



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners McRae, Barofsky, Schlossberg, Brown, and Carlson
FROM: Jason Heuser, Public Policy and Government Affairs Program Manager
DATE: February 23, 2024 (March 5, 2024, Board Meeting)
SUBJECT: March 2024 Legislative/Policy Update
OBJECTIVE: Information

Issue

EWEB monitors, influences, and strategically plans around legislative and regional policy issues.

Background

The Board adopts general policy directives for advocacy on legislation and other public policy matters, which guide the work of EWEB's lobbying activities. When political considerations test the applicability of those directives, the General Manager makes a determination as to whether a fundamental shift in direction is required. The Board may be asked to reaffirm policy directives or direct staff to make necessary adjustments.

Discussion

2024 State Legislative Session Issues Status:

The 2024 State Legislative Session has proceeded normally and rapidly thus far. The Legislature has focused the bulk of its time thus far on Measure 101 Drug Policy Reform and policy increasing Housing Supply and Affordability.

SB 1576A – Recreational Immunity – SUPPORT

In 2023 an Oregon appellate court decision called into question the tort immunity enjoyed by public and private landowners when they allow access to land free of charge for recreation. The issue in question in the case was whether a person hiking on a trail while walking their dog and socializing with a friend was recreating on the trail or was using it for transit to and from a beach recreational area.

SB 1576A contains a restoration of recreational immunity, a priority for local governments and recreation enthusiasts this session. The bill adds running, walking and biking to the definition of recreational immunity, but sunsets the changes at the end of 2025 to allow for court cases to resolve and a workgroup to craft a more durable solution to be adopted in the 2025 legislative session.

The bill was approved by the Senate unanimously on February 22 and awaits action by the House of Representatives.

SB 1581A – Organized Market Participation Reporting – MONITOR

This legislation requires an investor-owned utility that sells more than two million megawatt hours of electricity in a calendar year (Portland General Electric and Pacific Power) to report to and inform the Legislative Assembly on the activities, if any, that the investor-owned utility has taken or is taking toward participating in a regional energy market. The bill does not apply to any consumer-owned utility. The bill as amended does not require a written report but allows oral testimony at an informational hearing to satisfy compliance. Portland General Electric and Pacific Power have expressed a neutral position on the amended bill and did not testify at the public hearing on the bill, which was approved by the Senate 24-6 on February 21st.

Hydroelectric Water Rights Conversion Statute Clarification – SUPPORT

EWEB initiated a request for the drafting of a legislative concept that would clarify any potential ambiguity on the timelines for conversions of hydroelectric water rights to instream rights. In January and February EWEB outreach and negotiations with interest groups and state agencies did not produce consensus on how Oregon law might clarify potential ambiguity and EWEB voluntarily ceased working to advance the legislative proposal. Lack of consensus and concerning concessions that EWEB would have likely had to accept to achieve passage resulted in legislative options that were not judged by staff to be net positive. Contested legislation is not easy to get approved during any legislative session – and improbable in a short session. EWEB staff continue to pursue administrative options to address clarity for Leaburg’s hydroelectric water rights and will reevaluate legislative options prior to the 2025 legislative session.

SB 1575A – Professional Design Contracts: Duty to Defend Preemption– OPPOSE

As proposed, SB 1575A would preclude a public body from including contractual language requiring a design professional (architects, engineers, landscape architects, surveyors, etc.) to defend and indemnify a contracting agency prior to liability being established. In other words, design professionals would not need to indemnify or defend contracting agencies for design defects until after a legal determination that the design defect was attributable to the design professional. This change in policy would fundamentally shift the risk of liability for defending construction design defect claims from the design professional to the contracting agency. This is an abnormal assumption of risk because the contracting party who is able to mitigate the risk is generally the one who assumes the risk. The risks of defective design claims is best born by the designers: designers can mitigate against litigation risk by designing projects without defects.

HB 4015 – Energy Storage Siting Authority Transfer – MONITOR

This bill allows a developer of a facility or the governing body of a local government after consulting with the developer to elect to defer regulatory authority to the Energy Facility Siting Council for the siting of a battery energy storage system. The bill was approved by the House 44-13 on February 15 and awaits action in the House of Representatives.

SB 1525A – Oregon Department of Energy (ODOE) Technical Omnibus – SUPPORT

Natural and Working Lands:

SB 1525A requires ODOE to report to the Oregon Climate Action Commission (OCAC) on updates to the natural and working lands net biological carbon sequestration and storage inventory no later than December 1 of each odd-numbered year rather than in each even-numbered year. It requires the results of the ODOE study on workforce and training needs to support natural climate solutions on natural and working lands by September 15, 2025, rather than September 15, 2024, and extends the sunset to January 2, 2026, instead of January 2, 2025. It requires that ODOE and OCAC establish nonbinding biological carbon sequestration and storage goals for Oregon’s natural and working lands by January 1, 2026, rather than January 1, 2025. The adjusted deadlines are to improve the quality of the reports which entail complex analysis.

Energy Security Plan:

SB 1525A requires ODOE to submit the first state energy security plan by September 30, 2024, rather than June 1, 2024. The plan will identify risks and threats to Oregon’s energy systems, including transportation fuels storage, and identify actions that can be taken in the future to reduce those risks.

Community Renewable Investment Program:

SB 1525A expands the definition of planning costs and project cost in the in the Community Renewable Energy Grant Program to include costs paid or incurred by an applicant’s partner, rather than exclusively an applicant. It clarifies that "electric cooperative" includes cooperative that is operating in state and formed to generate, purchase or obtain electric power, energy, transmission services or ancillary services or to represent one or more consumer-owned utilities in meeting rural, environmental or renewable energy requirements and mandates. ODOE is authorized to release up to 30 percent of additional grant money provided for in a performance agreement from the Community Renewables Energy Grant Program, if the applicant demonstrates certain requirements have been met. The bill stipulates that the amount of grant moneys released prior to completion may not exceed 30 percent of qualifying project costs and 15 percent of costs that do not qualify as community energy resilience projects.

Standby Generation Facilities:

SB 1525A expands exemption from obtaining a site certificate from the Energy Facility Siting Council for a standby generation facility that is electrically capable of being interconnected to the grid but is dispatched by a local transmission and distribution grid operator or balancing authority to support grid reliability. The bill requires the standby generation facility to be operating consistent with federal requirements and to exclusively use renewable fuels, including renewable diesel, renewable natural gas, or renewable hydrogen, if they are available and it does not violate the generator's warranty or certification. The bill requires a public utility that operates a dispatchable standby generation program to report to the Director of ODOE on the number of generators, the average hours of operation, aggregated amounts of fuel by type, availability of renewable fuels, and statutory compliance. The ODOE Director is required to make this information available on a publicly available website.

Heat Pump Grants and Rebates:

SB 1525A requires that money in the Heat Pump Deployment Fund on July 1, 2024 be transferred to the Residential Heat Pump Fund. It requires the transferred moneys to be used to provide grants, rebates, and administrative costs in some regions and for members of federally recognized Indian tribes – the existing heat pump program did not successfully procure regional program administrators across all of Oregon – leaving some regions and tribes unserved, which HB 1525 will remedy. The transferred funds are required to be used to provide rebates for the purchase and installation of air-source or ground-source heat pumps to owners of a dwelling unit used as a residential tenancy and to the owners of a manufactured dwelling or recreational vehicle who rent a space in a manufactured dwelling or recreational vehicle park.

SB 1525A passed the Senate unanimously on February 21st and awaits action in the House of Representatives.

Recommendation/Requested Board Action

These are informational updates, and no action is required at this time.