, criminal history, and future release from custody of the defendant; (3) refuse a discovery request by the defendant; (4) receive restitution from the convicted defendant; (5) have a copy of the transcript of any court proceedings; (6) be consulted regarding plea negotiations involving a violent felony; and (7) be informed of these rights.

Section 43, Article I of the Oregon Constitution grants crime victims the right to: (1) be reasonably protected from the criminal defendant or a convicted criminal throughout the criminal justice process, and (2) have decisions by the court regarding pretrial release of a criminal defendant based on the principle of reasonable protection of the victim and the public, as well as the likelihood that the criminal defendant will appear for trial.

Neither of these constitutional provisions applies to the criminal appellate process, post-conviction relief, Psychiatric Security Review hearings, or to Parole Board hearings. House Bill 3634 extends to victims certain rights at these proceedings, most notably the right to be notified.

*Effective date: March 23, 2010*

## **House Bill 3670**

*Rulemaking authority for registration requirements for sex offenders*

House Bill 3670 grants rulemaking authority to the Oregon State Police (OSP) to clarify registration requirements for sex offenders.

The OSP Sex Offender Registration Unit tracks registration of persons convicted of sex crimes who reside, work, or attend school within the State of Oregon. The unit is the state repository for information within the state, encompassing adult and juvenile offenders. In 2007, the unit maintained files on 13,873 sex offenders residing in Oregon. The OSP asked for rulemaking authority to ensure uniformity in administration of the sex offender program.

*Effective date: March 10, 2010*

## **House Bill 3695**

*Regulation of scrap metal businesses*

House Bill 3695 eliminates the restriction that only licensed scrap metal businesses must comply with the provisions of Oregon's metal theft law. The measure allows a scrap metal dealer's metal purchase report to contain an address other than the home address of a person selling scrap metal if the address is listed on government-issued photo identification. House Bill 3695 changes, for metal theft and related crimes, the requisite mental state to "knows or has good reason to know" from "reasonably suspects." The measure also removes the requirement that scrap metal reporting include a classification code from the Institute of Scrap Recycling Industries' Scrap Specifications Circular.

*Effective date: March 10, 2010*



## Senate Bill 1007

### *Earned time*

Oregon allows persons convicted and sentenced to prison for crimes not carrying a mandatory minimum sentence to receive a reduction of up to 20 percent of their sentence for good behavior while in prison. On average, prisoners receive about 65 percent of eligible earned time.

In order to reduce prison costs, rather than reduce funding in other parts of the criminal justice system such as state police patrols, the 2009 Legislative Assembly increased earned time by an additional 10 percent for certain offenses. The offenses eligible for the additional 10 percent were primarily those offenses already eligible for 20 percent earned time less certain specified additional crimes. The additional 10 percent earned time applied to offenses committed both before and after the measure's effective date. The Oregon Constitution requires that all sentences be set in open court and that victims have a right to be heard if they so choose. Consequently, for those persons in prison convicted of eligible sentences, a judicial determination of whether to grant the offender eligibility for an additional 10 percent earned time was required. The resentencing process was very unpopular with district attorneys, judges and victims.

Senate Bill 1007 eliminates the additional 10 percent earned time and reinstates an additional 10 percent earned time for nonperson felonies on July 1, 2011. This provision sunsets on January 1, 2013. Senate Bill 1007 excludes from the additional 10 percent earned time those before the court who have a past conviction for a person felony if the sentence, probation, or post-prison supervision ended less than five years prior to the current criminal charge. It

excludes person felonies regardless of past criminal history. Senate Bill 1007 stipulates that person felonies are to be determined by the rules of the Oregon Criminal Justice Commission. Senate Bill 1007 also includes additional crimes in the exclusion list. It stops all re-hearings for the additional 10 percent, upon passage, unless a court has entered a supplemental judgment or the court has ordered in open court that the Department of Justice may consider the inmate for an additional 10 percent earned time. Senate Bill 1007 requires the Secretary of State to conduct an audit of earned time.

*Effective date: February 17, 2010*

## Senate Bill 1064

### *Persons prohibited from possessing a firearm*

Senate Bill 1064 requires that a person barred from possessing or purchasing a firearm must file a petition for reinstatement in the circuit court for the community where the petitioner resides, rather than a justice court, if the person wants reinstatement of his or her rights to purchase or possess a firearm.

Prior to the enactment of Senate Bill 1064, the petition for reinstatement had to be filed in a justice court unless a justice court was not reasonably accessible, in which case the petition could be filed in circuit court.

*Effective date: March 18, 2010*



# Labor & Employment



## **House Bill 3651**

### *Prevailing Wage in Public Construction*

Oregon's prevailing wage law was established in 1959 and is based on the federal Davis-Bacon Act of 1931. Prevailing wage laws apply to all contractors or subcontractors who work on certain types of public works projects as defined in statute; examples include projects on public land if they cost more than \$50,000, those that are for construction or major renovation, or those that directly or indirectly use funds of a public agency. The prevailing wage rate is the standard wage a construction worker is paid in a particular occupation in one of 14 different regions throughout the state. It is established through a survey of wages paid on commercial construction projects by both union and non-union contractors and is the rate paid to the majority of workers in a particular trade and locality. In instances where there is not a majority of workers who are paid at the same rate, the workers are paid the average rate in that particular locality.

House Bill 3651 expands the definition of "public works" to include the construction or installation of an individual or combination of devices, structures, or mechanisms that use solar radiation for generating energy on land owned by a public body. The measure also allows the Commissioner of the Bureau of Labor and Industries to take any action before the operational date necessary to implement and manage the measure's provisions.

*Effective date: March 10, 2010*

## House Bill 3652

### *Apprenticeship Standards*

Current law requires that apprenticeship standards set forth the “minimum numeric ratio of journeymen to apprentices consistent with proper supervision, training, safety and continuity of employment,” and stipulates that registered apprenticeship is to be learned via a structured, systematic program of on-the-job supervised training. Based on these requirements, the State Apprenticeship and Training Council has traditionally required direct supervision of apprentices by a journeyman.

House Bill 3652 allows local committees to determine when apprenticing electricians, if they are close to achieving the required 6,000 hours of apprenticeship training, can work with indirect supervision during the remainder of their apprenticeship. A similar work-alone provision is currently in effect for apprenticeships that require 8,000 hours of training.

*Effective date: January 1, 2011*

## House Bill 3655

### *Unemployment insurance benefit extensions*

House Bill 3655 authorizes an emergency extension of unemployment insurance benefits beginning the week that is at least 14 days after February 25, 2010 and ending when the total of emergency benefits paid reaches \$19 million. The measure sets the maximum amount of emergency benefits a qualified individual may receive to 23 percent of the individual’s most recent regular unemployment benefit claim. It also authorizes Employment Department

rulemaking to determine individual eligibility for extended benefits.

Unemployment insurance is a monetary benefit available to workers who are out of work through no fault of their own. The money for benefits comes from employers as a tax on wages. The tax schedule in effect for a given calendar year is directly dependent on the solvency of the Unemployment Insurance (UI) Trust Fund, which is designed to maintain a 1.5 reserve multiple, enough reserves to pay benefits for 18 months. When the reserve falls below 1.5, employer taxes go up in order to rebuild the reserve.

Weekly benefit amounts are based on the unemployed individual’s work record for a 12-month period known as the base year. Currently, the minimum weekly benefit amount available each week is \$115; the maximum potential weekly benefit is \$493 a week. In periods of high unemployment, claims may be extended beyond the normal one-year benefit period. Federal extensions can add 13 to 20 or more weeks, depending upon congressional action. State-authorized extended benefits may pay for an additional 13 or 20 weeks.

House Bill 3483 (2009) allocated \$30 million from the UI Trust Fund for qualified individuals to receive Oregon emergency benefits once they had exhausted regular benefits for the period between October 4, 2009 and January 2, 2010. Because a federally-authorized program funded by the American Recovery and Investment Act of 2009 also extended benefits, a state balance of \$19 million remained.

House Bill 3655 reauthorizes the extension of unemployment insurance benefits drawing from the remaining \$19 million. The measure also authorizes the

Employment Department to blend federal- and state-extended benefits by administrative rule and provides a “reach back” to federally-funded unemployment benefit eligibility of an additional \$9 million.

Oregon’s seasonally-adjusted unemployment rate for December 2009 was 11 percent (compared to 10 percent nationally), up from 8.3 percent a year ago (compared to 7.4 percent nationally).

*Effective date: February 25, 2010*

## **Senate Bill 989**

### *Ballots for faculty collective bargaining agreements*

Prior to the enactment of Senate Bill 989, when faculty of an Oregon University System (OUS) institution wished to consider organized representation for collective bargaining, the Employment Relations Board (ERB) was required to place on a ballot those labor organizations designated by more than 10 percent of the employees in the prospective bargaining unit. Once the issue of eligible representing organizations was determined, two issues were placed on the ballot: one related to support or opposition for representation; the other related to which labor organization would provide the representation. If a majority of votes were cast against representation, the ERB would not certify a representative for the unit. If the majority vote was for representation, however, the ERB would determine which labor organization received the most votes and designate that organization as the bargaining unit’s representative. Voters were expected to choose a representative organization, even if they voted against representation generally.

Voters had to vote on representation in order for their choice of representation to be counted. An improperly marked ballot would be voided.

In other education labor-representation elections and all private- and public-sector representation elections, all choices are listed on a single ballot, with a second runoff election among the top two vote-getters, if necessary, until a single choice has a majority vote. Senate Bill 989 removes the requirement that both issues be shown separately on the same ballot.

*Effective date: March 4, 2010*

## **Senate Bill 1045**

### *Use of credit history for employment purposes*

Senate Bill 1045 prohibits the use of credit history for employment purposes including hiring, discharge, promotion, and compensation. The measure provides exceptions for financial institutions, public safety offices, and other instances when credit history is job-related. Senate Bill 1045 establishes that violations are unlawful employment practices, enforceable through the Bureau of Labor and Industries and civil action. The measure defines credit history as a communication of information by a consumer reporting agency that bears evidence of a consumer’s creditworthiness, credit standing, or credit capacity. “Credit” is often used to mean borrowing capacity or the ability to repay loans of money. Credit history has been used as a surrogate measure of trustworthiness and/or verification of an applicant’s information. The measure is operative as of July 1, 2010.

*Effective date: March 29, 2010*

## **Measures Not Enacted**

### **House Bill 3653**

Senate Bill 519 (2009) prohibited adverse employment actions against employees for declining to participate in employer-sponsored meetings or communications regarding either religious or political matters. Exemptions were established for legally required or voluntary meetings or communications, as well as mandatory meetings amongst an employer's executive or administrative personnel to discuss issues, including those subjects covered under Senate Bill 519. The measure also exempted political and religious organizations whose mandatory meetings or communications were conducted for the primary purpose of communicating their beliefs, practices, tenets, or purposes. Senate Bill 519 also created civil causes of action for employees.

House Bill 3653 would have clarified the intent of Senate Bill 519 by removing the

definition of "labor organization," and modifying the definition of "political matters" to include ballot measures and "religious matters" to parallel current federal law regarding the definition of a religious organization. The measure also would have clarified that employers who are religious organizations, corporations, associations, or educational institutions are exempt from statutory requirements in Senate Bill 519. It would have permitted mandatory employer-sponsored meetings reasonably necessary to the employees' performance that may lawfully have been required by the employer and were related to the business's normal operations.

House Bill 3653 would have also changed the maximum amount a prevailing employee could win in court from treble damages combined with back pay to back pay plus two times the amount for liquidated damages awarded for harms caused by delay in payment.

# Land Use



## **House Bill 3647**

### *Soil assessments for agricultural lands*

In 1999, the Department of Land Conservation and Development (DLCD) was required by ORS 215.209 to develop a computerized database of county-wide maps that show the diversity of Oregon's rural lands. The database includes information on soil classifications.

House Bill 3647 allows a person to ask DLCD to arrange for a land assessment by a professional soil classifier. The measure requires that a classifier performing such an assessment be chosen by the landowner and be certified by and in good standing with the Soil Science Society of America. The soils assessment is not considered a public record unless it is utilized by the requester in a land use proceeding. If a person decides to utilize the assessment, they must inform DLCD and consent to the release of all of the assessments produced. This soil assessment process becomes operative on October 1, 2011.

*Effective date: March 10, 2010*

## **House Bill 3673**

### *Landowner immunity for recreational uses of land*

Generally, property owners are immune from contract or tort liability for the use of their land for recreational purposes if they are allowing the public to use the land for free (ORS 105.682). Charging a fee for use removes that protection. A recent Oregon Supreme Court case, *Bradley Coleman v. Oregon Parks and Recreational Department* (2009), held that the state lost immunity protection because the paying of a fee for

camping removed the immunity protection for all other recreational use of the land and remanded the case to determine damages from a bicycle injury caused by a defective bridge.

House Bill 3673 continues the immunity protection if a land owner does not charge a fee. If a landowner charges a fee, immunity is lost unless notice is given of the limited uses of the land subject to the fee and the immunities for the remainder of the land. In addition, landowners offering access for special uses of land, specifically gardening and woodcutting, are allowed to charge a fee not to exceed a certain amount and continue to preserve their immunity. However, if a landowner charges more than the prescribed fee, immunity is lost unless notice is given.

*Effective date: March 10, 2010*

## **Senate Bill 1031**

### *Destination resort siting law*

In 1984, the Land Conservation and Development Commission adopted provisions of a goal relating to recreational needs that allowed for the siting of destination resorts outside of urban growth boundaries. The provisions of this goal were enacted into law in 1987.

Senate Bill 1031 continues the existing prohibition on siting destination resorts in areas of especially sensitive big game habitat as determined by the Department of Fish and Wildlife in 1984, and adds any such additional lands designated by a county. The measure provides that if the Fish and Wildlife Commission amends the 1984 determination for an entire county and the county amends its comprehensive plan to adopt the amended determination, a destination resort may not be

sited in those areas. The measure prohibits counties from allowing a destination resort to be sited on lands predominantly classified as Fire Regime Condition Class 3, unless the county approves a wildfire protection plan that demonstrates a site can be developed without being at high overall risk of fire. Finally, the measure directs counties to require an applicant to submit economic and traffic impact analyses for sites within specified distances of an urban growth boundary.

*Effective date: March 4, 2010*

## **Senate Bill 1036**

### *Guest ranches*

Guest ranches were allowed in exclusive farm use zones beginning in 1997. Between 1998 and 2007, 11 such ranches were approved, ranging in size from 155 acres to over 10,000 acres. Four of the guest ranches have since been converted to bed-and-breakfasts or are no longer in business. The numbers of guest ranches in operation during 2008 and 2009 are not yet available. The law authorizing guest ranches sunsets on January 2, 2010. Senate Bill 1036 reinstates the authority and postpones the sunset until January 2, 2012.

*Effective date: March 18, 2010*

## **Senate Bill 1049**

### *Determination of lawfully permitted uses under Ballot Measure 49 (2007)*

In November 2007, Oregon voters approved Ballot Measure 49, which modified Ballot Measure 37 (2004). The prior measure had allowed property owners whose property



value was reduced by land use regulations to claim compensation or increased development rights from state or local governments. Ballot Measure 49, in turn, allowed certain claimants to establish a specific, but limited, number of home sites, and limited claims under Ballot Measure 37 to those who filed on or before June 28, 2007. House Bill 3225 (2009) allowed for an extension of Measure 49 for certain claimants who failed to meet procedural requirements, and also directed the Department of Land Conservation and Development (DLCD) to study reasons why other claimants were unable to meet the requirements. Senate Bill 1049 resulted from the DLCD study.

Senate Bill 1049 provides a process for allowing one additional dwelling for the approximately 800 claimants who filed claims under Measure 49 only with a county, as opposed to both the county and state, as required by Ballot Measure 49.

The measure also allows for one additional dwelling for approximately 85 claimants who sought approval of up to 10 home sites under Ballot Measure 37, but failed to provide the required appraisal information as part of the application package. In both cases, the claimants must pay a \$2,500 processing fee. The DLCD is directed to complete work on the applications by June 30, 2011.

Senate Bill 1049 also provides a process for handling claims on approximately 700 properties acquired after the statewide land use goals were enacted in 1975, but before the comprehensive plans for the counties in which the properties lie were acknowledged by DLCD. These claims must comply with local zoning requirements that existed at the time the property was acquired, but do not need to show compliance with statewide land-use goals.

*Effective date: February 25, 2010*



# Transportation



## Senate Bill 1019

### *Omnibus transportation bill*

Senate Bill 1019 makes several technical changes to House Bill 2001 (2009), commonly referred to as the Jobs and Transportation Act. The measure corrects the allocation of heavy vehicle registration fees so that they are distributed to cities, counties, and the state consistent with the other taxes and fees raised by House Bill 2001. It also eliminates a requirement that an allocation from *ConnectOregon* III funds be used for a multimodal study that was inadvertently carried over from *ConnectOregon* II. The measure also eliminates the requirement that the Oregon Department of Transportation (ODOT) refer to federal standards for medium-speed electric vehicles when adopting state safety standards for such vehicles.

Senate Bill 1019 also makes additional technical changes to current law. It specifies that moneys allocated to the Oregon Historical Society from the sale of Pacific Wonderland registration plates (Senate Bill 961, 2009) do not need to be used for the establishment of an Oregon History Center at the Oregon State Capitol. The measure clarifies that Oregon's "Move Over" law, as amended by House Bill 2040 (2009), requires that vehicles passing in the lane adjacent to a stopped emergency or public safety vehicle or tow truck must slow to at least five miles per hour below the designated speed for the road or the speed limit established under ORS 810.111. Senate Bill 1019 also restricts the requirement created by Senate Bill 579 (2009), that seat belts or harnesses be worn by children when operating or riding in Class I or Class II all-terrain vehicles (ATV), to instances when those vehicles are operated on public lands or private lands

open to the general public for ATV recreation. The measure also provides explicit statutory authority for holders of variance permits to operate over-dimension vehicles to make statute consistent with current practice. Senate Bill 1019 also requires communities utilizing photo radar speed enforcement in school zones that are not marked by flashing signals to include notification on the required temporary signage that school is in session.

In addition to the technical changes listed above, Senate Bill 1019 includes several new provisions. The measure authorizes the Travel Information Council to borrow money to facilitate the improvement of infrastructure at rest areas. It authorizes the Department of Administrative Services to sell, dispense, and distribute compressed natural gas to private entities. Finally, the measure specifies that rural airports receiving moneys from the Multimodal Transportation Fund may use those funds for transportation projects already completed or those underway if the project also received a federal grant.

*Effective date: March 4, 2010*

## **Senate Bill 1024**

### *Highway access*

Senate Bill 1024 establishes criteria for requiring new approach permits for highway access issued by the Oregon Department of Transportation (ODOT) when there are changes of use. The measure requires ODOT to adopt rules that are less stringent for highway segments averaging 5,000 vehicles or fewer daily. Senate Bill 1024 also requires ODOT to develop proposed legislation for access management based on objective standards, and requires ODOT to report to

the Legislative Assembly on the proposed highway access management legislation prior to January 2011.

Current ODOT administrative rules (OAR 734-051-0020 *et seq*) state that the purpose of the department's access management program is "...to provide a safe and efficient transportation system through the preservation of public safety, the improvement and development of transportation facilities, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, and the elimination of hazards due to highway grade intersections. These rules establish procedures and criteria used by the Department to govern highway approaches, access control, spacing standards, medians and restriction of turning movements in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans and consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and the 1999 Oregon Highway Plan (OHP)."

Currently, a change of use of an approach includes: any change in zoning or comprehensive plan designation of the property; construction of new buildings on the property that increase floor space of existing buildings, divisions, or consolidation of property boundaries; changing the character of the traffic using the approach; changing the internal or inter-parcel circulation design; or reestablishment of a property's use after a period of two or more years which may require a new approach permit application. The risk of losing the permit when a new permit is required and/or applied for due to a change of use is said to have resulted in constraining redevelopment.

*Effective date: March 4, 2010*

# Veterans



## Senate Bill 999

### *Diversion from criminal prosecution*

The Oregon National Guard is in the midst of its largest deployment since World War II, with over 3,000 men and women on active duty, including deployments to Iraq and Afghanistan. Many Guard members have been deployed multiple times. Experts now recognize that concussions from explosives and the stress of combat both cause injury to the brain. Injury to the brain causes people to react differently than they may have otherwise, particularly when under stress. Concussions and combat stress increase the chances that some of these returning National Guard members will come into contact with law enforcement.

Senate Bill 999 gives greater discretion to district attorneys in placing veterans in a supervised performance program. The measure excludes offenses involving serious physical injury and crimes classified as Class A or Class B felonies involving physical injury, and prohibits a service member charged with Rape I or II, Sodomy I or II, Unlawful Sexual Penetration I or II, or Sex Abuse I from being offered diversion. Senate Bill 999 also prohibits offering diversion to a service member charged with a domestic violence crime while subject to a domestic violence protective order in favor of the person the service member is alleged to have committed the domestic violence crime against. Those charged with a domestic violence crime must waive the right to a speedy trial and plead guilty or no contest to the charge. For domestic violence charges, the court must then stay the proceeding for two years. Senate Bill 999 specifies that former service members who were dishonorably discharged are not eligible.

*Effective date: March 4, 2010*

## Senate Bill 1000

### *Veterans' identification on driver licenses*

Senate Bill 1000 allows a veteran to have included on his or her driver license a notation that the person is a veteran. Oregon has approximately 341,000 veterans, many of whom may qualify for veterans' benefits earned through service. The Oregon Department of Veterans' Affairs (ODVA) has identified and assisted about 80,000 of these veterans. House Bill 3104 (2009) directed ODVA to develop and implement a veterans outreach program. The inclusion of veteran status on driver licenses is designed to assist in the identification of veterans and

to assist them in obtaining federal veterans' benefits.

Oregon has a special license plate for those who have been awarded the Congressional Medal of Honor. There is currently one Oregon resident, a World War II veteran, with this license plate. House Bill 2001 (2009) increased the fee for certain license plates, including the Congressional Medal of Honor plate, from \$50 to \$100. Senate Bill 1000 allows the Department of Transportation to waive the customized registration plate fee for persons with the Congressional Medal of Honor registration plates.

*Effective date: January 1, 2011*

# Water

## House Bill 3602

### *Umatilla River hydroelectric project*



The Jim Boyd hydroelectric project is located on the Umatilla River in Umatilla County. The project, which was issued a state hydroelectric license and water right in 1984, has not operated since June 2002 when its power purchase agreement expired. Umatilla County began tax lien foreclosure proceedings in 2006 and took title to the project in 2009. Under ORS 543.440, a hydroelectric project license terminates upon the voluntary or involuntary transfer of a project to the state or any municipal corporation.

House Bill 3602 directs the continuation of a hydroelectric license for a project located in the Umatilla Basin if the following conditions are met: the transfer of the license, rights or property is to Umatilla County; the transfer results from foreclosure of a tax lien; and the transfer occurred on or before January 1, 2010. The measure requires that the project license water right be subordinate in priority to any in stream water right for which a certificate is issued on or before the measure's effective date. House Bill 3602 also directs the Water Resources Department to modify the license conditions to include fish passage and screening requirements. The new project owner is required to develop an implementation plan that identifies repairs or modifications necessary for the project to meet the fish passage and screening criteria of the Oregon Department of Fish and Wildlife. The measure is repealed on January 2, 2018.

*Effective date: March 18, 2010*

## Measures Not Enacted

### **Senate Bill 1060**

#### *Task Force on Waterways*

The Department of State Lands is responsible for managing the submerged and submersible land underlying Oregon's publicly owned waterways that have been determined to be navigable for title purposes. To date, public ownership has been determined for land underlying certain segments of 12 Oregon waterways: the Chetco, Columbia, Coos, Coquille, John Day, Klamath, McKenzie, Rogue, Sandy, Snake, Umpqua and Willamette rivers. In addition to these waterways, the public owns much, but not all, of the submerged and submersible land affected by the rise and fall of tides, as well as many lakes in Oregon.

Many questions have arisen over the rights of the public to make use of a waterway that has not been determined to be navigable for title purposes. Currently, the public's right to the use of waterways is not addressed in state law.

Senate Bill 1060 would have created a 17-member Task Force on Waterways to study public use of waterways and to submit a report summarizing the results of the study, including recommendations for legislation, to interim legislative committees on or before December 1, 2010.



# Vetoed Measures



## House Bill 3704

*Permits recycling cooperatives to collect value of processed containers from nonmembers*

The Oregon “Bottle Bill” was enacted in 1972 to reduce litter and increase recycling by assessing deposits on particular beverage containers. Over time, many containers were introduced into the marketplace that were not subject to a deposit. Senate Bill 707 (2007) expanded the types of beverage containers subject to deposit to include water and flavored water containers. It also took another step toward making universal redemption possible in the state in the future, by requiring dealers (i.e., large retailers) to accept any brand of beverage container if the dealer sold the type of beverage.

In response to Senate Bill 707, a statewide cooperative evolved, from five preexisting regional ones into the Oregon Beverage Recycling Cooperative. Participation in the cooperative is less than 100 percent of affected businesses, however, so discrepancies developed with regard to implementation of Senate Bill 707.

House Bill 3704 allows two or more beverage distributors or importers to establish a distributor cooperative for the following purposes: collecting container refunds from distributors or importers to refund dealers the amount paid for the value of empty containers; paying the refund value for beverage containers sold in the state; and processing beverage containers sold in the state. The measure does not require businesses to become members of such cooperatives, but does require those that are not members to pay for the benefit of services provided by such a cooperative (i.e., the refund value of redeemed

containers) so long as an accounting is kept and made available for that purpose.

### Governor's Veto Message

*I am returning Enrolled House Bill 3704 unsigned and disapproved.*

*House Bill 3704 allows two or more private beverage distributors to form a cooperative in Oregon to facilitate the collecting and processing of recyclable beverage containers under Oregon's landmark bottle bill. Significantly, the measure requires that the cooperative must service a majority of the dealers (the retail sellers of recyclable containers) in the state.*

*I have long supported efforts to expand and enhance Oregon's bottle bill and increase the overall rate of recycling in Oregon. My concern is that the practical impact of this bill may actually hinder consumer recycling.*

*I acknowledge that Enrolled House Bill 3704 is a better business model in terms of economics and convenience for distributors and dealers. However, I am concerned that the business model envisioned in HB 3704 will make it less convenient for the consumer to recycle. The consumer will be limited in their ability to obtain a refund or credit at the neighborhood retailer. Instead, the consumer will put his or her recyclables in a bag, drive to a redemption center, wait in line to drop off the bag, receive a credit for the recyclables, and then save that credit to use at a later time or travel back to the neighborhood retailer to shop.*

*In addition to consumer inconvenience, this recycling model would likely require the consumer to have a car, and requires more traveling to and from the*

*redemption center, more time in traffic on our streets, more CO2 emissions, and more time away from home.*

*The argument that this bill may provide an incentive for distributors and dealers to support an expansion of the bottle bill is a hopeful one. My question is: why isn't such expansion in the bill before me?*

*There are more pieces to be added to this proposal before it will be good public policy that benefits all stakeholders, especially the consumer.*

*Also, a serious legal concern has been raised about whether HB 3704, in combination with likely actions of competitor businesses, would violate federal antitrust laws by restraining competition to the private participants in this industry. If federal antitrust legislation begins, it would be lengthy and expensive, and create a roadblock to beverage container recycling efforts for which Oregon has gained world-wide commendation.*

*Finally, I write to comment and urge caution on an issue that has arisen with each of the bills I have vetoed today. All three bills proposed changing a long-standing Oregon public policy. I have a serious concern as to whether the Special Session in February provided opportunity for citizens and interested stakeholders to be adequately involved in the development of these proposed policy changes.*

*The public give-and-take is critical to crafting and amending legislation by allowing all interested parties to be involved in the development of public policy. I believe we must always be open and transparent when we are proposing changes to long-established Oregon policy, especially in a short legislative session.*

*The regular session in 2011 will give all parties, including the public, a more meaningful opportunity to be part of the legislative process.*

## **Senate Bill 1014**

### *Operations of public boards and commissions*

Most state agencies and departments are headed by policy-making boards and commissions. The membership of most boards and commissions includes both citizens and elected officials who volunteer for appointment. Each board or commission has specific statutory requirements related to membership, professional experience or occupation of members, scope of authority, and type and frequency of meetings.

Many of the governing statutes for boards and commissions are silent as to whether legislative members can receive per diem compensation or mileage reimbursement related to their participation. Senate Bill 1014 aligns the eligibility of legislators to receive reimbursement with current practices of each board depending on whether non-legislative members receive per diem compensation or mileage reimbursement.

Senate Bill 1014 also amends several statutes relating to state boards and commissions. The measure clarifies that boards and commissions may conduct meetings by telephone or other electronic means in accordance with public meeting laws and that legislative members participating via phone or electronic means are not eligible to seek reimbursement or compensation. In addition, Senate Bill 1014 expands the Oregon Board of Pharmacy to eight members by adding one licensed pharmacy technician and permits the Governor to select up to two educators to

serve on the Oregon State Board of Education.

### Governor's Veto Message

*I am returning Enrolled Senate Bill 1014 unsigned and disapproved.*

*With one exception, this measure is a well-crafted clarification of the operation of executive branch boards and commissions that I worked with the Legislature on in order to update and standardize the practices of state boards.*

*I am exercising my veto solely because of Section 21 of the Enrolled bill. Section 21 would authorize the Governor to appoint no more than two members who are employed by a school district to the seven-member State Board of Education. It also deletes the existing prohibition in ORS 362.021(2)(a) of appointment of any individual who is currently engaged in teaching, administration, or operation of any school. In this respect, SB 1014 represents a significant policy modification that I believe is inconsistent with the need for impartiality among the members of the Board of Education.*

*The selection of public board and commission members to serve as policy makers for Oregon is one of the most important duties we exercise. During my many years in public office, I have seen the value that these citizens provide as they seek to carry out the responsibilities we have assigned to them. Although many state boards are made up of stakeholders relevant to the subject matter on which they provide advice, that is not the case with the Board of Education.*

*The existing statute appropriately permits appointment of former educators to*

*the board, and in fact two members of the current Board of Education are former school employees. While it is important for the Board to listen to, and understand the effect of their deliberations and decisions on, various interest groups, especially educators, the appointed members' duty is to serve the interests of all Oregonians. My veto will ensure that this continues to be the case with the Board of Education.*

*Finally, I write to comment and urge caution on an issue that has arisen with each of the bills I have vetoed today. All three bills proposed changing a long-standing Oregon public policy. I have a serious concern as to whether the Special Session in February provided opportunity for citizens and interested stakeholders to be adequately involved in the development of these proposed major policy changes.*

*The public give-and-take is critical to crafting and amending legislation by allowing all interested parties to be involved in the development of public policy. I believe we must always be open and transparent when we are proposing changes to long-established Oregon policy, especially in a short legislative session.*

*The Regular Session in 2011 will give all parties, including the public, a more meaningful opportunity to be part of the legislative process.*

## **Senate Bill 1046**

*Prescription authority for certain licensed psychologists*

To become licensed in Oregon, psychologists 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 their patients. Proposals have been made in 17 states to authorize specially trained psychologists to prescribe psychotropic medications; to date, two of these states, New Mexico and Louisiana, have passed such legislation.

The United States Department of Defense Psychopharmacology Demonstration Project was a pilot demonstration project mandated and funded by Congress in 1991 to train military clinical psychologists in the safe and effective prescription of psychotropic medication to eligible beneficiaries of the military health system under certain circumstances.

Senate Bill 1046 would have allowed the Oregon Medical Board (OMB) to issue a certificate for prescriptive authority to certain psychologists. To become certified, a psychologist would have needed at least a doctorate from an approved educational program or have completed the Department of Defense Psychopharmacology Demonstration Project or similar program operated by any branch of the armed forces of the United States. Certification would also have required completion of a clinical training program approved by the OMB, passing a national certification examination, and payment of fees. The measure established that the OMB would adopt rules, after taking into account recommendations of the newly established Committee on Prescribing Psychologists and the Oregon Board of Psychologist Examiners, (OBPE)

and set educational requirements, clinical training, standards, examinations, continuing education requirements, and prescribing psychologist formulary that would have been reviewed annually. The measure set timelines for the review and processing and approval or denial of applications, including situations in which a recommendation is contested.

Senate Bill 1046 also established that the OMB could deny, suspend, limit, or revoke a certificate, and required the OMB, with the concurrence of OBPE, to adopt rules requiring a psychologist to maintain a documented, ongoing collaboration with the health care professional overseeing patients' medical care, and that the health care professional not be liable for injuries to a patient from psychologist's care. Senate Bill 1046 would have allowed the OMB to impose disciplinary action against a psychologist who misuses prescriptive authority. It also created a Task Force on Prescribing Psychologists, and charges the task force with developing recommendations on educational requirements, curriculum, clinical training, and standards for prescribing psychologists.

#### Governor's Veto Message

*I am returning Enrolled Senate Bill 1046 unsigned and disapproved.*

*I have long advocated for mental health parity and improving the integration of mental health and physical health disciplines in order to improve the overall health of Oregonians, and increase access to services to underrepresented populations. However, I am concerned that Senate Bill 1046 as written creates serious policy and regulatory conflicts.*

*Furthermore, I believe that a policy change of this significance requires more safeguards, further study and greater public input than was provided during the February special session.*

*I believe that the best first step toward achieving the goals of Senate Bill 1046 is for the legislature to authorize in the 2011 Legislative Session a pilot program that would generate data on which to inform and guide solutions that give greater access to broader mental and physical healthcare.*

*Finally, I write to comment and urge caution on an issue that has arisen with each of the bills I have vetoed today. All three bills proposed changing a long-standing Oregon public policy. I have a serious concern as to whether the Special Session in February provided opportunity for citizens and interested stakeholders to be adequately involved in the development of these proposed major policy changes.*

*The public give-and-take is critical to crafting and amending legislation by allowing all interested parties to be involved in the development of public policy. I believe we must always be open and transparent when we are proposing changes to long-established Oregon policy, especially in a short legislative session.*

*The Regular Session in 2011 will give all parties, including the public, a more meaningful opportunity to be part of the legislative process.*



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<b>SB 1049</b> .....	<b>56</b>
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<b>SB 1055</b> .....	<b>5</b>
<b>SB 1059</b> .....	<b>25</b>
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<b>SB 1064</b> .....	<b>49</b>
<b>SJR 41</b> .....	<b>30</b>
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