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SPECIAL DISTRICTS  
ASSOCIATION OF OREGON

2018 LEGISLATIVE SESSION  
*FINAL REPORT*

# TABLE OF CONTENTS

<b>Oregon’s Fourth Constitutionally Required Annual Legislative Session Concludes .....</b>	<b>1</b>
<b>State Budget Solid with Revenue Forecasts.....</b>	<b>1</b>
<b>2018 Session Overview .....</b>	<b>2</b>
<b>Looking Forward to the 2019 Session.....</b>	<b>4</b>
<b>2018 Interim Process.....</b>	<b>4</b>
<b>Initiative Petitions .....</b>	<b>5</b>
<b>Legislative Referrals .....</b>	<b>5</b>
<b>Summary of Ways &amp; Means Expenditures.....</b>	<b>5</b>
<b>SB 5702 – General Obligation Bonding.....</b>	<b>5</b>
<b>SB 5703 – Lottery Bonding Bill.....</b>	<b>6</b>
<b>HB 5201 – General Fund Expenditure Omnibus Budget Reconciliation Bill .....</b>	<b>6</b>
<b>Economic Development Bills that Passed .....</b>	<b>8</b>
<b>HB 4023 – Broadband Deployment .....</b>	<b>8</b>
<b>SB 1516 – Small Business Loans.....</b>	<b>9</b>
<b>Economic Development Bills that Failed.....</b>	<b>9</b>
<b>HB 4024 – OBDD Study of Economic Development .....</b>	<b>9</b>
<b>HB 4078 – Brownfields.....</b>	<b>9</b>
<b>Environmental Bills that Passed .....</b>	<b>10</b>
<b>SB 1541 – Clean Air Oregon .....</b>	<b>10</b>
<b>Environmental Bills that Failed.....</b>	<b>11</b>
<b>HB 4001 – Cap and Trade .....</b>	<b>11</b>
<b>HB 4002/SB 1508 – Cleaner Air Oregon Fees .....</b>	<b>12</b>
<b>SB 1519 – Oregon Energy Commission.....</b>	<b>12</b>
<b>Finance and Taxations Bills That Passed .....</b>	<b>12</b>
<b>HJR 201 – Legislative Referral of Constitutional Amendment.....</b>	<b>12</b>
<b>HB 4139 – Heavy Equipment Taxation .....</b>	<b>13</b>

# TABLE OF CONTENTS

<b>SB 1528 – Pass Through State Tax Deduction .....</b>	<b>13</b>
<b>Finance and Taxations Bills That Failed.....</b>	<b>14</b>
<b>HB 4027 – Gigabit Property Tax Repeal.....</b>	<b>14</b>
<b>General Government Bills That Passed .....</b>	<b>14</b>
<b>HB 4155 – Net Neutrality .....</b>	<b>14</b>
<b>SB 1542 – Odd-Numbered Year Legislative Session Start Date.....</b>	<b>15</b>
<b>SB 1551 – Account Breaches .....</b>	<b>15</b>
<b>General Government Bills That Failed.....</b>	<b>15</b>
<b>HB 4015 – Oregon Conservation and Recreation Fund .....</b>	<b>15</b>
<b>SB 1514 – Sunset of Boards and Commissions.....</b>	<b>16</b>
<b>SB 1515 – Children’s Services Districts .....</b>	<b>16</b>
<b>Land Use Bills That Passed .....</b>	<b>17</b>
<b>HB 4031 – Omnibus Land Use Modifications .....</b>	<b>17</b>
<b>HB 4124 – Remand Decisions.....</b>	<b>17</b>
<b>Land Use Bills That Failed .....</b>	<b>17</b>
<b>HB 4075 – Change in Reserves in Washington County.....</b>	<b>17</b>
<b>HB 4092 – Extension of Airport Runways into Exclusive Farm Use Lands.....</b>	<b>18</b>
<b>PERS Bills that Passed .....</b>	<b>18</b>
<b>SB 1529 – PERS Incentive Fund Capitalization .....</b>	<b>18</b>
<b>SB 1566 – PERS Incentive Fund Framework .....</b>	<b>18</b>
<b>Public Contracting Bills That Passed.....</b>	<b>19</b>
<b>SB 1565 – State Procurement Pilot Program.....</b>	<b>19</b>
<b>Public Contracting Bills That Failed .....</b>	<b>19</b>
<b>HB 4003 – Diesel Emissions and Public Contracting .....</b>	<b>19</b>
<b>HB 4127 – Qualification Based Selection (QBS) Modifications .....</b>	<b>20</b>

## TABLE OF CONTENTS

<b>Transportation Bills That Passed .....</b>	<b>20</b>
<b>HB 4059 – Transportation Funding Package Modifications.....</b>	<b>20</b>
<b>Water Bills That Passed.....</b>	<b>21</b>
<b>SB 5702 – General Obligation Bonding Budget Note WRD – Report.....</b>	<b>21</b>
<b>Water Bills That Failed.....</b>	<b>21</b>
<b>HB 4016 – Klamath District Temporary Transfers.....</b>	<b>21</b>
<b>HB 4029 – Deschutes Wild and Scenic Bridge Proposal.....</b>	<b>21</b>
<b>HB 4126 - Household Hazardous Waste Stewardship Program .....</b>	<b>22</b>
<b>SB 1558 – Stored Water Transfers.....</b>	<b>22</b>
<b>Index by Bill Number .....</b>	<b>23</b>

## **2018 LEGISLATIVE SESSION**

### **OREGON'S FOURTH CONSTITUTIONALLY REQUIRED ANNUAL LEGISLATIVE SESSION CONCLUDES**

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Voters approved Ballot Measure 71 at the November 2010 ballot. They rejected a similar measure in 1990, but resoundingly supported the constitutional amendment in 2010 with 68% of voters favoring annual sessions. Some of the arguments supporting the amendment included:

- The Legislature will meet for fewer days overall, and will be able to provide greater accountability and more consistent budgeting.
- By not waiting every two years to do the people's business, taxpayer dollars would be enhanced through government transparency and efficiency.
- The Legislature could increase responsiveness and get the greatest value for every tax dollar to improve the delivery of vital services.

Annual legislative sessions are now limited to a maximum of 35 days in even-numbered years and 160 days in odd-numbered years. This was the fourth even-numbered year, constitutionally-mandated legislative session.

The members of the Legislative Assembly expressed frustration about the number of big issues that were addressed this session. However, the recently concluded session was far less acrimonious than past short sessions due to the Senate's unwillingness to address a large magnitude of high profile issues in such a short time period.

### **STATE BUDGET SOLID WITH REVENUE FORECASTS**

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At the conclusion of the 2017 Legislative Session, the Legislature approved a spending plan of \$20.9 billion in general fund and lottery revenue over the next two years, which was a \$2 billion increase or 10.3% more than the previous two-year budget. Since lawmakers approved the budget last year, revenue estimates based on the previous two forecasts, coupled with the current forecast provided during the second week of the 2018 session, showed that general fund and lottery revenues had increased nearly \$255 million from the close of session forecast. The February 16<sup>th</sup> forecast set the stage for the budget co-chairs to make the necessary modifications to the budget based on the latest revenue. However, whether the Legislative Assembly would disconnect with portions of the recently passed Tax Cuts and Jobs Act had yet to be determined. Once it was determined that Oregon pass-through entities would no longer receive the state tax break, the assembly was in a position to make additional expenditures as described later in this report.

## 2018 LEGISLATIVE SESSION OVERVIEW

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Prior to the 2018 Legislative Session's opening gavel, much of the focus was given to Ballot Measure 101 which was referred to the voters after the conclusion of the 2017 Legislative Session. Measure 101 asked voters whether two health-care related taxes that were enacted during the previous session should remain in place. Voters overwhelmingly supported the preservation of the taxes in the end. If voters had rejected the measure, the assembly would have spent a good deal of time trying to balance the state's Medicaid budget.

Another topic that received a great deal of pre-session discussion was the effort to reduce the state's carbon impact. Soon after the 2017 session concluded, the chairs of the House and Senate Environment Committees convened a clean energy and jobs workgroup in order to develop a carbon cap and trade proposal for consideration during the 2018 session. Despite months of meetings that took place over the interim, the Senate announced that the votes did not exist at the time to undertake such a complex policy discussion during the 35-day session. Furthermore, the Governor did not even mention the proposal during her State of the State speech during the opening day of session. Regardless, the House worked hard until the final days of session to find a pathway to the Governor's desk for this proposal.

Also given considerable attention was the federal Tax Cuts and Jobs Act that had been passed by Congress and signed into law by the President. Enactment of this bill in Washington D.C. created a new budget challenge for Oregon. Specifically, the bill created a tax cut for repatriated profits being held in offshore accounts. Estimates were that this new law would reduce state income taxes by approximately \$100 million from the close of session forecast – necessitating program cuts without new revenue. In the end, rather than making program cuts, the Legislative Assembly disconnected the state's tax code from the federal tax code, which turned a \$100 million loss into a \$140 million one-time windfall.

As in previous short sessions, policy makers were intent on addressing more than budget adjustments and technical fixes. Policy measures were filed to address a number of issues including but not limited to: access to firearms, prescription drug pricing, industrial emissions, the broken foster care system, updating advance directives, affordable housing and homelessness, net neutrality, and consumer protections. Leadership limited each member's ability to introduce legislation to a maximum of two bills in the House and one bill in the Senate (unlike previous short sessions when each member was provided two bills). Committees were prohibited from introducing more than three pieces of legislation, with a few exceptions. In the end, 259 pieces of legislation were introduced for consideration.

The 79<sup>th</sup> Oregon Legislative Assembly, 2018 Regular Session convened on February 5<sup>th</sup> with Democrats controlling the Senate by a 17 to 13 margin. Four days into session, Senator Jeff Kruse (R-Roseburg) announced his resignation effective in mid-March and stated he would not enter the Capitol during the remainder of the session. In the House of Representatives, Democrats held a 35 to 25 majority over their Republican counterparts. Measures that were

not posted for a work session by February 9<sup>th</sup> were considered dead and those that were posted but had not been moved out of their originating committee by February 15<sup>th</sup>, were also considered dead under the provisions of House Concurrent Resolution 40 (2017). As a result of these deadlines, many of the bills introduced and printed at the beginning of the session saw no further action. Bills that moved to the second chamber were required to be posted for a work session by the 22<sup>nd</sup> and moved out of committees by the 27<sup>th</sup>. These strict timelines did not apply to the Joint Ways & Means Committee, neither chamber's Rules Committees, nor the House and Senate Finance and Revenue Committees.

The Legislative Assembly, unlike the previous short session, was not influenced by the threat of initiative petitions. Despite this, a few high-profile measures did ultimately make it to the Governor's desk. A bill requiring state and local governments to only contract with internet services providers who do not block, slow or charge more for information, was a direct swipe at the Trump Administration's repeal of net neutrality at the Federal Communications Commission.

Other high-profile issues included elimination of a state tax break for pass through entities which resulted from the federal Tax Cuts and Jobs Act, closing the "boyfriend loophole" in gun background checks, and greater transparency for large increases in prescription drug pricing. A number of bills relating to homelessness and affordable housing also passed. Most measures were less controversial this session and many passed with broad bi-partisan support in both chambers. In fact, only two measures passed this short session without Republican support: SB 1528 which eliminates the state tax break for pass through entities (part of the federal Tax Cuts and Jobs Act) and HB 4135 which makes changes to the state's advance directives law.

Unlike the last short session, the Joint Ways & Means Committee released their budget adjustments and expenditures towards the end of session. This was largely due to the fact that closing the pass-through state deduction was not assured until the final days, which resulted in a nearly \$200 million swing in revenue for the state. The three significant expenditure measures were the Lottery Bonding bill (SB 5703), the General Obligation Bonding bill (SB 5702), and General Fund Expenditure bill (HB 5201).

In the end, the Legislative Assembly adjourned *sine die* shortly before 5:00 p.m. on March 3<sup>rd</sup> – eight days short of the constitutionally required adjournment. This was the shortest short session thus far (28 days), beating the 2016 shortest session which lasted 32 days. Of the 259 bills and resolutions introduced, 141 (122 bills and 19 memorials/resolutions) passed both chambers. SDAO monitored 82 of the measures introduced because of their potential to impact our member districts.

All 60 seats in the state House are up for election, along with 16 state Senate seats, all five of Oregon's U.S. House seats, the governorship, and the Commissioner for Bureau of Labor. 15 people applied to challenge Governor Kate Brown, including two fellow Democrats.

## LOOKING FORWARD TO THE 2019 LEGISLATIVE SESSION

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### Composition of the Legislative Assembly

The House of Representatives currently is comprised of 35 Democrats and 25 Republicans. Democrats only need to pick up one seat allowing them to vote for tax increases without the need of a single Republican member. Eight current members (six Republicans and two Democrats) are either not running again, are seeking a different office, or have been appointed to a different office. Of the 60 seats in the House, 19 seats did not draw an opponent from the opposite party (15 Democrats and four Republicans) and are guaranteed to hold that seat in the November general election. There are nine House Republican and six House Democratic primary election challenges.

Democrats control the Senate by a 17 to 13 margin, and by picking up a single seat they will have a super majority, allowing them to vote for tax increases without the need of a single Republican member. Two existing Democrats have primary elections – Senator Rod Monroe (D-Portland) and President Peter Courtney (D-Salem). Some of the most closely watched races will be in:

- Senate District 3: Jackson County; Senator Alan DeBoer (R-Ashland) will not seek re-election to a second term and Democrats will target this open seat.
- Senate District 20: Clackamas County; Senator Alan Olsen (R-Canby) will have to defend his seat in a district that could flip if there is a big blue wave in November.
- Senate District 26: Hood River County; Senator Chuck Thomsen (R-Hood River) faces changing demographics and Democrats will likely make a push to take control of this seat.
- Senate District 15: Washington County; Republicans will likely attempt to pull an upset by unseating Senator Chuck Riley (D-Hillsboro) in a potentially expensive race.

Kate Brown is running for her first four-year term for Governor. She has attracted two primary candidates with little name recognition. Representative Knute Buehler (R-Bend) is the current odds-on favorite to emerge from the Republican primary which has a total 13 contestants. In the only other state-wide election, Labor Commissioner Brad Avakian will not be seeking another term. As a result, three candidates are vying for the non-partisan office including former House Majority Leader Val Hoyle and the Mayor of Tualatin Lou Odgen.

### 2018 Interim Process

The Legislature has designated three separate blocks of “interim committee days” to receive reports and updates on designated issues and to preview legislative concepts for 2018: May 21st-23rd; September 24-26th; and December 12-14th.



Several key dates for interest groups seeking to introduce legislation are listed below:

- September 28 – Pre-Session Legislative Requests Due
- December 5 – Pre-Session Legislative Drafts Returned
- December 21 – Pre-Session Filing Closes

State agencies must submit legislative concepts to the Department of Administrative Services (DAS) by April 13, 2018. DAS will approve introduction of agency concepts by June 1, 2018. Legislative counsel will have completed all agency legislative concept drafts by November 1, 2018. The Governor’s office will then review approved DAS legislative concepts. Pre-session filing closes for state agencies on December 7, 2018.

## **Initiative Petitions**

Petition sponsors of other measures have until July 6, 2018 to submit the required number of valid signatures in order to place a measure on the ballot. Measures that propose to change Oregon’s Constitution need 117,578 valid signatures and statutory changes require 88,184 signatures.

Several measures are currently actively gathering signatures for the upcoming ballot. Some of those include: retroactive term limits, requiring voters to prove citizenship, elimination of the state’s “sanctuary statute”, public disclosure of corporate tax returns, elimination of compulsory union dues, and a prohibition on grocery store sales taxes. At this time, it is difficult to predict what will appear on the November ballot.

## **Legislative Referrals**

The 2017 Legislative Assembly referred one measure to the voters of Damascus and one to voters statewide for the general election in November. HJR 201 refers a constitutional amendment to all voters at the November 6, 2018 election, to approve or deny the ability of local governments to issue of general obligation bonds for affordable housing.

## **SUMMARY OF WAYS AND MEANS EXPENDITURES**

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### **SB 5702 – General Obligation Bonding**

*Effective Date: April 3, 2018*

SB 5702 increases bond authorizations for the 2017-19 biennium and makes changes to the following previously approved bond authorizations, among other changes:

- Department of Environmental Quality (DEQ), Environmental Data Management System (EDMS): approved \$5,070,000 Article XI-Q bonds to finance \$5,000,000 project costs and \$70,000 for costs of issuing the bonds. The project is to implement the foundational build of a customized off-the-shelf (COTS) software solution that will replace multiple outdated and disparate information technology systems currently in use. The EDMS project will provide a common platform to receive and share environmental information and support e-commerce and web-based interactions.
- City of Carlton Water Loss Reduction: approved an additional \$5,710,000 lottery bonds to provide \$5,150,000 in net proceeds for distribution to the City of Carlton to replace the city's finished water supply line and reduce water loss.
- Lottery bonds proceeds of \$10,000,000 were originally approved in 2013 to ODOT for the Oregon International Port of Coos Bay to acquire, construct, or improve the Coos Bay rail link railroad right-of-way infrastructure. Designating \$3,000,000 of remaining proceeds towards the acquisition of rolling stock leaves \$7,000,000 authorized for the original project, in addition to \$10,000,000 that was approved for acquisition, construction, or improvement of the Coos Bay rail link in HB 5030 (2015).
- \$39 million for the Cascade Oregon State University campus.
- \$20 million for the University of Oregon Campus for Accelerating Scientific Impact, Phase II.

### **SB 5703 – Lottery Bonding Bill**

*Effective Date: April 10, 2018*

The March 2018 revenue forecast of 2017-19 biennium lottery resources is \$110,349,711 (8.3%) above the level assumed in the 2017-19 legislatively adopted budget. Three allocations are specified in the constitution:

- The Education Stability Fund receives 18 percent of net lottery proceeds.
- The Parks and Natural Resources Fund receives 15 percent of net lottery proceeds.
- The Veterans' Services Fund receives 1.5 percent of net lottery proceeds.

The March 2018 lottery revenue forecast translates into a \$19,862,948 increase in revenue to the Education Stability Fund, a \$16,552,457 increase in revenue to the Parks and Natural Resources Fund, and a \$1,655,246 increase in revenue to the Veterans' Services Fund, over the levels anticipated in the 2017-19 legislatively adopted budget.

### **HB 5201 – General Fund Expenditure Omnibus Budget Reconciliation Bill**

*Effective Date: April 10, 2018*

This bill is the omnibus budget reconciliation bill for the 2018 Legislative Session, implementing the statewide rebalance plan that addresses changes in projected revenues and expenditures since the close of the 2017 session. HB 5201 allocated the following:

- \$1,895,000 for disbursement to the Rogue River Valley Irrigation District for the Bradshaw Drop Irrigation Canal project.
- \$1,000,000 for disbursement to the Port of Umatilla to build a new facility to house the Hermiston Chamber of Commerce.
- \$100,000 for disbursement to Harney County for a study of the Silvies River and its drainages.
- \$1,435,000 General Fund appropriation to support operations of a Carbon Policy Office to be housed temporarily in the Department of Administrative Services.
- \$642,194 was approved for repairing and improving docks owned by the Port of Brookings Harbor (*Lottery bonds were approved to finance this project in the 2017 session, but because of an error, expenditure limitation of the bond proceeds was not added to the agency budget. This additional "Other Funds" expenditure limitation corrects the error and permits the agency to distribute the bond proceeds, which are expected to be issued in the spring of 2019. The Federal Funds expenditure limitation was increased by \$703,125 to accommodate expenditure of federal grants awarded under the State Trade Expansion Program*).
- \$500,000 was provided for the City of Warrenton to finance the rebuilding of a dock destroyed by fire.
- \$500,000 was provided for the Port of Cascade Locks to finance infrastructure and business recruitment at the Port's Business Park.
- \$500,000 was provided for deposit into the Local Economic Opportunity Fund, to assist community economic resilience planning.
- \$5,000,000 in General Fund was added as a one-time enhancement to the budget for the Housing and Community Services Department for homeless shelter capacity and homelessness prevention services provided throughout the state through the Emergency Housing Account Program.
- \$1,917,084 General Fund, \$2,965,300 Other Funds expenditure limitation, and the addition of six months to existing limited duration positions (3.38 FTE) to continue planning and begin development of an environmental data management system (EDMS). \$5 million in bonds have been approved for this project and it will begin May of 2018.
- \$26,194,224 General Fund to the Department of Forestry, Fire Protection Division was approved for the payment of emergency firefighting costs associated with the 2017 forest fire season.
- \$3 million for the Pacific Marine Energy Center South Energy Test site, which will test wave energy devices seven miles offshore just south of Newport. The \$3 million in state funds will help leverage an additional \$35 million in federal dollars for the project. The test facility is being designed and constructed by a team led by Oregon State University, and is expected to be operational in 2021.
- \$7,244,215 for expenses associated with the cleanup efforts at the Goble, Oregon, site on the Columbia River
- \$15.7 million to DHS to add caseworkers and other personnel to aid the state's troubled child welfare agencies.

## ECONOMIC DEVELOPMENT BILLS THAT PASSED

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### **HB 4023 – Broadband Deployment**

*Effective Date: April 3, 2018*

HB 3158 (2009) created the Oregon Broadband Advisory Council. The mission of the Council is to encourage coordination and collaboration between organizations and economic sectors to leverage the development and utilization of broadband data. The Council is required to report on the affordability, accessibility and use of broadband in Oregon and its role in economic development to the Joint Legislative Committee on Information Management and Technology by November 1 of every even-numbered year.

The Universal Service Administrative Company (USAC) is an independent, not-for-profit corporation created in 1997 to collect universal service contributions from telecommunications carriers for administration of programs designed to help communities across the country secure access to affordable telecommunications services. USAC administers universal service programs for high-cost companies in rural areas, low-income consumers, rural health care providers, schools, and libraries under the oversight of the Federal Communications Commission (FCC). The Universal Service Schools and Libraries Program, commonly known as “E-rate,” provides discounts of up to 90 percent to help eligible schools and libraries in the United States obtain affordable telecommunications and Internet access.

The FCC created a new state match in December 2014 that provides eligible applicants with an up to 10 percent additional discount for special construction charges and matches state funding for eligible projects on a dollar-to-dollar basis. The State Chief Information Officer (CIO) has formed a partnership with Oregon’s four research universities, called OregonFIBER, to provide more affordable, reliable, and higher speed broadband connectivity to state agencies and partner universities. OregonFIBER will utilize and connect existing fiber resources to create a public core fiber network, with last mile connectivity to state office and university locations provided by telecommunications service providers operating throughout Oregon. State agency and university facilities are located in communities all across Oregon - often within a few miles or just down the street from tribal government, local government, school, library, and other public body locations. Under current law, the State CIO is authorized to provide advanced digital telecommunications (i.e. broadband) services only to state agencies, and non-profit organizations under certain circumstances. Under current law, these tribal governments and other public bodies would be unable to access the enhanced broadband communications services made possible by the OregonFIBER network.

HB 4023 authorizes the State CIO to make such technology available to local governments pursuant to adopted rules identifying and limiting instances of possible competition with a private telecommunications provider.

## **SB 1516 – Small Business Loans**

*Effective Date: January 1, 2019*

This bill creates the Small Business Expansion Loan Fund, administered by Oregon Business Development Department (OBDD). It authorizes loans of up to \$250,000 from the fund for early stage growth capital to individuals and businesses with 50 or fewer employees. It permits larger loans upon approval of the Oregon Business Development Commission. Eligibility criteria are established and the bill provides terms of repayment and pricing. Under the bill, loans must be secured by sufficient collateral and security. OBDD is required to consult with a representative from an association representing banks before adopting rules for implementation. OBDD is authorized to set aside up to 20 percent of moneys in the fund for loans to applicants with low to moderate income or personal net worth who operate businesses with a majority share owned by minorities, women, or honorably discharged veterans, or that are located outside the Portland metropolitan area. The OBDD Commission is authorized to transfer moneys in Oregon Business Development Fund to the Small Business Expansion Loan Fund when reasonable and financially appropriate.

## **ECONOMIC DEVELOPMENT BILLS THAT FAILED**

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### **HB 4024 – OBDD Study of Economic Development**

*In committee upon adjournment*

The Oregon Business Development Department (OBDD), more commonly known as “Business Oregon,” is the state’s economic development agency. The Department’s core functions include: rural community development and infrastructure financing; business retention, expansion and recruitment; promotion of exports and international trade; industry research and development and entrepreneurship; small business assistance; and support for arts and cultural organizations. HB 4024 would have required the Business Oregon to study economic development in Oregon and report to Legislative Assembly by February 1, 2019.

### **HB 4078 – Brownfields**

*In committee upon adjournment*

The Legislative Assembly enacted SB 1565 during the 2016 Session. That bill allows cities and counties, by passing an ordinance or resolution, to establish a property tax exemption or deferral for newly constructed or installed industrial improvements that cost a minimum of \$1 million and do not exceed \$25 million. Exemptions or deferrals under the program may be granted for up to five years, but properties must be located in rural areas (entirely outside of an urban growth boundary of a city with a population of more than 40,000 or more—a provision similar to the existing strategic investment program statute).

HB 4078 would have expanded eligible locations to include a location that was not formerly used for industrial purposes. It also clarified the definition of eligible property to include property whether appraised by the county or the Department of Revenue. In addition, it would

have expanded the definition of eligible property to include property constructed or installed at a brownfield and allowed the cost of initial investment to include the costs of the remaining brownfield cleanup.

## **ENVIRONMENTAL BILLS THAT PASSED**

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### **SB 1541 – Cleaner Air Oregon**

*Effective date: April 10, 2018*

In 2016 when it was discovered that toxic heavy metals were being emitted from a glass manufacturer in a residential neighborhood in SE Portland, Governor Brown committed to addressing the problem. Over the course of about 18 months, the Department of Environmental Quality (DEQ) developed and proposed rules that the Oregon business community and some public entities had concerns with. After the failure to obtain funding to implement those rules during the 2017 session, a few Legislative members and lobbyists began negotiating a compromise. SB 1541 is a product of those discussions.

Under the Cleaner Air program, companies would have to track any release of more 600 chemicals and file reports with air regulators. The chemicals range from aniline to zinc oxide. Manufacturers (e.g. factories, lumber mills, glass blowers) whose emissions are deemed to excessively increase health risks for people living nearby would have to install pollution controls on their machinery or equipment.

Under the proposed state agency rules, those requirements would have kicked in for existing businesses whose emissions create a heightened risk of cancer in 25 out of a million people after a lifetime of exposure.

Under SB 1541, the requirements apply only to businesses with emissions that heighten the cancer risk for 50 out of a million people. Then, in 2029, the requirement would tighten to 25 people out of a million. Meanwhile new businesses immediately face the tougher compliance standards of 25 people out of a million.

The bill authorizes the Environmental Quality Commission (EQC) to establish a pilot program within Multnomah County to evaluate and control cumulative public health risks associated with toxic air emissions from multiple contamination sources. The requirements of the pilot program would be in addition to others established in the bill.

Once operational, regulations will be fully funded by fees paid by polluters. SB 1541 includes \$824,000 from the general fund in startup costs, out of a budget of \$1.6 million this biennium. Roughly \$133,000 of the program's \$3.1 million 2019-2021 budget will come from the General Fund. The balance will come from fees leveraged on air quality permit holders.

Funding will cover 10 positions at DEQ and the Oregon Health Authority, in order to implement air toxics rules. DEQ will hire permit writers, an air quality modeler, program coordinator, management and information technology support.

An additional \$1 million was added to DEQ's budget to allow them to begin to address their current backlog of industrial air permits. A recent audit by the Secretary of State revealed the serious extent of this backlog, which is due to a chronic under-funding of the agency.

## **ENVIRONMENTAL BILLS THAT FAILED**

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### **HB 4001 – Cap and Trade**

*In committee upon adjournment*

HB 4001 was one of two bills introduced that proposed that Oregon adopt a cap and trade program. Both bills (HB 4001 and SB 1507) were the result of a work group during the 2017 interim. As introduced, both HB 4001 and SB 1507 updated existing state greenhouse gas reduction goals and would have required the Oregon Environmental Quality Commission to establish an overall statewide cap on greenhouse gas emissions. The statewide cap would be reduced over time to achieve emission reductions of 80 percent below 1990 emission levels by the year 2050. The bills would have required regulated entities, whose emissions of greater than 25,000 metric tons per year, to obtain allowances. The bills also set forth provisions outlining the distribution of allowances and market establishment by which allowances would be auctioned/traded in a secondary market. Revenues from auction proceeds would be dedicated to a Transportation Decarbonization Investment Fund, a Climate Investment Fund and a Just Transition Fund. HB 4001 and SB 1507 would have established a Joint Legislative Committee on Climate to provide legislative oversight over the program and to make recommendations on expenditures of auction proceeds. In addition, a 21-member program advisory committee would have been created. While HB 4001 and SB 1507 were similar in overall policy and general program requirements, there were some significant policy differences between the bills. The Senate version contained provisions to allow regulated entities who were energy intensive and trade exposed to receive free allowances.

Under the provisions of SB 5701, the legislature dedicated \$1.4 million in general funds to fund and create a new Carbon Policy Office. The funds will be used to staff the office with four limited duration positions (2.32 FTE), the Governor's Carbon Policy Advisor, a Climate Policy Manager, Project Manager and a support staff position. The approved one-time funding includes \$650,000 for studies to examine the following areas: an economic impact analysis of a cap and trade program on Oregon's jobs and economy, leakage risk of emission intensive, energy-intensive trade exposed industries (EITEs) and carbon sequestration.

Both cap and trade bills failed this session. The Speaker of the House and the President of the Senate will co-chair a Joint Interim Committee on Carbon Reduction that includes fourteen members of the legislative assembly to further examine the issue. It is highly anticipated that similar legislation will be considered during the 2019 session.

## **HB 4002 and SB 1508 – Cleaner Air Oregon Fees**

*In committee upon adjournment*

These two bills proposed to assess additional fees for air contamination sources operating under a state, regional or federal air quality permit. The new fees would have been in addition to existing permit fees and would have been used to develop and implement a program to reduce public health risks from toxic air emissions from commercial and industrial sources. Under the bill, total fees collected for the existing biennium could not exceed \$2 million. (See SB 1541 above.)

## **SB 1519 – Oregon Energy Commission**

*In committee upon adjournment*

SB 1519 would have established a ten-member, Governor appointed Oregon Energy Commission. The bill outlined the purpose of the commission and transferred rulemaking authority from the Oregon Department of Energy (ODOE) to the commission. The bill would have required the ODOE to develop a statewide strategic energy plan. In addition, the bill would have transferred the small-scale energy loan program to the Oregon Business Development Department. Finally, the bill proposed modifications to the current assessment imposed on energy supplier gross receipts. That assessment, known as the energy supplier assessment, typically funds more than one-third of the department's operating budget. Currently, the assessment is capped at 0.375 percent. This bill would have reduced the cap to 0.15 percent. The bill was passed out of committee and sent to the Joint Ways & Means Committee where it failed to move forward.

## **FINANCE & TAXATION BILLS THAT PASSED**

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### **HJR 201 – Legislative Referral of Constitutional Amendment: General Obligation Bonds for Affordable Housing**

*Effective Date: Passage/Rejection at Statewide General Election November 6, 2018*

Article XI, Section 9, of the Oregon Constitution provides that a local government may not "...raise money for, or loan its credit to, or in aid of" a private company. This provision was originally adopted in 1859 and amended in 1917, and has been the subject of litigation in the past. Given the role the private sector plays in many affordable housing projects, some bond counsels have been unable to provide potential lenders with an unqualified opinion that the Oregon Constitution authorizes the issuance of affordable housing bonds.



HJR 201 refers a constitutional amendment to the voters, at the November 6, 2018 election, to approve or deny the ability of local governments to issue of general obligation bonds for affordable housing. If voters approve the measure, bond issuance will require four conditions to be met:

- The bonds must be payable from ad valorem taxes that are not otherwise subject to Ballot Measure 5/50 limits (they must be outside of the \$5 and \$10 limit).
- An election must be held in May or November or have 50 percent of registered voters cast a ballot.
- The local government must conduct audits of and publicly report on the expenditure of proceeds from the bonds.
- The measure limits the principal amount of the local government's indebtedness that may be outstanding for affordable housing projects to one-half of one percent of the real market value of all property in the jurisdiction.

### **HB 4139 – Heavy Equipment Taxation**

*Effective Date: June 2, 2018*

HB 4139 replaces the existing personal property tax system for heavy equipment held for rental with a two percent point-of-sale tax. This type of personal property is very mobile and often missed in property tax assessments. Heavy equipment rental providers will file quarterly tax returns and remit the sales tax to the Oregon Department of Revenue (DOR). DOR will return the revenue to the county in which it was rented, where it will be distributed to taxing districts using the tradition property tax methodology. The county assessors opposed the bill. SDAO was neutral on the bill because it ensures that local governments will be made whole yearly by the rental companies if there is a revenue loss. DOR will submit a report on the new program on or before July 1, 2022.

### **SB 1528 – Pass-Through State Tax Deduction**

*Effective Date: June 2, 2018*

In December 2017, the Tax Cuts and Jobs Act was enacted by Congress and signed by President Trump. Included in the Act was a provision that allowed specified pass-through entities (S-Corps and LLCs) a deduction generally equal to twenty percent of the pass-through entities' qualified business income. Due to Oregon's connection to the federal definition of taxable income, the 20 percent deduction, absent any law change in Oregon, would automatically become part of Oregon's taxable income starting point for determining Oregon tax liability.

SB 1528 rolls back a new state business tax break automatically created by 2017 federal tax reform. Oregon tax law is generally connected to the federal tax code, unless the state specifically disconnects from it. The federal tax break would have allowed "pass-through" businesses to deduct 20 percent of their gross income from their state taxes, in 2018. SB 1528's disconnection from this break restores roughly \$200 million per year to Oregon's state budget.

During the weeks that followed the conclusion of the legislative session, Governor Brown indicated she would study the bill's provisions and not automatically sign it. On April 6, 2018 (the deadline the Governor needed to notify the legislature of the intent to veto legislation), the Governor held a press conference indicating her intent to sign SB 1528. However, she has asked that legislators return to Salem for a one-day special session in June to extend an existing state business tax break to some of Oregon's smallest businesses – sole proprietorships. At this time, it is unclear whether the Legislature will convene in special session this summer.

## **FINANCE & TAXATION BILLS THAT FAILED**

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### **HB 4027 – Gigabit Property Tax Repeal**

*In committee upon adjournment*

During the 2015 Legislative Session, a property tax exemption for companies that invested in infrastructure offering gigabit symmetrical service (e.g. Google planned to offer gigabit service to the City of Portland) was passed. The tax exemption lawmakers created in 2015 was broadly written, with few standards for what a company must spend to qualify for the tax break and no threshold on how many customers it must serve with its gigabit connections. So, when Comcast and Frontier each began offering their own gigabit service, they each sought the tax exemption, which could have cost local governments and school districts more than \$17 million a year. Gigabit connections, once a novelty promoted by Google Fiber, are now widely available. Comcast offers those speeds throughout its Oregon service territory, and CenturyLink offers gigabit connections in much of its territory in and around Portland. HB 4027 would have repealed the gigabit property tax exemption beginning in 2018; the two companies that have a pending exemption application (Comcast and Frontier) would have retained the exemption for 2017. The bill passed the House but failed to make it out of the Senate.

## **GENERAL GOVERNMENT BILLS THAT PASSED**

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### **HB 4155 – Net Neutrality**

*Effective Date: April 9, 2018*

Prior to December of 2017, the Federal Communications Commission (FCC) enforced "net neutrality" rules that required Internet service providers (ISPs) to treat all web traffic equally. ISPs were prohibited from blocking or slowing consumers' access to web content and from requiring websites to pay to have their content prioritized. On December 14, 2017, the FCC adopted the Restoring Internet Freedom Order, which repealed the previous 2015 Open Internet Order that served as the legal basis for the FCC to enforce net neutrality rules.

HB 4155 prohibits a public body from contracting with a broadband Internet Service Provider if that provider engages in paid prioritization, blocks lawful content or applications, or

disadvantages lawful Internet content beginning January 1, 2019. There are exceptions that include contracts entered into before a broadband provider ceases engaging in prohibited activities, or if the Public Utility Commission determines that contracting provides significant “public interest benefits.”

### **SB 1542 – Odd-Numbered Year Legislative Session Start Date**

*Effective Date: June 2, 2018*

Currently, ORS 171.010 provides that all regular sessions of the Legislative Assembly begin on the first day of February, unless the first day is a Thursday, Friday, Saturday or Sunday; in which case, the regular session begins on the following Monday. Senate Bill 1542 retains this start date for even-numbered year regular sessions, while beginning the odd-numbered year regular sessions on the Tuesday after the holiday for Dr. Martin Luther King, Jr.'s birthday.

### **SB 1551 – Account Breaches**

*Effective Date: June 2, 2018*

Oregon enacted the Consumer Identity Theft Protection Act in 2007. Under the law, consumers must be given notice when a data breach of their personal information occurs; if more than 250 consumers are affected, notice must also be given to the Attorney General. The statutes also require personal information be safeguarded by those who own, maintain, or possess such information. This bill was introduced in response to the Equifax data breach and seeks to extend several consumer benefits and protections. At least one of the provisions contained in the bill likely impact district members who have personal information of patrons that they serve. Specifically, the bill requires a person that must give notice of a breach of security shall give the notice in the most expeditious manner possible, without unreasonable delay, but not later than 45 days after discovering or receiving notification of the breach of security.

## **GENERAL GOVERNMENT BILLS THAT FAILED**

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### **HB 4015 – Oregon Conservation and Recreation Fund**

*In committee upon adjournment*

HB 4015, similar to a bill introduced in 2017, would have established the Oregon Conservation and Recreation Fund. Money would have been appropriated to the Oregon Department of Fish and Wildlife (ODFW) for carrying out activities that served to protect, maintain, or enhance fish and wildlife resources in Oregon. ODFW would have been permitted to expend Fund moneys for the following activities:

- Promoting the health of ecosystems and fish and wildlife species by implementing strategies identified in the Oregon Conservation Strategy.
- Improving public engagement in hunting and fishing opportunities.
- Increasing and refining educational outreach and engagement.

- Engaging and funding projects with other agencies to include conservation, management, research, habitat improvement, enforcement, outdoor recreation, or education activities.

The bill would have also created the Oregon Conservation and Recreation Advisory Committee to serve as an advisory committee to the State Fish and Wildlife Commission and ODFW. The bill required the committee to review ODFW policies regarding the use of Fund moneys and to make recommendations. The bill also required ODFW and the committee to jointly submit a biennial report regarding Fund expenditures to the Legislative Assembly. In an attempt to reduce the fiscal impact, this bill would have only appropriated \$40,000 to the Fund for the biennium ending June 30, 2019.

### **SB 1514 – Sunset of Boards and Commissions**

*In committee upon adjournment*

This bill would have created periodic sunset review of state boards, commissions, committees, task forces and other executive department entities that met certain criteria. Under the proposal the Legislative Policy and Research Director (LPRD) would establish a roster and schedule of entities for periodic sunset review. The bill directed listed entities, with periodic sunset reviews scheduled for next odd-numbered year regular session of Legislative Assembly, to provide specific information and required the LPRD to compile and present that information to legislative committees and facilitate committee undertaking of periodic sunset review.

### **SB 1515 – Children’s Services Districts**

*In committee upon adjournment*

This bill would have authorized the formation of a new special district to provide services for children. Specifically, it would have given these districts the ability to levy and collect property taxes to pay the costs of services to children. A similar bill introduced during the long session went through several fits and starts with amendments to prohibit expenditures that could be attributable to the \$5 cap under education. This short session’s bill had a similar provision. A coalition of local governments opposed the bill because property tax levies for a new special district would cause, or exacerbate, compression for existing property tax dependent governments due to Measure 50.

SDAO opposed the bill because it was duplicative and would have competed with other successful programs that already exist or that could be provided by school districts and local government taxing districts including library and recreation/park districts. The bill did not receive a hearing and was in committee upon adjournment.

## LAND USE BILLS THAT PASSED

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### **HB 4031 – Omnibus Land Use Modifications**

*Effective Date: March 16, 2018*

This bill included several modifications to current land use laws mainly dealing with guest ranches and a small-scale recreation community's development rights. However, one provision within the bill could impact urban service providers providing services within an urban growth boundary. Specifically, the Legislative Assembly enacted SB 1051 in 2017 which authorized accessory dwelling units in areas zoned for single-family dwellings. Through an oversight, language limiting this authority to areas within urban growth boundaries was omitted in the last round of amendments, even though this had been in earlier drafts and understood to be the bill's intent from the beginning. A provision contained in HB 4031 restricts the ability to construct accessory dwelling units to only within urban growth boundaries. This was to correct a deal that was made during the 2017 Legislative Session and was the subject of HB 4034 this session.

### **HB 4124 – Remanded Decisions**

*Effective Date: April 13, 2018*

The Land Use Board of Appeals (LUBA) was created to simplify the land use appeals process, speed resolution of land use disputes, and provide consistent interpretation of state and local land use laws. LUBA reviews only final land use decisions and limited land use decisions and will issue a final opinion and order to affirm, reverse, or remand a challenged decision. Currently, upon remand of a LUBA decision, county governing bodies conduct hearings and make a decision for lands designated under a statewide planning goal addressing agricultural lands or forestlands.

HB 4124 would allow a county governing body to have the planning commission or a hearings officer conduct hearings and make a decision regarding designated agricultural lands or forestlands following a LUBA remand decision.

## LAND USE BILLS THAT FAILED

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### **HB 4075 – Change in Reserves in Washington County**

*In committee upon adjournment*

This bill, introduced at the request of the City of Hillsboro would have changed a deal brokered in 2014 under the title of "The Grand Bargain." That bargain was encapsulated in HB 4018 during the 2014 Legislative Session. Specifically, HB 4075 would have changed the designation of approximately 1,700 acres in Washington County from rural reserve and re-designated that property as urban reserve. It would have also permitted the zoning of those lands for employment or residential use. The bill received a hearing and no further action was taken.

## **HB 4092 – Extension of Airport Runways into Exclusive Farm Use Lands**

*In committee upon adjournment*

This bill was introduced by the Canby Chamber of Commerce would have permitted state owned airports with 350 based aircraft as reported by the Federal Aviation Administration to extend their runways into Exclusive Farm Use (EFU) lands, thereby circumventing local land use processes. The bill would have only applied to state-owned airports which there are currently twenty-eight. In this case the bill would have applied to the Aurora Airport. The bill was broadly opposed by local governments who were concerned that the bill overrode local land use processes.

## **PERS BILLS THAT PASSED**

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### **SB 1529 – PERS Incentive Fund Capitalization**

*Effective Date: June 2, 2018*

SB 1529 establishes and appropriates money to the Employer Incentive Fund (EIF), which will be used to assist PERS employers fund their unfunded actuarial liability (see SB 1566 summary below). Monies generated in this bill for the EIF are as a result of the bill's provisions that reconnect Oregon's tax code to the federal tax changes made in late 2017. Eighteen percent of the total amount raised by this bill is dedicated to the EIF, and the Legislative Revenue Office projects that the fund will receive \$25 million as a result.

### **SB 1566 – PERS Incentive Fund Framework**

*Effective Date: June 2, 2018 with an Operative Date of January 1, 2019*

SB 1566 establishes eligibility criteria for the PERS Employer Incentive Fund (EIF) established in SB 1529 (see above). Employers with unfunded actuarial liabilities of more than 200 percent of their PERS-eligible payroll will be eligible for the first six months after enactment of the bill. The fund then becomes open to all other employers up to the amount remaining in the EIF.

All PERS employers are eligible to receive matching funds; however, an employer must have an approved Unfunded Actuarial Liability Resolution (UALR) plan. The PERS agency is tasked by the bill with developing rules and technical assistance for agencies to develop their UALR plans.

The match rate is up to 25 percent of a PERS employer's contribution. An employer must make a minimum contribution of \$25,000, and the maximum amount to be matched is up to 5 percent of the employer's UAL or \$300,000, whichever is greater. The employer must apply to reserve matching funds by no later than December 31, 2019, and lump sum payments must be made by July 1, 2023. Contributions generated from debt financing are not eligible to receive a match. The employer's match must be from cash on hand and cannot be from borrowed funds.

PERS will engage in administrative rulemaking to implement the provisions of the bill. It is expected that in future legislative sessions, additional funds will be made available to fund the EIF; the Governor's target is to ultimately capitalize the fund with \$400 million.

## **PUBLIC CONTRACTING BILLS THAT PASSED**

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### **SB 1565 – State Procurement Pilot Program**

*Effective Date: June 2, 2018*

SB 1565 requires the Oregon Department of Administrative Services (DAS) to implement a pilot program to evaluate a reverse auction method for procuring goods and services under ORS chapter 279B. Through a reverse auction, sellers of goods and services would openly compete on price. The bill would require DAS to use the reverse auction method for a minimum of 10 separate procurements for a contract of \$150,000 or more. To evaluate the efficacy of a reverse auction program, DAS will collect information from state agencies participating in the pilot program. That information will include identification of cost savings, potential nonmonetary benefits, and any identifiable benefits or detriments to bidders and proposers. DAS is required to report the results of the evaluation to the governor and the Legislature by December 31, 2019.

In addition to the reverse auction pilot program established by SB 1565, the bill establishes another pilot program for state contracting agencies. They are required, in their evaluation of prospective contracts for goods and services, to weigh price at not less than 30 percent of the total weight that the state contracting agency gives to all factors in the final evaluation of a proposal. The bill allows state agency directors to seek a waiver from the cost-weighting requirement if they determine, in writing, that such a waiver is in the best interest of the agency. The bill provides that both pilot programs will sunset on January 2, 2020.

Although neither pilot program applies to local governments it is clear that at some point in the future, if successful, the programs will be made available to other public entities.

## **PUBLIC CONTRACTING BILLS THAT FAILED**

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### **HB 4003 – Diesel Emissions and Public Contracting**

*In committee upon adjournment*

This bill was substantially similar to a measure introduced during the 2017 Legislative session (SB 1008). Among other things, HB 4003 would have required public bodies within a micropolitan or metropolitan statistical area with a population of 10,000 or more undertaking a public improvement project in excess of \$2 million with 30% of the funds coming from the state to require the repower, retrofit or replacement of nonroad diesel equipment be used on the public improvement project. It further required those public bodies to set aside one percent of the public improvement project to pay for the repower, retrofit or replacement of that nonroad

equipment. The bill would have also prohibited the operation of nonroad diesel equipment in Oregon without first registering the equipment with the Department of Environmental Quality, which would have also been authorized to charge registrants a fee at no longer than one-year intervals.

The bill set standards for emissions of medium-duty trucks and heavy-duty trucks operating in Oregon. Specifically, the bill prohibited the replacement of one of these trucks with a 2006 model year or earlier beginning on January 1, 2019. It would have further required that all medium-duty and heavy-duty trucks operating in Oregon beginning on January 1, 2029 to be equipped with a 2007 model year or newer engine. HB 4003 would have also authorized the Environmental Quality Commission to adopt rules governing the diesel emission standards of nonroad equipment similar to the California nonroad diesel emission standards.

### **HB 4127 – Qualification Based Selection Modifications**

*In committee upon adjournment*

This bill was requested by the City of Hillsboro and would have created a new option for public contracting agencies to hire design professionals like architects, engineers, land surveyors and photogrammetric mapping and transportation planning. Under current law, qualification based selection (QBS) requires contracting agencies to make selections on the basis of each consultant's qualifications for the type of professional service required. QBS allows a contracting agency to ask for or use pricing policies and proposals, or other pricing information, to determine consultant compensation only after a candidate is selected. If negotiations over compensation do not reach a level that is reasonable and fair to the contracting agency, the contracting agency can then select the second most qualified consultant, and request pricing information; and so on, one at a time, in descending order. Direct appointment is allowed if the estimated cost of services for the project does not exceed \$100,000.

HB 4127, which passed the House but stalled in the Senate, would have permitted a public contracting agency to pursue a second method from the previously described process that would have allowed up to three of the most qualified firms that responded to a request for qualifications being selected and then requesting pricing policies and other pricing information from those firms prior to making a selection.

## **TRANSPORTATION BILLS THAT PASSED**

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### **HB 4059 – Transportation Funding Package Modifications**

*Effective Date: June 2, 2018*

During the 2017 session, the Oregon Legislature passed the largest transportation funding package in the State's history. That bill, HB 2017, increased fuel taxes, registration and title fees, and implemented a new payroll tax dedicated to public transportation. HB 4059 was introduced as a bill to make technical corrections to the bill enacted last year. Another bill, HB



4060 was introduced in order to make policy changes to the recently enacted law. In the end, however, both bills were merged into HB 4059. HB 4059 makes a number of technical and a few policy changes to the transportation funding package passed last year. There were a few changes applying to transit and no policy changes to the ConnectOregon program.

## **WATER BILLS THAT PASSED**

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### **SB 5702 – General Obligation Bonding Budget Note – Water Resource Department Report**

*Effective Date: April 3, 2018*

Occasionally the Legislative Assembly will provide direction to agencies to undertake certain actions that might not otherwise have been required by law. These are typically executed by way of what is called a budget note. These budget notes are typically included within an agency's approved budget. Once such budget note that was included in the General Obligation Bonding bill was the following:

*“The Water Resources Department (WRD) is directed to report to the Emergency Board, no later than December 2018, on publicly owned high-hazard dams in Oregon that have unsatisfactory or poor condition ratings. The report shall include existing WRD Dam Safety Program activities, such as dam inspection and Emergency Action Plans, as well as policy and budget recommendations related to the repair, remediation, and replacement of dams with significant risk of failure. The report should include the approximate cost to rehabilitate dam infrastructure with unsatisfactory and poor condition ratings and existing federal, state, and local resources currently available for this purpose.”*

## **WATER BILLS THAT FAILED**

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### **HB 4016 – Klamath District Temporary Transfers**

*In committee upon adjournment*

This bill would have authorized irrigation districts, along with several other specified water-related districts, to temporarily transfer the place of use for water under a determined claim within the Klamath Project. HB 4016 would have allowed a transfer of water to other lands within the district boundaries. It included protections against enlargement of the water being transferred and additional provisions to prevent injury to other determined claims or existing water rights. The bill was introduced to permit more flexible management of irrigation district water during the adjudication process that has been ongoing in the Klamath Basin.

### **HB 4029 – Deschutes Wild and Scenic Bridge Proposal**

*In committee upon adjournment*

This bill was introduced at the request of impacted landowners and Oregon Wild who had concerns about a proposed bridge connecting segments to the Deschutes River trail system. A

similar bill was introduced and hotly discussed during the 2017 session. The bill statutorily prohibited a bridge from being built within certain scenic waterway segments on the Upper Deschutes. The Bend Park and Recreation District has sought to create a contiguous trail from Sunriver to Tumalo and this bridge would have completed an important milestone for that effort. The bill would have required the Oregon Parks and Recreation Department to consult within certain federal state and local government agencies to develop a study of potential alternative routes to connect the trail system. The bill was passed by the House Agriculture and Natural Resources Committee to the Joint Ways and Means Committee where it remained upon adjournment.

### **HB 4126 – Household Hazardous Waste Stewardship Program**

*In committee upon adjournment*

HB 4126 would have established a product stewardship program for the collection of household hazardous waste products. The bill would have required manufacturers to support the collection and disposal of covered products. The bill exempted various products including: certain agricultural products, batteries, pharmaceutical drugs, architectural paint, electronics, mercury containing lamps and thermostats, vitamins and dietary supplements. Covered products under the bill would have been banned from sale unless the product was labeled for and included in a plan for an approved stewardship program. In addition, the bill would have required manufacturers and retailers to provide consumers with information on available collection opportunities for covered products.

### **SB 1558 – Stored Water Transfers**

*In committee upon adjournment*

This bill, introduced at the request of the Tumalo Irrigation District and a local developer, made several changes to the ways in which water can be transferred to changed. Specifically under the bill, stored water would have been considered a water use that is eligible to be transferred. The bill would have authorized the Water Resources Department (WRD) to approve transfers of stored water from one location to another. It would have allowed an applicant to use the state's transfer process in lieu of being required to obtain a new water right. SB 1558 also clarified the authority of the WRD to approve transfers of stored water for instream purposes. Several meetings were conducted with stakeholders, however, due to several concerns the bill was never heard and it is anticipated that a workgroup will convene over the interim to continue discussing transfers.

## INDEX BY BILL NUMBER

<b>HB 4001, 11</b>	<b>SB 1508, 12</b>
<b>HB 4002, 12</b>	<b>SB 1514, 16</b>
<b>HB 4003, 19</b>	<b>SB 1515, 16</b>
<b>HB 4015, 15</b>	<b>SB 1516, 9</b>
<b>HB 4016, 21</b>	<b>SB 1519, 12</b>
<b>HB 4023, 8</b>	<b>SB 1528, 13</b>
<b>HB 4024, 9</b>	<b>SB 1529, 18</b>
<b>HB 4027, 14</b>	<b>SB 1541, 10</b>
<b>HB 4029, 21</b>	<b>SB 1542, 15</b>
<b>HB 4031, 17</b>	<b>SB 1551, 15</b>
<b>HB 4059, 20</b>	<b>SB 1558, 22</b>
<b>HB 4075, 17</b>	<b>SB 1565, 19</b>
<b>HB 4078, 9</b>	<b>SB 1566, 18</b>
<b>HB 4092, 18</b>	<b>SB 5702, 5,21</b>
<b>HB 4124, 17</b>	<b>SB 5703, 6</b>
<b>HB 4126, 22</b>	
<b>HB 4127, 20</b>	
<b>HB 4139, 13</b>	
<b>HB 4155, 14</b>	
<b>HB 5201, 6</b>	
<b>HJR 201, 12</b>	

SDAO

SPECIAL DISTRICTS  
ASSOCIATION OF OREGON

*Administrators for SDIS*

PO Box 12613  
Salem, OR 97309-0613

Toll-free 800-285-5461  
Phone: 503-371-8667  
Fax: 503-371-4781  
Web: [www.sdao.com](http://www.sdao.com)



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