



2021 Legislative Summary
for
American Council of Engineering Companies of Oregon
July 2021

Pandemic legislative session. These three words will echo through the minds and memories of anyone who needed to address the Oregon legislative process in 2021. Most likely it won't be a warm and fuzzy memory of but one of an already difficult process made more difficult. The 2021 legislative session adjourned sine die on June 26, just one day prior to the constitutional end on June 27.

Democrats controlled both chambers with supermajorities of 18-10-2 in the Senate and 38-22 in the House. Both were led by seasoned veterans with **Speaker Tina Kotek** and **Senate President Peter Courtney** at the helm. It was an ambitious agenda with no limits on bill introductions and with a full slate of policy committees, even a few new committees with new chairs. While some legislators thought it would be best to limit the session to a process that would triage the key policies including budget items until the capitol opened back up to in-person communication, other leaders suggested to lobbyists in a pre-session call that we should add another computer screen to our desk to assist us in keeping up with the concurrent hearings that would be happening over the next six months.

In the end, a huge influx of federal funds helped smooth over the economic devastation of the pandemic across the state but by no means was the legislature able to end the hardship for thousands. Sine die ceremoniously brought to an end sixteen months of pandemic malaise but the real impacts of the pandemic and its impact on Oregon's economic, educational, societal and soulful institutions will continue as government can only do so much to overcome such a catastrophic event. Many legislators entered the session already exhausted from months of constituent service related to seeking unemployment insurance payments for frustrated constituents. The added stresses of a virtual legislative session to already tired legislators solidifies my personal appreciation for their service during these trying and unique times. This was not a session for the weak nor the timid. The problems statewide were significant, and policies were implemented to assist to the extent that budgets and governmental remedies were the solution.

KEY ISSUES

[SB 213](#) – *Duty to Defend*

ACEC, AIA and PLSO sponsored this bill and worked over the interim to draft language in SB 213. This bill was not conducive to a pandemic session that was 100% virtual as the subject matter at the confluence of contract law and insurance law was distorted and muddled by opponents of the bill. In addition, our key legislative committee had a steep learning curve and the clarification of indemnify, indemnitee, indemnitor, negligence, and damages amid the intensive and intentional smokescreen of confusion by opponents was ultimately too much to overcome.

We had a great public hearing where design professionals painted a clear picture of the need for the bill and how it would have assisted small and emerging businesses. The effort was beneficial as we were able to lay a base layer of understanding for the Senate Judiciary Committee and we will continue to build upon this during the interim.

Moving forward, **Senator Floyd Prozanski**, Chair of the Senate Judiciary Committee, will continue to champion the issue and will hold an interim workgroup. Unfortunately, a key committee staffer has accepted another job at the end of the session so our interim workgroup may be led by a new staffer who will need to learn the Duty to Defend policy issues as well as the participants.

[HB 2605](#) – *Tsunami Risk*

Led by ASCE, SEAO and ACEC, we worked on this legislation to help Oregon be more resilient against natural hazards, including the expected Cascadia Subduction Zone earthquake and tsunami, by upgrading and hardening infrastructure with inclusion of the latest codes. The team recommended changes to the original bill that would:

1. Reference ASCE 7 Chapter 6 - the most current version of ASCE 7 Chapter 6 for tsunami design requirements.
2. Delete statutory reference to definitions of critical/essential structures and design criteria because it is included in the building code.
3. Include building codes change changes in the code as opposed to a state statute. Amendments were made that took away our major objections.

[HB 5010](#) - *DOGAMI Budget*

Prior to the beginning of legislative session, the Governor's recommended budget actually signaled the dismantling of the Oregon Department of Geology and Mineral Industries. But a petition signed by more than 2,300 people, stakeholder input and advocacy with legislators reversed that plan.

HB 3055 -ODOT omnibus bill

[HB 3055 2021 Regular Session - Oregon Legislative Information System \(oregonlegislature.gov\)](#)

This bill updated issues related to tolling, and major projects from the 2017 transportation package.

GENERAL BUSINESS ISSUES

[SB 164 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

SB 164 was the corporate activity tax (CAT) “technical fix” bill. The bill included important provisions to fix the fiscal year/calendar year filing problem in current statute, as well as clarify language for Oregon-based insurers to avoid retaliatory taxes in other states. We are likely to see CAT fix bills in most upcoming sessions, as taxpayers seek adjustment to this sweeping program passed in 2019. Effective 91 days after adjournment, Sept. 25, 2021.

[SB 139 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

SB 139 will eliminate eligibility for preferential pass-through entity (PTE) tax rates for PTEs with taxable income above \$5 million/year. The bill will also create additional employment and reinvestment hurdles for PTEs that still qualify. The amended bill is much narrower in scope than the original bill. This preferential tax treatment for pass-through taxpayers has been targeted for adjustment by lawmakers since it was crafted as part of a larger tax compromise some years ago. We will likely see other attempts to reduce PTE benefits in future sessions. Effective 91 days after adjournment, Sept. 25, 2021.

[HB 2457 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

HB 2457 was a mixed bag. We supported the underlying concept, which would be to maintain Oregon’s connection to the federal tax code. This kind of bill passes pretty much every legislative session, typically without controversy. However, there were attempts to amend the bill to tax forgiven Paycheck Protection Program (PPP) loans. Recognizing that Congress created the PPP program to offset the financial impacts of COVID crisis on small businesses (fewer than 500 employees), we strongly opposed the amendments and coordinated coalition opposition efforts. The amendments were rejected, and the connection bill was passed. Effective 91 days after adjournment, Sept. 25, 2021.

[HB 2420 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

HB 2420 extends the timeline for filing complaints with the Bureau of Labor and Industries (BOLI) for allegations of retaliation related to workplace safety complaints. The bill amended the existing statute to align the timelines with other claims so that employees have one year to file a complaint with BOLI. Effective Jan. 1, 2022.

[HB 2474 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

HB 2474 makes several changes to the Oregon Family Leave Act (OFLA) which provides unpaid protected leave for employees employed by employers with 25 or more employees. Two changes

are only applicable in a public health emergency – temporarily reducing the amount of time an employee must be employed to 30 days from the standard 180 days, and allowing leave to be used when an employee’s child’s childcare or school is closed due to a public health emergency. The bill also makes two other permanent changes – allowing pregnant employees, regardless of gender identity, to use pregnancy leave and providing that employees who leave employment and return within 180 days will have their eligibility restored to what it was when they left employment. As introduced, this was a disastrous bill that reduced the employer threshold down to one employee and made other changes. Effective Jan. 1, 2022.

[HB 2818 \(oregonlegislature.gov\)](https://oregonlegislature.gov/bills_laws/2018/02818.html)

HB 2818 makes several changes to employment laws: Allows BOLI to pay wage claims out of the Wage Security Fund after a final order if the employer has not paid the owed wages. Effective when signed by the governor. Exempts vaccine incentives during a public health emergency from the definition of compensation under the Pay Equity law. Applies to claims filed on or after April 29, 2021. Temporarily exempts hiring and retention bonuses from the definition of compensation under the Pay Equity law. Effective May 25, 2021 - March 1, 2022.

[HB 3389 \(oregonlegislature.gov\)](https://oregonlegislature.gov/bills_laws/2018/03389.html)

HB 3389 makes several changes to unemployment insurance (UI) taxes to alleviate some of the costs that employers could face due to layoffs during the COVID pandemic. It also relieves some employers from partial tax burdens in 2021. The bill will have long-term impacts that will prevent UI taxes from drastic increases in the coming years. After hearing concerns from several members about rising unemployment taxes, this was a top priority bill for OBI. Effective 91 days after adjournment, Sept. 25, 2021.

[HB 3398 \(oregonlegislature.gov\)](https://oregonlegislature.gov/bills_laws/2018/03398.html)

HB 3398 delays implementation of the paid family leave law. Under the bill, contributions will begin Jan. 1, 2023 and employees will be eligible to use benefits on or after Sept. 3, 2023. The bill is crucial to ensure that proper systems are in place before employers are required to submit contributions from employers and employees. Effective 91 days after adjournment, Sept. 25, 2021.

[SB 169 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

SB 169 makes noncompete agreements void and limits enforceability to 12 months. **Oregon Business Industries** (OBI) negotiated this bill in 2020 and again in 2021. Several legislators argued for prohibiting noncompete agreements altogether, but we were able to defeat those efforts and the bill passed as we negotiated. We do expect this issue to arise again in future years. Effective Jan. 1, 2022.

[SB 483 \(oregonlegislature.gov\)](https://oregonlegislature.gov)

SB 483 creates a presumption of retaliation if an employer disciplines, terminates or otherwise discriminates against an employee within 60 days of the employee filing an OSHA complaint. OBI testified several times against the bill and argued for amendments but ultimately the bill passed without those changes. Effective when signed by the governor.

[SB 493 2021 Regular Session - Oregon Legislative Information System \(oregonlegislature.gov\)](https://oregonlegislature.gov)

SB 493 amends the prevailing wage law for publicly funded construction projects and directs that the prevailed wage will be the union-bargained rates rather than a rate based on a survey of contractors. This bill will likely hurt smaller local contractors and benefit larger contractors who are able to pay higher wages. Effective 91 days after adjournment, Sept. 25, 2021.

BIG FUNDING for PROJECTS

Senate President Peter Courtney was quoted as saying *“Oregon has never had a session like this. The state was on fire. People were out of work. Families were struggling. We were in the middle of a pandemic...”* - oddly, and not mentioned here, we were also in the midst of an incredible economic high.

As previously reported, Oregon tax revenues were up \$1 billion from expectations for the 2019-2021 biennium. Oregon’s finances are largely based on income (not spending as are states that rely on sales tax income for budgeting), so high unemployment benefits and federal payments for businesses, health providers, and renters/landlords meant more income totaled and more money for the state to tax.

This revelation made programs that had been defunded in midst of pandemic and economic worries be restored, all agency budgets increase beyond expected current service level minimums, rainy day funds to be filled and wildfire/pandemic emergency needs met. The largest share of the \$29 billion budget (including \$2 billion from the federal government) went to K-12 education, a record \$9.3 billion investment that was \$200 million more than originally proposed, but still not as much as schools wanted.

The more surprising investments during session stemmed from federal funding provided by the American Rescue Plan Act (ARPA). More than \$4 billion in federal funding came to Oregon in the form of state and local allocations:

- \$1.5 billion for counties and cities - mostly based on population and poverty
- \$2.6 billion total for the state to mete out. The state divvied their share this way:
 - \$1.3 billion right away to protect current service levels
 - \$520 million to an emergency fund for future budget cycles (have 4 years to spend)
 - \$780 million to new projects, one-time investments

And most interestingly, budget writers ceded some control of allocating \$240 million of the \$780 by allowing legislative district earmarks - \$4m for each Senator to allocate and \$2m for each Representative. A collective of all omnibus bill allocations can be found [here](#) with the legislative district ARPA projects on Pages 26-38.

Details about the major spending bills are here:

- [SB 5505](#) state bonds bill
- [SB 5506](#) state capital construction
- [SB 5534](#) lottery bond
- [HB 5006](#) Omnibus bill/E-Board

CHILDCARE

Pointing to a “childcare crisis” the Legislature reformed Oregon’s system by establishing a new independent state agency. The Department of Early Learning and Care (DELIC) will make reforms to the state’s childcare subsidy program, the Employment Related Day Care (ERDC) and create more financial stability for providers and parents, including low-income and single parent families, BIPOC mothers and caregivers.

Reforms to how the current program works include capping copays to no more than seven percent of a family’s income to drive down costs; increasing the program’s flexibility for parents to utilize their child care assistance outside of working hours; expanding access to all income eligible children and families, regardless of documentation status; and providing additional financial stability for providers by paying based on enrollment, not attendance, to protect eligibility for children for at least one year, and setting rates for providers based on the true cost of care.

BEHAVIORAL HEALTH

Urged for years to do more in the mental health policy and funding arenas, this Legislature, likely compelled by the pandemic, invested a historic \$470 million in a behavioral health package. Funding aims to grow the behavioral health workforce, expand services, and invest in structures and best practices.

Policies include:

- [HB 2417](#): Expansion of mobile crisis stabilization centers and 9-8-8 suicide prevention hotline to aid Oregonians experiencing a mental health crisis.
- [HB 2086](#): Requires Oregon Health Authority to establish peer and community-driven programs that provide culturally specific and culturally responsive behavioral health services.

RECYCLING

Referring to the current recycling system in Oregon as “outdated,” the Legislature passed [SB 582](#) establishing a producer responsibility program for packaging, printing and writing paper and food service ware. This modernization includes new statewide recycling rates for plastic and recycling contamination reduction goals, and requires large producers of packaging, paper products, and food service ware to help fund the expansion of recycling services.

The measure requires DEQ to conduct several studies, establishes the Oregon Recycling System Advisory Council, and the Truth in Labeling Task Force. The measure allows DEQ to set a one-time “producer responsibility program” plan review fee and an annual producer responsibility organization fee. These fees are intended to support the ongoing costs of administering the program. DEQ estimates the cost of startup and implementation of the program and the measures various requirements will be approximately \$2 million during 2021-23, and it is assumed that all costs associated with this program past then will be fee supported.

CLEAN ENERGY

Called the “100% Clean Energy for All” act, [HB 2021](#) creates what supporters dubbed the strongest electricity emissions reduction timeline in the country. The bill changes Oregon’s Renewable Portfolio Standard requiring retail electricity providers to reduce greenhouse gas emissions associated with electricity sold to Oregon consumers to 80% below baseline emissions levels by 2030, 90% below baseline emissions levels by 2035 and 100% below baseline emissions levels by 2040.

HB 2021 will fund and support small scale, community-based energy projects through a \$50 million Community Renewable Investment Fund. HB 2021 also invests in training and apprenticeship opportunities for women, BIPOC community members, veterans and disabled Oregonians. The bill includes strong labor standards and benefits for the workers who are tasked with carrying out these renewable projects. The bill also effectively prohibits new gas generation without carbon capture and storage in the state - the state Energy Facility Siting Council cannot approve new generation from fossil fuels unless it determines that it does not emit GHG emissions.

In addition, the Legislature passed:

- [HB 2165](#), expanding electric vehicle access and transportation electrification, especially for communities of color, low-income, and rural communities.

- [HB 2475](#) allowing the Public Utility Commission to create a discount rate class for low-income households.
- [HB 2842](#) investing \$10 Million to low-income Oregonians to improve energy efficiency, safety and drive down costs.

WILDFIRE RECOVERY and PLANNING

In response to the devastating 2020 wildfire season, the Legislature approved more than \$600 million wildfire package to expand wildfire prevention and mitigation efforts, rebuild fire-affected communities, and provide relief to wildfire victims.

Policies include:

- 1) Legislation aimed at making rebuilding easier and providing property tax waivers to those impacted by fire
 - [HB 2247](#): Allows counties to waive interest on late property tax payments for Oregonians impacted by the 2020 wildfires for the 2020-21 property tax year.
 - [HB 2289](#): Authorizes a property owner to alter, restore, or replace certain nonresidential structures destroyed by the 2020 wildfires without additional applications to local government and requires local government to approve applications for dwellings.
 - [HB 2341](#): Authorizes the proration of property taxes on land that has been destroyed or damaged by wildfires
 - [HB 2607](#): Provides construction tax exemptions on residential housing built to replace homes destroyed or damaged by the wildfires.
 - [HB 2809](#): Allows temporary siting of RVs on properties with homes that natural disasters have made uninhabitable.
 - [HB 3126](#): Streamlines the ability for counties to annex land into a surrounding special water district if the water supply has become inadequate or contaminated.
 - [HB 3219](#): Requires local governments to approve the rebuilding of manufactured dwelling parks destroyed or impacted by wildfires.
 - [HB 3272](#): Requires insurer to allow homeowner insurance policyholder at least 24 months of additional living expense, subject to policy limits, and at least 24 months to repair, rebuild, or replace damaged property if property is located in an area subject to a declared state of emergency and the damage or loss is directly related to declared emergency.
 - [SB 405](#): Allowing commencement of restoration or replacement of nonconforming use structures that were damaged or destroyed by the September 2020 wildfires.
 - [SB 464](#): Authorizes counties impacted by the September 2020 wildfires to prorate and cancel property taxes imposed on taxable properties that suffered losses in real market value as result of the wildfires.
 - [SB 590](#): Expands the definition of "rangeland" to include land used primarily for cultivating crops for purposes of organizing rangeland protection associations and providing fire protection for rangeland.

- [SJM 3](#): Urges the federal government to reimburse state and local governments and private property owners for damage from wildfires originating on federal lands.
- 2) A \$190 million comprehensive plan to improve wildfire prevention and mitigation. Based on Wildfire Council recommendations, [SB 762](#) aims to improve and modernize Oregon’s wildfire preparedness with three strategies: creating fire-adapted communities; developing safe and effective responses; and increasing the resiliency of Oregon’s landscapes. SB 762:
- Develops statewide, publicly available map of wildfire risk.
 - Creates policies for community-driven restoration of forests and rangelands and requirements for ignition-resistant materials for new construction within high-risk zones.
 - Directs new defensible space standards.
 - Establishes electric utility planning requirements to be maintained and updated regularly in preparation for and during wildfire events.
 - Designates a process for emergency shelter and voluntary evacuation services and funds a grant program for smoke filtration systems and local government clean air shelters.
 - Increases firefighter capacity, including air defense resources.
 - Invests in youth and workforce training programs to help manage our forest lands.
 - Appoints a Wildfire Programs Advisory Council composed of stakeholders and members of the public to advise a new State Wildfire Programs Director, provide recommendations on implementation and community engagement.

KEY INTERIM DATES of INTEREST

- Sept. 20-21 - Possible Special Session (Redistricting)
- Sept. 22-24 - Interim Committee Days
- Sept. 24 - Deadline for Legislature to Approve Redistricting/Legislative Districts
- Nov. 15-18 - Interim Committee Days
- Nov. 18 - 2022 Session Bill Request Deadline
- Jan. 10-13 - Interim Committee Days
- Jan. 14 - 2022 Session Bill Filing Deadline
- Feb. 1-Mar. 7 - 2022 Session