

E – Outlook

ENVIRONMENTAL HOT TOPICS AND LEGAL UPDATES

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Environmental & Natural Resources Section
OREGON STATE BAR

Editor’s Note: This issue lists legislative concepts under consideration by Oregon’s environmental and natural resources agencies. This information was provided by the individual state agencies in response to a request by the section and has been edited to maintain brevity. Each agency’s information can be assessed by clicking on the name of the agency in the list below.

The legislative concepts were reviewed by the Department of Administrative Services and the Governor’s Office, with approved concepts submitted to the Legislative Counsel for bill drafting. Each agency has its own deadlines for feedback from stakeholders. Anyone wishing to provide comments or feedback on the legislative concepts should contact the appropriate agency representative or their legislature. Due to the evolving nature of this topic, we cannot assure you of the current accuracy of the information.

If you have comments or would like to contribute to future issues, please contact the E-Outlook Editor: Hong N. Huynh (<mailto:Hong.Huynh@MillerNash.com>)

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Oregon Department Of Agriculture ("ODA")

Bill No./Title	Bill Description
HB 2292: Continue Government Speech Provisions for Commodity Commission Programs	Removes sunsets on ODA's authority to oversee promotion, advertising, and research programs for Oregon's Commodity Commissions.
HB 2287: Include Flower Seed Under Seed Law	Makes flower seed subject to the same labeling, purity, and marketing of requirements as other Agricultural seeds. Requires wholesalers of flower seed to be licensed as wholesale seed dealers. Closes an important pathway for noxious weed seeds to enter Oregon.
HB 2290: Food Security Responses to Terrorism and Natural Disaster	Clarifies the type of facilities to be covered by Human Services food borne illness prevention program.
HB 2289: Authority to Regulate Wild Bird Feed for Noxious Weed Seeds	Gives ODA authority to adopt rules establishing maximum permissible amounts of viable noxious weed seeds in birdseed. The proposal would regulate birdseed as an animal feed. Recent studies have shown serious levels of viable noxious weed seed contamination in birdseed.
SB 234: Regulation of Biopharmaceutical Crops	Provides a framework for ODA to fully participate with USDA in the suitability of a bio-crop for production in Oregon.
SB 239: Measure 37 Exemption for ODA Pest and Disease Control Actions	Exempts regulations dealing with protecting the economic welfare of the agricultural industry and the natural environment (quarantines, embargoes, and right-to-farm) from the provisions of Chapter 1, Oregon Laws 2005 (Measure 37).
SB 236: Brand Inspection Fee Schedule	Increases statutory cap for brand inspection fee to not less than 85 cents and not more than \$1 per head of cattle and not more than \$2 per hide. Eliminates required brand inspection for horses. Currently program costs are exceeding program revenues.
SB 238: Weighing and Measuring Device License Fees	Increases maximum weighing and measuring device license fees in order to maintain current levels of program services. Proposed fee structure is based on the cost of providing inspection services for each of the 18 device types. Currently program costs are exceeding program revenue. Fees for this program were last increased in 1991.
SB 235: Revision of Agriculture Air Quality Exemption	Revises the agricultural exemption in Oregon's air pollution laws to enable the state to comply with federal requirements. Allows Department of Environmental Quality ("DEQ") and ODA to administer and enforce air quality regulations to applicable agricultural operations and equipment in order to comply with the Federal Clean Air Act. Expands the duties of the Natural Resources Division of ODA to include air. This concept was developed jointly with DEQ and a stakeholder workgroup.
SB 237: Pesticides Program Fee Increase	Increase the maximum fee amounts ODA is authorized to impose for pesticide product registration to \$250. \$40 of the pesticide product registration fee is dedicated for the Pesticide Use Reporting System.

Oregon Department of Energy

Bill No./Title	Bill Description
LC 562: Business Energy Tax Credit (BETC) Changes	Amends the Business Energy Tax Credit to provide greater incentives for renewable energy.
LC 563: Residential Energy Tax Credit (RETC) Changes	Makes the incentives for renewable energy more effective.
LC 564: State Agency Renewable Energy Projects	Provides a package of measures to encourage greater development, distribution and use of agricultural and forest material for biofuels, for electricity and for other forms of biomass energy use.
LC 824: Renewable Portfolio Standard	Establishes a Renewable Portfolio Standard for electricity. The bill requires that 25% of Oregon's electric load come from new renewable energy by 2025.

Oregon Department of Environmental Quality ("DEQ")

Bill No./Title	Bill Description
Unknown at this time	Provides funding by dedicating existing penalties for open burning and asbestos violations to the grant and loan program. The concept also updates the statute to require removal of uncertified stoves upon sale of residential property. In the accompanying budget policy package, DEQ requests General Fund for .5 FTE to administer the fund and \$50,000 of General Fund to get the fund started along with the open burning and asbestos penalties.
HB 2172	Reduces public health risks from diesel emissions by offering a variety of incentives to diesel engine users to reduce emissions. The concept includes loans, grants and tax credits that could be used to retrofit or rebuild existing diesel engines to reduce emissions and reduce idling.
SB 107	Overall increases 24% in fees for Title V of the Clean Air Act permits to restore necessary FTE and to provide an adequate fund balance for future operations.
Unknown at this time	Allows regulation of agriculture to the extent necessary to comply with the federal Clean Air Act by addressing the agricultural exemption. The bill is introduced jointly with ODA would designate ODA as the lead implementing agency, and would authorize ODA to conduct research on best management practices to reduce emissions from agricultural operations.
HB 2272	Requires a new vehicle is registered in Oregon to have proof of compliance with California emission standards beginning with the 2009 model year
SB 103	Proposes a fee increase (\$400,000) and request additional General Fund to retain about 7 FTE to adequately fund and staff DEQ's hazardous waste compliance and enforcement program that is approved by the U.S. EPA to implement the federal hazardous waste laws in Oregon.
SB 104	Continues the 2005 annual underground storage tank fee of \$85 while DEQ coordinates with fee payers to determine what specific fee amount should be proposed.

Oregon Department of Environmental Quality ("DEQ") Continued

Bill No./Title	Bill Description
SB 105	Raises oil spill prevention fees to maintain adequate staff to fulfill DEQ's assess the performance of Oil Spill Contingency Plan for ships or operation of a terminal or pipelines capable of storing 10,000 gallons of oil in Oregon waters without an Oil Spill Contingency Plan approved by DEQ.
SB 106	Adds 1 FTE to audit contractor's work to provide assurance that Heating Oil Tank standards are met by increasing heating oil tank fees would be increased to pay for this position.
HB 2118	Establishes additional statutory authority to DEQ to charge fees for administering the underground injection control ("UIC") program. This would include DEQ developing a fee structure for the program within OAR 340-044, which was not provided for in 2001 when the EQC adopted revisions to the program.

Oregon Department of Fish and Wildlife ("DFW")

Bill Title	Bill Description
SB 240 LC 426: SW LOP program	Extends program that provides landowner preference tags to address damage caused by elk on privately owned land in southern Oregon.
SB 241 LC 427: Modifications to Developmental Fisheries Program	Expands membership of Commercial Fishery Permit Board to include representatives of developmental fisheries and representatives of certain restricted permit systems established by rule of State Fish and Wildlife Commission. Allows persons denied developmental fisheries permit or restricted permit, or denied renew.
HB 2294 LC 428: Fish Screening Statute Revision	Modifies tax credit requirements for fish screening and by-pass devices. Allows State Department of Fish and Wildlife to recover actual cost of inspecting or maintaining screening or by-pass device if person responsible for water diversion fails to do so.
HB 2295 LC 809: Wolf Compensation Fund.	Defines gray wolf as game mammal. Directs the DFW Commission to establish special management regulations for gray wolf. Describes circumstance in which gray wolf may be taken. Directs commission to establish wolf depredation compensation and cost-sharing program for purposes of compensating persons who suffer loss or injury due to wolf depredation and providing financial assistance to persons who implement livestock management techniques or non lethal wolf control techniques designed to discourage wolf depredation of livestock. Creates Wolf Management Compensation and Proactive Trust Fund and continuously appropriates fund moneys for purpose of providing compensation and financial assistance under program.

Oregon Department of Forestry ("ODF")

Bill No./Title	Bill Description
HB 2067: Fire Protection Costs	Extends the sunset date for the fire protection cost legislation out for two more years, to July 1, 2009. HB 2327 (2005) extended for two more years a previously enacted temporary increase, from \$10 million to \$15 million, in the yearly limit on landowner expenditures for emergency fire suppression. This was done with the understanding that the higher limit would continue to be extended, in two-year increments, so long as the Legislature continues to share emergency suppression and fire insurance costs, and to provide severity funds, from the state General Fund.
SB 99: Changes to SB 360 (1997)	Makes a variety of changes to SB 360, which increases fire safety in the wildland-urban interface, including clarifying that landowners have two years to comply with SB 360 requirements after receiving notice that they must do so; setting a specific term for appointments to county classification committees (currently unspecified); and providing a means of dealing with properties that are held jointly by multiple owners.
SB 98: Working Forests For Higher Education	Provides bonding mechanisms for state acquisition of forestland that is offered for sale, and that might otherwise be fragmented or converted to non-forest use. The lands would be managed to produce a range of forest values, including timber harvest, recreation, and environmental benefits. Revenue from timber harvest on the lands would be used to retire the bonds, to pay for the state's management of the land, and to provide assistance to students attending institutions in the Oregon University System.
HB 2068: Invasive Species Council	Secures ODF standing membership on the Oregon Invasive Species Council, a statutorily authorized body with standing members currently from the ODA and DFW, and Portland and Oregon State Universities. The legislation reflects increasing concern about the effects of invasive species in Oregon's forests.
HB 2293: Forest Resource Trust	Restructures the Forest Resource Trust program, which seeks to help landowners establish and maintain healthy forests on under-producing forestlands, such as brushland, pasture or poorly stocked fore, by encouraging participation, broadening eligibility, and promoting forest stand management practices.

Oregon Department of Forestry ("ODF") Continued

HB 2069: Tree Improvement Program / Seed Bank	Clearly defines the legal framework under which the ODF manages the Schroeder Seed Orchard, near St. Paul, as a source of improved seed for state-owned forests, for cooperating private land managers, and for family forestland owners.
HB 2114: Stewardship Agreements	Voluntary stewardship agreements seek to provide landowners with various incentives to exceed regulatory requirements in order to conserve, restore and improve water quality or fish and wildlife habitat.
HB 2115: Biennial Harvest Tax	<p>Sets Forest Products Harvest Tax rates for calendar years 2008 and 2009 to support the Oregon State University Research Laboratory and the Department's administration of the Forest Practices Act. Under the Act, the Department works with landowners to ensure that timber harvest is conducted in ways that are consistent with protection of environmental and scenic values.</p> <p>The bill continues the historical funding approach for these programs through a combination of harvest tax and general fund dollars, maintaining a "shared responsibility" concept.</p>

Oregon Department of Land Conservation and Development

Bill Title	Bill Description
SB 186: Industrial Reserves	Expands the supply of land planned for industry in and adjacent to urban growth boundaries (UGB's).
SB 187: Sites Dedicated to Affordable Housing	Directs LCDC to encourage local governments to plan new sites dedicated to affordable housing, through amended requirements for expansion of urban growth boundaries (UGBs).
SB 140: Standard of review for Rule Consistency	Directly addresses DLCD and DOJ concerns about the "standard of review" employed by the Court of Appeals in a recent decision (<i>City of West Linn v LCDC</i>) invalidating LCDC's "Subregional" administrative rules (OAR 660, division 26). Amends ORS 197 to include a clear standard of review for consistency between rules and statewide goals.

Oregon Department of State Lands ("DSL")

Bill No./Title	Bill Description
HB 2104	Changes the current dormancy period of five years to three years for property held by financial institutions, insurance companies and intangible equity ownership interests (stock and related distributions) and changes the method for giving notice of impending service charges by a financial institution from certified mail to first class mail.
HB 2105: Removal-fill Permit Fee Increase	Increases fees for the state's Removal-Fill Program, provide for an annual increase of permit fees and revise the fee structure to a more equitable schedule. Additionally, the Department would be allowed to assess a fee for persons conducting certain actions under a general authorization and for emergency authorizations.
HB 2106: Establish New Fee For Review and Concurrence of Wetland Delineation Reports	Establishes a new \$350 fee for the review and concurrence of wetland determination or delineation reports. The fee would allow DSL to add staff necessary to be able to respond to requests for reviews in a timely manner.
LC 825: Water-Related Permit Improvement Process	Jointly submitted by DSL and the Office of Regulatory Streamlining, allows for various agencies to create a pilot project for processing water related permits. The pilot project is under development by the Water-Related Permit Process Improvement Team ("RPPIT" and will address streamlining and better coordination of permitting by agencies that issue permits related to the removal-fill permit process.
SB 67: Moves Unclaimed Property Program from DSL to OST	Transfers the Unclaimed Property Program from DSL to the OST. The goal of the move is to increase the profile of the program, and therefore increase reporting by holders and claims by the rightful owners of the unclaimed property.

Oregon Water Resources Department

Bill Title	Bill Description
HB 2101 LC 01: Fee Adjustments	Proposes to adjust certain statutorily established fees under ORS 536.050, 537.150(5), and 537.620(5).
HB 2100 LC 02: Exempt Uses	Modifies ORS 537.14 1 (l)(b) to clarify that any non-emergency fire-fighting training is an exempt use of surface water provided prior approval of use is granted by the appropriate watermaster or other minimum notice requirements are met.
SB 88 LC 03: Well Constructor Continuing Education	Makes permanent statutory provisions for the well constructors continuing education program and Continuing Education Committee that sunset January 2, 2008.
HB 2097 LC 04: Split Season Use Instream Leasing	Makes permanent statutory provisions under ORS 537.348 allowing the "split season use" instream leasing of water rights that sunset January 2, 2008.
SB 89 LC 05: Pilot Project for Certain District Temporary Transfers	Continues through June 30, 2010 a pilot project for certain districts to make annual place of use changes to water rights within their district boundaries without making application for a temporary transfer.
HB 2098 LC 06: Irrigation Season Extensions	Proposes to amend ORS 536.050 to refund all or a portion of the protest fee to water right holders who successfully rebut a claim of forfeiture under ORS 540.641.