

2009 Session Recap

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Session Overview

The 75th Oregon Legislative Assembly convened on January 12, 2009, and adjourned *sine die* on June 29, 2009.

Measures Introduced: 2,778
Passed by House: 1,118
Passed by Senate: 1,030
Signed by Governor: 905

Governor Ted Kulongoski, Democrat

OREGON STATE SENATE: 18 Democrats, 12 Republicans.
Senator Peter Courtney (D-Salem), President of the Senate
Richard Devlin (D-Tualatin), Senate Majority Leader
Senator Ferrioli (R-John Day) as Senate Republican Leader

OREGON HOUSE OF REPRESENTATIVES: 36 Democrats, 24 Republicans
Representative Dave Hunt (D-Gladstone), Speaker of the House
Representative Mary Nolan (D-Portland), Majority Leader
Representative Bruce Hanna (R-Roseburg), House Republican Leader

PUBLIC SAFETY

SB 77 – DISTRESSED COUNTIES

Chapter 789, 2009 Laws; Effective date, July 23, 2009

SB 77 establishes a process whereby a county government or the Governor can declare a state of fiscal distress that compromises the ability of the county government to provide a minimally adequate level of public safety services. Under the new bill, the Governor or a county government may request a review and analysis of public services in the county by the Oregon Criminal Justice Commission. The Commission must establish, by rule, minimal standards for public safety services.

SB 212 – VICTIMS ASSISTANCE

Chapter 176, 2009 Laws; Effective date, May 26, 2009

SB 212 rewrites the criteria for programs distributing victim assistance funds to city and county offices for victim services. The measure adds a requirement that notice be given to victims of their rights as soon as practicable.

SB 325 – GATHERINGS IN EFU ZONES

In committee upon adjournment

SB 325 was a proposal that caused much concern among fire districts. The bill, introduced at the request of Senator Rick Metsger (D-Mt Hood) for a constituent, would have permitted properties within exclusive farm use zones to be used for weddings and other commercial gatherings. District representatives expressed concern that there would be no inspection oversight by the fire marshal. The bill did not advance.

SB 556 – DEFIBRILLATORS IN PUBLIC PLACES

Chapter 450, 2009 Laws; Effective date, January 1, 2010

SB 556 requires certain public places (facilities of 50,000 square feet or more and at least 25 individuals congregated on a normal business day) to have automated external defibrillators. The bill provides an exemption for facilities owned by a school district, education service district, private school or public charter school. It also limits liability of the owner for “use, attempted use or nonuse of defibrillator.”

SB 583 – HELMET LAWS

Chapter 452, 2009 Laws; Effective date, January 1, 2010

SB 583 requires persons under the age of 18 to wear motorcycle helmets while operating or riding as a passenger on a Class II all-terrain vehicle.

Three other bills relating to helmets did not pass:

- HB 2409 would have allowed for certificates of exemptions from wearing motorcycle helmets to persons who present a signed statement from their physician;
- HB 2499 would have required motorcycle helmets for those under 21 years of age only;
- HB 3438 would have permitted a person to operate a motorcycle without a helmet if the person had increased his or her motor vehicle liability coverage for personal injury.

SB 590 – TRIBAL REPRESENTATION ON INTEROPERABILITY COUNCIL

Chapter 453, 2009 Laws; Effective date, September 28, 2009

SB 590 allows the Governor to appoint a member of one of Oregon’s nine federally recognized tribes to the Oregon State Interoperability Executive Council from a pool of designees put forward by the Indian tribes.

SB 935 A – FIRST RESPONDER MAPPING

In committee upon adjournment

SB 935 would have directed the Office of Emergency Management to develop and operate statewide first responder building mapping information system. The OEM would have been required to consult with State Fire Marshal, Department of State Police, and emergency service agencies in developing guidelines for and creating the system.

SB 971 – TRAINING REIMBURSEMENT

Chapter 902, 2009 Laws; Effective date, January 1, 2010

SB 971 requires reimbursement of training costs between governmental agencies for public safety officers trained by one agency who then leave within three years to work for another agency. The bill also makes provision for the first agency to waive the reimbursement.

HB 2040 – SAFE DISTANCE

Chapter 198, 2009 Laws; Effective date January 1, 2010

Concerns over failure of drivers to yield to emergency vehicles inspired two pieces of legislation aimed at driver safety. HB 2040 expands the requirement that drivers maintain a safe distance from emergency vehicles to include roadside assistance vehicles and tow vehicles. The bill specifies that compliance requires either moving to an adjacent lane or slowing to at least five miles per hour below the posted speed limit. A similar bill, SB 619, increasing penalties for failure to yield to emergency vehicles, failed to pass.

SB 528 – FIELD BURNING

Chapter 692, 2009 Laws; Effective date, July 14, 2009

Two bills aimed at curtailing field burning were introduced during the 2009 session. SB 528, which passed following heavy debate on both the House and Senate Floors, applies to open field burning, propane flaming, and stack pile burning of grass seed or cereal grain crop residues in nine counties of the Willamette Valley. It caps maximum acreage for burning at 20,000 acres and decreases it to 0 acres starting in 2010. A similar bill, HB 2183, introduced by Governor Kulongoski for the Department of Environmental Quality, received no hearings and was In committee upon adjournment

HB 2365 – NOVELTY LIGHTERS

Chapter 101, 2009 Laws; Effective date May 21, 2009

The priority bill for the public safety community this session was HB 2365, which prohibits the sale, distribution, import, or manufacture for sale of novelty lighters effective June 2, 2009. The bill allows the State Fire Marshal or a designated representative to conduct inspections to ensure compliance and seize and destroy listed products. The bill is expected to reduce the number of fires and deaths. Prohibiting their sale will protect children from a dangerous instrument that encourages curiosity and invites unintentional misuse. These novelty lighters could place children and their families at risk for burn injury, death and property loss. Beginning June 2, 2009, wholesalers may no longer import novelty lighters for sale in Oregon. Beginning June 2, 2009, distributors may no longer sell novelty lighters to retailers in Oregon.

HB 2375 – FIREWORKS EXEMPTION

In committee upon adjournment

HB 2375 would have discontinued an exception created in 2003 for a fireworks business in Clackamas County operating on property zoned for exclusive farm use. The exception was created by SB 667 (2003 legislative session) for the business, which has operated in the same since December 31, 1986. The bill passed the House but died in the Senate Business and Transportation Committee when no one appeared to testify.

HB 2377 – CELL PHONES WHILE DRIVING

Effective date January 1, 2010

HB 2377 prohibits the use of mobile communication devices (i.e. cell phones) while operating a motor vehicle unless the driver is using a hands-free device. There are a number of exemptions for public safety personnel, as well as an exemption for "a person operating a motor vehicle in the scope of the person's employment if operation of the motor vehicle is necessary for the person's job". Violation of the new requirement is a Class D traffic violation, punishable maximum fine of \$90.

HB 2401 – ASSAULT ON PUBLIC SAFETY OFFICERS

In committee upon adjournment

HB 2401 would have expanded the definition of assault in the third degree to include an assault with a dangerous substance on a public safety officer. The bill deletes saliva from the list of dangerous substances and clarifies that there is no requirement to sentence the offender.

HB 2512, HB 2901 – PUBLIC SAFETY LICENSE PLATES

In committee upon adjournment

HB 2515 would have allowed Directs the Department of Transportation to issue Fallen Public Safety Officer registration plates. Funds from sale of the plates would have been dedicated to the Police Memorial Trust, to be used for travel expenses of family members and honor guard escort to attend national memorial services.

A second bill, HB 2901, would have allowed the Department of Transportation to issue group registration plate for group that promotes prevention of wildfires.

HB 2457 – RESIDENTIAL SPRINKLER INSTALLERS

In committee upon adjournment

As originally introduced, HB 2457 would have allowed the State Plumbing Board to authorize journeyman plumber who obtains training and certification from a board-recognized provider to design fire sprinkler systems in one-and two-family dwellings. However, the bill met opposition in the Senate due to amendments that would have allowed journeyman plumbers to design plumbing portion of a fire sprinkler system for installation in a residential structure that is subject the currently exemptions to the Low-Rise Residential Dwelling Code. Opponents felt that the proposed revisions would have significantly expanded the current exemptions for design of one and two family dwellings. The bill died in Committee; however, interested parties (including SDAO) have agreed to work throughout the interim on a consensus bill for 2010.

HB 2460, HB 2281, SB 619 – VOLUNTEER TAX CREDITS

HB 2460, as passed, extends the sunset for the \$250 Volunteer Emergency Medical Technician (EMT) Tax Credit enacted in 2005 from January 1, 2011 to January 1, 2016 and expands the program by modifying population provision to ensure more geographic areas are covered.

A second bill, HB 3381 would have created an income tax credit or property tax exemption for emergency medical technicians who provide volunteer services. Requires one-time election of credit or exemption by emergency medical technicians.

On the Senate side, SB 619 would have allowed an income tax credits for volunteer firefighters and emergency medical technicians who provide volunteer services and for employers who permit employees who are volunteer firefighters and emergency medical technicians to respond to emergency calls during work hours. That bill did not receive a hearing.

Due to the economic climate, all tax credit programs, whether current or proposed, came under heavy scrutiny during the 2009 session.

HB 2539 – FIREWORKS BAN

In committee upon adjournment

HB 2539 sought to prohibit the use of fireworks within the city limits of Portland except between June 30 and July 5 of each year. The bill passed the House by a slim margin, but died in the Senate Business and Transportation Committee.

HB 2950 - OSFM INSPECTION LIMIT

Chapter 567, 2009 Laws; Effective date July 1, 2009

As originally introduced, HB 2950 would have limited inspections by the State Fire Marshal or local approved authority to one inspection of any alteration or construction of building or structure for compliance with Fire and Life Safety Code or local fire and safety code. The fire service strongly opposed the bill, which was ultimately amended to establish an 11-member Residential and Manufactured Structures Board to replace the Manufactured Structures and Parks Advisory Board and the Residential Structures Board and transfer their duties to the new agency.

HB 2975 – 1039 LIMITATION

In committee upon adjournment

Would have exempted PERS retirees employed as fire chief, assistant fire chief or deputy fire chief from the 1,039-hour limit on re-employment of retired PERS members.

HB 3254 – RADIO DISTRICTS

Chapter 584, 2009 Laws; Effective date September 28, 2009

HB 3254 allows radio and data communications districts to be formed as special districts. The bill addresses the Umatilla Chemical Depot (UMCD) communications system established, but no longer needed by the federal government. Federal funding currently pays 100 percent of costs of the communication system; however, once UMCD ceases to operate, the system will no longer be funded. HB 3254 allows Umatilla and Morrow counties to assume operation of the system and seek to levy taxes to fund the system.

HB 3414 – TAX CHECK-OFF FOR VOLUNTEER FIREFIGHTERS

In committee upon adjournment

HB 3414 as amended would have added the Oregon Volunteer Firefighters Association to the list entities eligible for individual income tax return check-off contribution, enabling the Association to bypass the requirement to show that it has banked \$1,000,000. Under the charitable contribution guidelines, funds received by the eligible entity may only be used for charitable purposes. In OVFA's case, contributions would have funded hardship grants, death benefits, and scholarships.

HB 3450 – CARBON MONOXIDE DETECTORS

Chapter 591, 2009 Laws; Effective date June 25, 2009

HB 3450 prohibits renting, transferring title of or issuing certificate of occupancy for single-family dwelling or multifamily housing that has a carbon monoxide source unless the dwelling or housing unit is equipped with carbon monoxide detector. The fire districts were successful in amending the bill to bring it into closer alignment with the current smoke alarm statute and requiring minimal enforcement.

DPSST

SB 92 – DPSST RESEARCH

Chapter 165, 2009 Laws; Effective date, January 1, 2010

SB 92 allows the Department of Public Safety Standards and Training to conduct research to improve police, fire, corrections, parole, probation, emergency medical dispatch and telecommunications professional services. The purpose of the measure is to establish rules for minimum training levels of professional development and improve competence of public safety personnel.

HB 2315 – DPSST DISCLOSURE

Chapter 135, 2009 Laws; Effective date May 26, 2009

HB 2315 exempts from disclosure the records of the Department of Public Safety Standards and Training relating to an ongoing investigation of the fitness of a public safety officer or private security officer to hold his position. The measure requires the department to issue a report when an investigation is completed regarding a private security officer or a public safety officer.

HB 2713 – PUBIC SAFETY OFFICER INVESTIGATIONS

Chapter 716, 2009 Laws; Effective date January 1, 2010

HB 2713 creates a state-wide standard for dealing with investigations involving public safety officers. This measure requires employers to adopt written procedures for investigating public safety officers. HB 2713 modifies and creates procedures for investigations involving public safety officers and provides for a six-month time-limit for investigations into officer misconduct. This measure adds parole officers and corrections officers to police officers in the definition of public safety officers. No revenue impact.

HB 2790 – DPSST MEMBERSHIP

Chapter 629, 2009 Laws; Effective date January 1, 2010

HB 2790 increases membership of Board on Public Safety Standards and Training to 25 members, three of which are nonvoting members. It also changes the membership of board policy committees and directs policy committees to establish fitness for duty standards and procedures for reviewing denial, suspension or revocation of certification. It further establishes procedures for investigating and hearing cases involving denial, suspension and revocation of certification. Key points are as follows:

- Adds a non-management parole and probation officer to the Board
- Eliminates Department of Forestry position
- The Superintendent of State Police and the State Fire Marshal remain
- Restructures several policy committees.

HB 5041 – DPSST Budget

Chapter 685, 2009 Laws; Effective date July 7, 2009

The primary revenue source for criminal justice training and certification is the Criminal Fine and Assessment Account (CFAA). This source also funds the Public Safety Memorial Fund as well as a large portion of administrative and support services. Fire service training is supported by the Fire Insurance Premium Tax, administered by the State Fire Marshal. General Fund dollars are used solely for debt service associated with borrowings for construction of the new academy in Salem. The Criminal Justice Training and Certification Program provides training and certification for police, sheriff deputies, correctional officers, parole and probation officers, 9-1-1 telecommunicators and emergency medical dispatchers.

The Legislature approved a budget of \$49,073,437 million total funds and 143.87 full-time equivalent positions. This is a 9.3 percent decrease from the agency's essential budget level. The breakdown is as follows:

- \$11,360,288 for debt service.
- \$ 37,067,745 for operations
- \$ 589,239 for the Public Safety Memorial fund
- \$56,165 maximum limit for payment of expenses from federal funds collected and received by DPSST

Arguably, one of the most controversial policy changes in the budget was a shift in training of corrections officers from DPSST to the Department of Corrections. However, DPSST will retain the responsibility for certifying the curriculum at DOC.

OSFM PRIORITIES

SB 88 A - Cardlock Fees

In committee upon adjournment

SB 88 would have updated statutes to increase cardlock fees to continue program funding and avoid a shortfall in the 09-11 bienniums. The fees had not been updated in thirty years. The bill would have also removed duplicative and outdated language.

SB 89 – Explosives Permits

Chapter 164, 2009 Laws. Effective date, January 1, 2010

Eliminates overlapping regulation of the explosives industry between state and federal government. Under the new law, persons possessing a permit or license issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to possess, store or manufacture explosives does not have to register with the State Fire Marshal.

SB 91 – LPG Fees

Chapter 790, 2009 Laws. Effective date, January 1, 2010

SB 91 increases fees charged by the State Fire Marshal's liquefied petroleum gas license and inspection program. The measure establishes a second increase, effective July 1, 2011. SB 91 also authorizes the transfer of gas fitter licenses and gas truck equipment licenses.

HB 5038 – OSP Budget

Chapter 682, 2009 Laws; Effective date July 7, 2009

The Office of State Fire Marshal falls is located within the Office of State Police and receives minimal General Fund dollars. Therefore, fees for programs overseen by OSFM must be sufficient to fund those programs. The OSP budget ratifies fees relating to the fireworks program increased by the State Fire Marshal in November 2008. The Wholesale Fireworks Permit is increased from \$2500 to \$3,000 generating an estimated \$14,000 in additional revenue. The Public Displays Fireworks Permit is increased from \$50 to \$100 generating an estimated \$82,500 in additional revenue. The Retail Fireworks permit is increased from \$50 to \$100 generating an estimated \$15,750 in additional revenue.

LABOR

SB 519 – MANDATORY WORKPLACE MEETINGS

Effective date: January 1, 2010; Chapter: 658 (2009 Laws)

One of the more controversial labor issues of the 2009 session was embodied in SB 519, which prohibits employers from requiring employees to attend mandatory meetings for the purpose of discussing political or religious matters. The controversy stemmed from whether the bill could be used to prevent employers from requiring employees to attend meetings regarding unionization efforts. The bill creates employee civil cause of action for violations and requires employers to post notices of employee rights. The bill also includes language clarifying that it is not intended to prohibit mandatory meetings of the employer's executives or administrative personnel to discuss issues, including those subjects covered by the bill.

A second bill, HB 3507, also passed. That bill modifies the definitions of "political matters" to include activities related to political policy affiliation, campaigns for ballot measures, political candidates, and the decision of whether to join or support any lawful political or constituent group.

SB 786 – OREGON WORKPLACE RELIGIOUS FREEDOM ACT

Chapter 744, 2009 Laws. Effective date, January 1, 2010

SB 786 requires employers to accommodate the scheduling of leave time for the observation of religious holy days, or for the wearing of religious apparel in the workplace unless it poses an undue hardship, defined as a "significant difficulty or expense" to their business. The bill was a priority for House Speaker Hunt.

SB 928 – ACCOMODATION OF VICTIMS OF DOMESTIC VIOLENCE

Effective date: January 1, 2010; Chapter: 478 (2009 Laws)

SB 928 requires employers to make reasonable safety accommodations for victims of domestic violence, sexual assault or stalking under the Unlawful Employment Practices Act. Provides list of reasonable safety accommodations that may, but are not required to, be used, such as unpaid leave. The bill also prohibits an employer from refusing to hire or retaliating against an individual due to the individual's "victim" status and allows employers to request documentation.

SB 966 – FAMILY LEAVE BENEFITS INSURANCE PROGRAM

In committee upon adjournment

SB 966 would have created the Family Leave Benefits Insurance program to provide benefits to employees taking family leave to care for an infant or newly adopted child, newly placed foster child under 18 years of age, adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability, or a family member with a serious health condition.

Funding for the "Family Leave Benefits Insurance Account" would have been generated from employer withholdings from employees, not to exceed two cents per hour worked.

HB 2298 – MILITARY LEAVE

Effective date: January 1, 2010; Chapter: 12, (2009 Laws)

HB 2298 states that an employee must be granted a leave of absence for the purpose of performing active state duty as ordered by the Adjutant General. The bill increases the maximum amount of donated leave a qualified employee may receive from co-workers from an amount equal to the employee's base salary, to the amount of the employee's total compensation. State and local governments are required to do the following: Calculate "total compensation" by including overtime hours equal to the average overtime hours for the same employee class; determine the average overtime hours for an employee class based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year; and maintain records of the average number of overtime hours for each employee class for each calendar year.

HB 2420 – CANCER PRESUMPTION

Chapter 24, (2009 Laws): Effective date January 1, 2010

During the 2008 interim, the Special Districts Association of Oregon (SDAO) and the Oregon State Firefighters' Council reached an agreement on the contentious issue of cancer presumption. That compromise took the form of HB 2420 which was passed by the legislature and signed by the Governor. Some key components of the bill are as follows:

- Includes twelve types of cancer: Brain, stomach, prostate, colon, testicular, multiple myeloma, non-Hodgkin's Lymphoma, chest, throat, rectal, breast and leukemia;
- No retroactivity. The presumption applies to claims diagnosed after July 1, 2009 by firefighters who have been on the job for at least five years;
- Shifts burden of proof so that employer no long must prove by clear and convincing evidence that cancer is unrelated to fire fighting activities;
- Higher standard of proof for smokers;
- Applies sever years after termination of service;
- Applies to paid firefighters only;
- Applies to claims filed within seven years of termination of employment.

HB 2633 – DEFINITION OF "SUPERVISORY EMPLOYEE"

In committee upon adjournment

HB 2633 would have modified the definition of "supervisory employee" in public employee collective bargaining law by stipulating that in order to be considered a supervisor, a public safety officer must have the authority to impose economic discipline on an employee. With this change, Oregon's Public Employee Collective Bargaining Act would include individuals having independent authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees.

HB 2821 – USE OF ACCRUED SICK LEAVE

In committee upon adjournment

HB 2821 would have prohibited an employer from requiring an employee to use accrued vacation leave or any other paid leave offered by the employer in lieu of vacation leave, when taking family leave. The bill was amended to require employers to provide employees with the employer's policies regarding family leave procedures. A similar bill was defeated in 2007. In response, the business community has indicated that if such a bill were to pass in the future, businesses will likely convert to "personal leave" as opposed to "sick leave".

HB 3162 –WHISTLEBLOWER PROTECTION

Chapter: 524 (2009 Laws); Effective date: January 1, 2010

HB 3162 establishes that discrimination against an employee who reports a violation of state or federal laws, rules or regulations is an unlawful employment practice. Employees can file a complaint through BOLI or they may choose to file a civil action in circuit court, rather than going to federal court.

URBAN RENEWAL

HB 3056 – URBAN RENEWAL

Chapter 700, (2009 Laws): Effective date January 1, 2010

Urban renewal districts (URDs) have long been a cause for concern among fire districts since the URDs freeze taxes for overlapping taxing entities while continuing the expectation of deliverance of vital services. The program, originally intended to address "blighted areas" had become widespread and projects were often extended, further delaying the returns to local government bodies, including fire districts. With no restriction on maximum indebtedness, there has been no mechanism by which an urban renewal agency limits collection of taxes. And, while urban renewal agencies were required to "consult and confer" with overlapping taxing districts on matters relating to a plan adoption and amendments, there was no requirement to obtain concurrence.

The fire service was a major player in resolving the issue which took the form of HB 3056. One of the key components of the bill is a cap on the amount of maximum indebtedness an urban renewal district can incur. Maximum indebtedness is the total amount that the urban renewal district would be allowed to bond for projects. Any increase in the cap will require approval from overlapping taxing districts such as cities, counties, special districts or other governmental entities within the urban renewal district

The fire service participated in a broad based coalition of interested parties who met over the interim to craft a compromise solution. The group included the following:

Clackamas Fire District #1
Tualatin Valley Fire and Rescue (TVFR)
Oregon Fire Chiefs Association (OFCA)
Oregon Fire District Directors Association (OFDDA)
Special Districts Association of Oregon (SDAO)

Oregon School Boards Association (OSBA)
Association of Oregon Redevelopment Agencies (AORA)
Portland Development Commission (PDC)
Association of Oregon Counties (AOC)
Clackamas County
Multnomah County
League of Oregon Cities (LOC)
City of Portland

The group gained considerable traction with the participation of the Oregon School Boards Association, whose members were quick to recognize the impact of URDs on school funding. Adding to the momentum was the commitment by House Speaker Dave Hunt (D-Clackamas County) to reach a resolution acceptable to local governing bodies as well as the development community.

As passed, HB 3056 accomplishes the following:

- Sets initial maximum indebtedness for urban renewal plans and establishes indexing scheme for increasing the maximum indebtedness for urban renewal plans. (Note: limits are based on formulas established for small, medium and large areas);
- Establishes the number of plan amendments and requires concurrence of overlapping taxing districts for substantial plan amendments that increase the maximum indebtedness by more than 20 percent of the plan's initial maximum indebtedness;
- After 10 years and/or certain levels of performance, value will be returned to the property-tax rolls;
- Establishes a mechanism for an urban renewal agency to limit collection of taxes either for a single fiscal year or in the future;
- Allows an urban renewal agency to notify the assessor to collect maximum division of taxes for newly approved urban renewal plans and substantially amended plans;
- Excludes any gap bond levy for Portland school district from the consolidated billing rate in calculating division of tax.

Additionally, parties signed a Memorandum of Understanding and agreed not to introduce any additional legislation modifying the urban renewal statutes until 2017. (See attached.)

The bill becomes effective January 1, 2010.