



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson
FROM: Jason Heuser, Legislative Representative
DATE: August 25th, 2017
SUBJECT: 2017 State Legislative Session Summary
OBJECTIVE: Information Only

ISSUE:

The Oregon legislature adjourned Friday, July 7th. Significant outcomes included addressing essential priorities such as: 1) resolving a \$1.8 billion state revenue deficit in order to pass a balanced \$21 billion state budget; 2) passage of a \$5 billion transportation plan; and 3) shoring up the financial health of Oregon's expanded Medicaid program.

Generally, the looming budget challenge coupled with the regulatory aftermath of the 2016 expansion of Oregon's Renewable Portfolio Standard resulted in modest policy proposals for water and energy. Even the broader environmental agenda went largely unrealized this legislative session. However, successful or not, energy and water bills were still the subject of great focus and hours and hours of committee hearings, laying groundwork for the likelihood that the 2018 and 2019 sessions will be active and ambitious in these policy areas.

BACKGROUND:

Prior to the start of each legislative session, the Board adopts general policy directives for advocacy at the Capitol which guide the work of EWEB's lobbying activities.

DISCUSSION:

The following is a summary of issues of interest to EWEB during the session:

SB 327 – Recreational Immunity – Passed

SB 327 will give employees, volunteers and agents acting at the direction of a land owner immunity from tort liability for injuries sustained by those recreating on lands such as a park or trail, if access to that land is free of charge. In Oregon law public and private landowners who allow recreation to occur on their property and do not charge a fee are granted immunity from civil liability for injuries that occur to individuals accessing those lands for recreation.

However, in 2016 the Oregon Supreme Court concluded in *Johnson v. Gibson* that the statute granting this immunity did not include employees. This decision resulted in the closure of approximately 12 parks or park features by cities due to increased insurance risk. Passage of SB 327 simply gives employees and volunteers the same consideration as the land owner, and allows observance of the goals of the Oregon Public Use of Lands Act to resume, to provide recreational access and opportunities to hikers, hunters, anglers and mountain bikers, etc.

SB 560 – PERS – Failed

No significant action to reform PERS was approved. The chances of a “grand bargain” integrating revenue raising tax reform and cost reductions in PERS had persisted throughout the session but when no bipartisan agreement on the former could be finalized in June the chance of approving PERS cost savings was extinguished.

Governor Kate Brown appointed a seven member task force to make recommendations on how to reduce the PERS system’s unfunded liability by \$5 billion, a 25 percent reduction. In addition to prospective reductions in PERS employee benefits, the task force will analyze options to liquidate or monetize state assets to pay down the unfunded liability.

SB 1070 – Carbon Cap and Trade – Failed

The Joint House and Senate Carbon Work Group was formed to vet a straw proposal that would put Oregon on a track to meet its statutory GHG reduction goals. The joint committee held multiple hearings over the course of this legislative session to gather information from policy experts, other jurisdictions that already have placed a price on climate pollution, affected communities and the public. Although it was widely expected the work product would not be voted on in the 2017 session, the group endeavored to build a public record cataloging the advantages and disadvantages of a statewide direct carbon reduction program as well as evaluate the design choices the state would need to decide in legislation or delegate to agency rulemaking.

This groundwork has set the table for a serious political push towards enactment of a carbon cap and trade program in either the 2018 or 2019 sessions. The two co-chairs of the joint committee sponsored Senate Bill 1070 which features a statewide cap on greenhouse gas emissions that lowers over time. The bill also establishes a price per ton of GHG emissions for the largest emitters in the state and a plan to reinvest proceeds into projects to reduce emissions, protect low-income Oregonians and mitigate economic/emissions “leakage” (transferring industries and emissions to other non-regulated jurisdictions). The bill was introduced in the waning days of the 2017 session with 35 sponsors and cosponsors and will start the conversation at a workgroup that will meet this fall to further refine a carbon cap and trade bill for the upcoming 2018 legislative session. EWEB has been invited to participate in that work group and will do so.

HB 2017 Electric Vehicle Rebate – Passed

HB 2017, a \$5 billion transportation plan, included an appropriation of up to \$12 million a year for six successive years that will fund point-of-purchase rebates for electric vehicles costing \$50,000 or less. Cars with batteries up to 10 kilowatt-hours will receive a \$1,500 rebate. Those with larger batteries will get the full \$2,500. Rebates have also been authorized for low-speed neighborhood

electric vehicles and for electric motorcycles, starting in 2019. Also, an additional "Charge Ahead" fund could provide an additional \$2,500 to incentivize low- and moderate-income drivers who replace (and scrap) a car that is at least 20 years old with an electric vehicle—new or used. The "Charge Ahead" funds could be combined with the standard purchase rebate to provide up to \$5,000 off the cost of a new or used electric car.

The EV rebate was modeled after a rebate proposed in HB 2704, cosponsored by Representatives Ken Helm (Portland) and Phil Barnhart (Eugene), which EWEB staff testified in support of in committee.

HB 2020 – ODOE Restructuring – Failed

HB 2020 would have expanded the mission and scope of responsibilities for the Oregon Department of Energy (ODOE) to include Climate Change as well as create a new Commission to oversee the Department, without utility representation. EWEB opposed HB 2020 because it has been the assessment of EWEB staff that climate issues have been handled best by the Oregon Department of Environmental Quality. Additionally, EWEB staff was very concerned that expanding ODOE to oversee climate policy could lead to a dramatic increase in the Energy Supplier Assessment paid by EWEB and other utilities and generators in Oregon that fund ODOE even though EWEB's electric portfolio is nearly carbon-free.

Even prior to this legislation EWEB had been concerned about the growth and redundancy of ODOE. The Joint Committee on Department of Energy Oversight met 10 times in 2016 to review the agency's mission, the necessity of its various programs, and glaring management failures with its incentive programs.

EWEB participated in the process and filed comments averring that the department needed to be right-sized, phasing out activities that were redundant compared to planning and work already conducted by the Public Utility Commission, the Northwest Power and Conservation Planning Council, BPA, the Energy Trust of Oregon and the Northwest Energy Efficiency Alliance.

EWEB further averred that the Department could be downsized to an Office of Energy and merged into another existing state agency, with any continuing tax credit programs transferred to Business Oregon. Finally, EWEB recommended a fundamental change in funding the Department by reducing the use of the Energy Supplier Assessment paid by EWEB and other electric utilities and increasing the use of the State General Fund to pay for programs with little nexus to consumer-owned utilities.

ODOE Energy Supplier Assessment Lawsuit -- Successful

EWEB was a plaintiff along with 9 other consumer-owned utilities in a lawsuit against ODOE and the Energy Supplier Assessment (ESA) used to fund the agency, arguing: 1) ODOE had failed to comply with a law requiring it to explain to utilities why they were being assessed and how the money collected would be used; and 2) the ESA was a tax, and subject to a 3/5th majority approval of any increase to the ESA rate, instead of a simple majority approval.

On August 9th, the Marion County Circuit Court ruled that ODOE had not complied with the legal process to assess and collect the ESA in 2016 and ordered a refund, and also that the ESA was

indeed a tax. The plaintiffs are waiting to hear whether the state will appeal the ruling. The plaintiffs are also considering a challenge to the 2017 ESA. In any case, the possibility exists for EWEB and the other plaintiffs to discuss settlement options with the state, which could include permanent changes in statute to the ESA that would ensure acceptable cost-containment and transparency.

HB 3203 – Least Cost Public Contracting – Passed

HB 3203 was introduced by a coalition of private contractors who wanted to make substantial changes to current least-cost requirements for public agencies. EWEB staff testified against the bill as introduced, and along with other local government organizations, worked throughout the session to address concerns shared among contractors and key legislators, knowing that failure to do so would likely result in legislation being folded into the transportation package, possibly in a manner that would be highly problematic for local government.

Current law requires every contracting agency to submit a list of all public improvement projects planned for a coming budget year, at least 30 days prior to budget adoption, to the Oregon Bureau of Labor and Industries (BOLI). If the costs to construct a public improvement exceed \$125,000 and the contracting agency plans to perform the work using their own equipment and personnel, the agency must show that self-performance is the least-cost option when compared to contracting out. HB 3203 increases the threshold that triggers least-cost demonstration requirements to \$200,000 for all public improvement projects, except for road resurfacing. For road resurfacing at a depth of more than two inches, the threshold remains at \$125,000. HB 3203 maintains existing law that road resurfacing at a depth of two inches or less would be considered maintenance and, therefore, not subject least-cost requirements. The bill provides a list of what needs to be included in cost estimates when comparing contracting out with self-performance, and specifies that the requirements do not apply if a contracting agency does not receive a responsive bid or proposal.

Under the provisions of HB 3203, BOLI is required to conduct a review every four years, beginning in 2021, of the costs accounted for in a least-cost analysis to determine whether changes should be made. BOLI must also review the thresholds to determine if adjustments are warranted.

Finally, HB 3203 implements a new enforcement process for alleged violations of the statute that will be administered by BOLI. Complaints for violations of the least-cost requirements can be filed by contractors or contractor trade associations, but must be filed within one year after the contractor or association discovered or should have known a violation occurred. A fee of \$250 is required to file a complaint, but is refundable if the BOLI commissioner finds substantial evidence of a violation. The BOLI commissioner must dismiss a complaint if the contractor or association brings an action in court or initiates another proceeding alleging a similar act or omission. Following an investigation, the commissioner shall notify the contracting agency in writing if there is substantial evidence of a violation. If, in the five years preceding the investigation, the contracting agency had no other violations, BOLI will take no further action. If the contracting agency had violations within the preceding five years, the commissioner will require the agency to negotiate an agreement with the contractor or trade association to remedy the violation and prevent future violations. HB 3203 stipulates additional enforcement provisions for continuing violations or for breaching a negotiated settlement.

SB 481 – Public Records Reform – Passed

A 2016 work group spent several months proposing sweeping changes to Oregon public records law. In the legislative process the scope of changes was pared back a great deal. SB 481 does clarify and add modest requirements to the state's public records request process.

SB 481 gives all public bodies five business days to acknowledge that a public records request was received. They have another 10 business days thereafter to fulfill the request, or to issue a written response estimating the time needed to fulfill it. The bill provides no hard deadlines and also includes a "safety valve" for impracticable requests. The safety valve applies when a public body receives a large volume of requests, or those that involve documents not readily available. It also applies when fulfilling the request would disrupt the ability of the agency to provide other services.

SB 481 leaves intact an exemption for:

"(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules."

Note: another bill, HB 2101, would have sunsetted or combined a number a number of exemptions into more general ones. It would have eliminated the exemption for electric transactions involving public bodies like EWEB, and it is unclear what kind of umbrella exemption for sensitive business information would have replaced this very specific exemption. That bill did not advance.

HB 3427 – High Hazard Dams – Passed

As written, HB 3427 requires existing high hazard dams to have completed emergency action plans (EAP's). Currently, the Oregon Water Resources Department does not have authority to require EAP's on existing dams. Through voluntary efforts and FEMA grant support, about 75 percent of state regulated high hazard dams have EAP's (EWEB's one state regulated dam does have an EAP, as do our FERC regulated dams). This bill would address the other 25 percent through a mandate to complete an EAP.

EWEB, along with PGE and Pacific Power requested a -2 amendment that clarified the requirements of HB 3427 do not apply to FERC regulated dams. That amendment was adopted in April and remained in the final bill signed by the Governor.

SB 979 - Renewable Direct Access – Failed/SB 978 – PUC Study Bill – Passed

The Northwest and Intermountain Power Producers Coalition (NIPPC), a merchant power generator association, brought forward a suite of bills that aimed to produce more competition to Oregon's deregulated electricity market, including SB 979, which would allow non-residential retail customers

of investor-owned utilities to buy renewable energy directly from a generator. Many large companies like Google, Facebook, Amazon and Apple have corporate sustainability policies that stipulate they should endeavor to use "bundled renewable energy" instead of just renewable energy certificates. This legislation could expand their ability to do so from an electric service supplier (ESS) by removing what NIPPC describes as "inflated transition charges that make participation uneconomic" for interested parties in a renewable direct access product. Investor-owned utilities are currently only allowed to serve customers with "system mix", and not specific resources, and argue the changes proposed in the bill make them and some existing customers vulnerable regarding cost recovery.

EWEB's concern in the bill was language that makes reference to "renewable direct access" in consumer-owned utility areas, including EWEB's service territory. However, after meeting with NIPPC to walk through the language of the bill, it was confirmed that the legislation leaves intact the current authority of the EWEB Board with regard to deregulation: EWEB's service territory is exempt except for any cases where the EWEB Board opts to allow customer choice for direct access. In this regard, the legislation creates a 2nd option the EWEB Board could allow, customer choice for renewable direct access. Furthermore, NIPPC agreed to clarify the legislative intent towards COU territories on the record in the bill's public hearing, and they did so. EWEB staff had no further concerns with the bill.

SB 979 was not approved, but a companion bill SB 978 was approved that will require the PUC to study the issues raised.

SB 382 – Qualifications Based Selection (QBS) Contracting Flexibility – Failed

Current law does not allow for the consideration of any pricing information until after a service firm has been selected solely on the basis of qualifications. SB 382 would have made changes to the current statutory mandate for the use of qualification based selection (QBS) of professional services, including architectural, engineering and land surveying. The bill, introduced at the request of the League of Oregon Cities and EWEB, would have increased the threshold by which a contracting agency may directly appoint a consultant from \$100,000 to \$500,000.

Following a public hearing, the League and EWEB worked on amendment language to SB 382 that would allow for the inclusion of pricing information as a factor in selecting a service firm which would provide greater flexibility in balancing qualifications with price to achieve the best value for local governments and their constituents. The proposed amendments would have still required using the formal QBS process for contracts greater than \$500,000, but would allow a local government to consider price for projects less than \$500,000. No more than one-third of the scoring could be weighted on the basis of pricing information. As a result, qualifications would continue to be the primary driver for the selection of professional services contractors. A public hearing was held on SB 382, but the bill did not pass out of a Senate policy committee.

HB 2597 – Driving While Distracted – Passed

This legislation makes more stringent laws and penalties for the operation of mobile electronic devices while operating a motor vehicle, clarifying that most anything a driver could think of doing with a cell phone while driving is illegal. If a police officer sees the white glow of the screen illuminating a driver's face, even if the officer didn't see the driver talking or fingering the keys, the

officer has witnessed a violation. Hands-free will be the only legal use of a cell phone as of the bill's Oct. 1 effective date.

The law was drafted to exempt specific vehicle operators who are performing work-related duties. Generally, the legislative intent during hearings signaled that communications equipment that is mounted or bolted into place is exempt from the law. However, because the bill was amended to specifically exempt school bus drivers and ham radio operators, without a specific exemption the status of utility employees conducting utility business was not clear. EWEB worked with Portland General Electric to procure an amendment in the final days of session that would exempt an employee "operating a vehicle owned or contracted by a utility for the purpose of installing, repairing, maintaining, operating or upgrading utility service." With this amendment, employees observing EWEB's employee driving policy should fall within compliance with this new law.

HB 2066 – Residential Energy Tax Credit (RETC) Extension – Failed

The Residential Energy Tax Credit, utilized by Oregonians adding energy efficiency measures or distributed generation to their homes, will sunset at the end of this year and the legislature declined to extend the program. EWEB testified in support of scaling down and preserving the RETC by focusing scarce state resources on energy efficiency and culling the amount of measures through a more strategic measurement of effectiveness. Other advocates of the RETC insisted on an extension of the RETC at its current funding level and suggested changes to the program should be made after an extension. When legislative leaders rejected that approach, advocates shifted their strategy in the final two weeks of the legislative session, but ran out of time to craft an alternative proposal to extend the RETC.

HB 3049 – Drone Regulation – Failed

This bill would have prohibited an operator of unmanned aircraft system from entering boundaries of privately owned premises in manner to "harass or unreasonably annoy owner or occupant." Due to the ambiguity in the language of this bill EWEB registered concerns with legislators about the impacts this legislation could have on reasonable business use of drones by utilities. Utilities had an amendment ready to address our concerns, but ultimately additional concerns from other industries emerged and led the legislature to cease work on the bill and await new rules expected soon from the Federal Aviation Administration.

RECOMMENDATION/BOARD ACTION:

This Memo is for informational purposes. No board action is requested.