

2020 End-of-Session Report

Prepared for OAHU

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GOP WALKOUT

Only three minor bills passed and were signed into law during the abbreviated short session. First, Senate Republicans walked out to stop the greenhouse gas cap-and-trade bill. Then House Republicans left.

Nearly two weeks later, 121 bills were in the queue awaiting debate and a vote on the House and/or Senate floor, when the session ended.

Republicans offered to come back on Sunday, March 8, the final day of the session, to pass needed budget bills. Democrats rejected that, likening it to blackmail where the R's get to cherry pick the bills that would pass. House Speaker Tina Kotek (D-Portland) said the democratic process was being "held hostage by a small group of legislators."

House Republican Leader Rep. Christine Drazan (R-Canby) said it's the Democrats who have supermajorities in both chambers and control the Governor's office. "It's time for them to look in the mirror and recognize that their approach to leadership is what led us to this day," she said.

The Governor says she will use executive action to address climate change.

There's talk of a special session to pass needed budget bills and maybe some policy bills, but when that will happen and what will be on the agenda is unclear.

SJR 201 – CHANGE QUORUM TO SIMPLE MAJORITY

Oregon is one of only four states that requires more than a simple majority for a quorum. Currently, two-thirds of legislators must be present for the House or Senate to conduct business.

House and Senate Republicans have staged walkouts during the 2019 and 2020 sessions to deny a quorum and prevent action on various bills, including the controversial greenhouse gas cap-and-trade bill.

The Senate Rules Committee considered options to change the Oregon legislature's quorum requirements. Any change would require a constitutional amendment and need to be approved by Oregon voters.

Sen. James Manning (D-Eugene) said, "This two-thirds majority is now being used as a weapon."

One opponent of the bill testified saying, "You are telling the minority that you don't matter. And that the people they represent don't matter."

The Senate Rules Committee voted to change the quorum requirement to a simple majority. But there's a Catch-22. A two-thirds quorum is necessary to vote on changing the quorum requirement, sending it to voters, and that did not happen before the session adjourned.

HEALTH INSURANCE

HB 4110 – GRACE PERIOD FOR HEALTH INSURANCE PAYMENTS

The House unanimously approved requiring a 30-day grace period for health insurance premium payments, and 15 days to make an initial payment on a new plan.

Current law only requires a 10-day grace period for past-due payments and no grace period for first premium payments.

Insurance commissioner Andrew Stolfi gave specific examples of the problem HB 4110 hoped to solve:

- A consumer missed a payment deadline by two days due to health problems and lost her coverage
- Another paid \$3 a day after it was due and lost their coverage.

Stolfi said this bill will make it easier for Oregon consumers to pay their premiums, get covered and stay covered.

The bill was awaiting a Senate floor vote at adjournment.

HB 4073 – INSULIN COPAY CAP

Supporters of HB 4073 said one in four Oregon diabetics report rationing their insulin by using less than the recommended dose to save money. The Oregon Health Authority estimates that 287,000 adult Oregonians have diabetes.

Rationing insulin can have serious health effects. Rep. Rachel Prusak (D-West Linn), who is a nurse practitioner, said, “When diabetics don’t have access to their insulin, this is how their kidneys fail. This is how they become blind. This is how they have a wound that doesn’t heal and results in amputations.”

Laura Keller, American Diabetes Association, testified that hospital costs related to diabetes jumped from \$44 million in 2012 to \$74 million last year.

The bill capped patients’ out-of-pocket cost for insulin at \$75 for 30-day supply or \$225 for 90-day supply.

Providence Health Plans projected that the cost savings from avoiding hospitalizations and adverse events would offset increased costs to their insurance plans.

HB 4073 passed the House but was not heard in the Senate

HB 4114 – DIALYSIS PAYMENTS

This bill would cap dialysis charges at Medicare rates and patient co-pays at 10%. Chief sponsor Rep. Andrea Salinas (D-Lake Oswego) said, “This will remove dialysis centers’ ability to price gouge consumers and commercial insurers...”

Dialysis providers argue that 90% of their patients are on Medicare, but that it pays below cost. So, they have to charge the 10% of patients who have commercial insurance significantly above cost.

Rep. Salinas is skeptical, saying she found a letter to Davita shareholders touting a \$1.5 billion operating profit in 2018.

Omar Amero, Davita, said the bill would significantly reduce access to care. “This bill will upset the delicate balance of commercial insurance to public health care that allows dialysis centers to stay solvent... Over half of the centers we have in Portland would no longer be viable [if this bill were to pass].”

Rep. Salinas decided to create an interim work group to study the topic rather than moving the bill in the short session. She hopes to bring legislation to the 2021 session.

HB 4102 – PRIOR AUTHORIZATIONS

After 18 months of negotiations, stakeholders came to an agreement on legislation that would have streamlined how commercial insurers deal with prior authorizations.

The bill excluded Medicaid and insurance for public employees and educators.

It made a number of changes to utilization management practices, including:

- Extending prior authorizations to 90 days
- Requiring treatments, drugs and devices that require a prior authorization to be posted on payers' websites
- Requiring insurers create electronic prior authorization portals
- Requiring commercial insurers to issue an explanation of denial using plain language
- Prohibiting insurers from altering utilization review requirements without a 60-day advance notice
- Extending step therapy history to previous coverage.

The bill's sponsor said, "I think it's going to do a lot of good for providers and patients across Oregon to access care. And I look forward to coming back to make sure it's more equitable and more insurers get covered in the future."

"I tend to think that what's good for the goose is good for the gander, and I look forward to talking about how to include OEBC and PEBC," added Rep. Christine Drazan (R-Canby).

The bill made it through the House but was still awaiting a floor vote in the Senate when session adjourned.

PEBB & OEBC

HB 4146 – OEBC FOR PART-TIME FACULTY

Ways and Means decided not to appropriate \$5.4 million to provide employee-only health insurance to part-time college faculty through the Oregon Educators Benefit Board (OEBC). Between 1500 and 1700 faculty would have been eligible.

Currently, part-time faculty can purchase OEBC insurance but must pay 100% of the cost. Under HB 4146, the employee would pay 10% of the premium; the state would pay 90%.

Ways and Means Co-Chair Sen. Elizabeth Steiner Hayward (D-Portland) said, "It is shameful that our adjunct faculty are paid so poorly and treated so shabbily."

Co-Chair Sen. Betsy Johnson (D-Scappoose) said, "It's fiscally irresponsible to make this an open-ended responsibility of the General Fund."

Steiner Hayward said they offered an alternative, adding the money to the community college appropriation. "Make it clear community colleges and universities would be required to pay their fair share. But it was dismissed."

There was widespread agreement these part-time faculty need support and health insurance, but Ways and Means decided HB 4146 was not the way to do it.

HEALTH CARE

HJR 202 – HEALTH CARE IS A RIGHT

Despite Republicans' discomfort with the concept, Rep. Mitch Greenlick's (D-Portland) plan to refer a constitutional amendment to Oregon's voters declaring health care is a fundamental right passed out of the House Health Committee.

Rep. Cedric Hayden (R-Roseburg) asked legislative counsel to provide clarity on what exactly it would mean to declare health care as a human right.

"The simplest answer to that question, which will be unsatisfactory, is that we don't know. The courts will have to decide," said legislative counsel's Victor Ruther. "The bill creates an affirmative obligation to provide access to cost effective, clinically appropriate, affordable health care. Exactly what [that] means is unknown... It will be interesting to see how the courts interpret that language."

Rep. Mitch Greenlick (D-Portland) has been working on this concept for 15 years.

This version added language requiring the state to balance the obligation to ensure health care with funding public schools and other essential service.

One supporter testified saying, “When health care is not a fundamental right, it is delayed and that is costly to all of us.”

The bill passed the House but was awaiting a vote in the Senate when the session adjourned.

HB 4115 – HEALTH CARE INTERPRETERS

This bill required the use of qualified or certified health care interpreters.

Maria Michalczyk, Healthcare Interpreters Association, said, “I’ve seen many grave errors due to misinterpretation,” including signing consent for the wrong surgery and taking the wrong dose of medication.

The bill was amended, removing health care providers and CCOs from responsibility, shifting the burden to the interpretation service companies.

The Health Committee approved the bill and sent it to Ways and Means, over the objection of Rep. Cedric Hayden (R-Cottage Grove) who said, “Once this is fully implemented, I think this will put some of our interpreters out of a job instead of bringing people into the job.”

Ways and Means did not take action on the bill before the session ended.

HB 4132 – STUDENT HEALTH SURVEYS

This bill sought to codify the Oregon Health Authority’s student health surveys given to children over the age of 10, and ensure the agency has adequate funding to conduct the survey. The survey is voluntary and anonymous.

“The data provides very important assessment... around behavioral interventions, school wellness policies, suicide prevention programs, anti-bullying efforts, mental health interventions, substance abuse prevention, intervention programs and ultimately evidence-based decision making for school districts,” said Sen. Rob Wagner (D-Lake Oswego).

The Oregon Christian Education Association and other parents’ rights organizations opposed the bill. They say they could be neutral if private and home schools were exempted.

The bill was in Ways and Means when the session ended.

HB 4161 – REGIONAL HEALTH EQUITY COALITION

Regional Health Equity Coalitions (RHEC) are autonomous, community driven, cross-sector groups that build on local communities’ inherent strengths to identify creative solutions to improve health equity for communities of color and other marginalized identities. This bill defined RHECs in statute and allowed for the expansion of these programs in the future. There are only four RHECs in Oregon and two capacity-building grantees piloting the RHEC model.

In Grants Pass, the RHEC helped AllCare CCO recognize that the graduation rate for students of color was just 21%. AllCare invested in a graduation coach at a local school district and was able to raise the graduation rate to 96% after just 5 years.

The bill passed the House but did not move in the Senate because of the walkout.

HB 4016 – UNIVERSAL HEALTH CARE; EMS SERVICES FOR SENIORS: PREP & PEP

This bill, “related to health care,” was gut and stuffed, and stuffed and stuffed. Three amendments were added that would have:

1. Extended the Task Force on Universal Health Care to have it report back to the 2021 Legislative Session and complete its work by November 1, 2021.
2. Allowed pharmacists to prescribe HIV drugs, known as PrEP and PEP. Pre-exposure prophylaxis (PrEP) is an oral medication taken daily to lower a person's chances of HIV infection. Post-exposure prophylaxis (PEP) is taken within 72 hours of HIV exposure.

This concept was previously in HB 4116 that was opposed by insurers and died in the House Health Committee. Carriers supported this modified version, saying it "ensures patients who need these drugs can get it." There are 210-230 new HIV infections in Oregon each year, and these drugs can help stop the virus from developing into AIDS.

3. Created a new DHS Senior Medical Services Innovation program to provide grants to local fire departments for pilot projects to address the EMS needs of nursing home residents. It also created a new Senior EMS Advisory Council and preempted the local nursing home EMS taxes, but allowed fines if nursing homes call EMS inappropriately for lift assistance, like they have in Portland and Clackamas. The program would sunset in January 2024.

The amended bill was approved by Ways and Means but was still pending action on the floor at adjournment.

HEALTH CARE PROVIDERS

HB 4081 – PA “MODERNIZATION”

The Oregon Society of Physician Assistants (OSPA) introduced legislation seeking to remove administrative burden for hiring and employing PAs, while also modernizing the physician to physician assistant relationship.

The Oregon Academy of Family Physicians testified that it had concerns with the bill, namely:

1. The removal of chart review from the statutory definition of supervision
2. The removal of board authority to require in-person supervision
3. Lack of a reasonable limit on the number of PAs one physician can supervise

Whether the bill passed or not, House Health Committee Chair Rep. Andrea Salinas (D-Lake Oswego) made it clear she expects PAs to work with physician organizations and other stakeholders to develop standardized expectations for supervision of PAs commensurate with their education, skills and experience.

The bill passed the House but never had a hearing in the Senate.

HB 4074 – GENETIC COUNSELOR LICENSURE

The bill authorized the Health Licensing Office to license qualified genetic counsellors – specialized health care professionals who calculate the risk of, order lab tests, and educate patients about genetic diseases. Oregon is one of 21 states that do not require licensure of genetic counsellors. Sixty genetic counsellors are currently practicing in Oregon.

The bill had OMA's support and unanimously passed the House Health Committee. It had overwhelming support in the House and died in the Senate due to the walkout.

PRESCRIPTION DRUGS

HB 4116 ⇒ HB 4016 – PHARMACISTS PRESCRIBE HIV DRUGS

HB 4116 did not pass but its provisions were later stuffed into HB 4106, which was approved by the House Rules Committee.

The bill would have made HIV drugs more readily accessible by allowing pharmacists to prescribe and dispense PrEP and PEP drugs.

Rep. Margaret Doherty (D-Tigard) said it could result in enormous savings. She said the cost of PeEP is about \$1000 per treatment, whereas treating one case of HIV can be as much as \$350,000.

SB 1535 – Rx FAIR PRICING TASK FORCE

This bill made small but significant changes to the Task Force on Fair Pricing of Prescription Drugs by:

- Expanding its scope of work to look at rebates and markups along the entire supply chain
- Adding a generic drug manufacturer
- Extending the life of the task force
- Clarifying that pharmaceutical manufacturers need to report to DCBS whenever there is a cumulative price increase of 10% or more in a calendar year.

The bill passed the Senate but was still pending in the House at sine die.

VAPING

HB 4078 – Prohibit Remote Sale of Vape Products

This bill would have banned online and phone sales of nicotine inhalant delivery system (“vape”) products. It passed the House floor and Senate Health Committee, and died awaiting action on the Senate floor.

The vape industry called for more robust age verification in lieu of an outright ban. They said this bill would push kids to buy products from completely unregulated retailers in China or other black-market vendors.

SB 1577 – Vape Sales Licensure

Banning the sale of flavored vapes was a top priority for many Democrats and public health advocates this session. Ultimately, the industry was able to convince legislators that banning flavors outright would only push kids to buy these products from unregulated markets.

The Human Services Sub-Committee on Ways and Means amended the bill, which originally banned flavored vape products, to instead require shops that sell vape products in Oregon be licensed. The bill passed out of full Ways and Means but never made it to the Senate floor.

BEHAVIORAL HEALTH

HB 4031 – BEHAVIORAL HEALTH WORKFORCE ASSESSMENT

Ways and Means passed the bill that would fund an assessment of behavioral health workforce to be completed by December 1, 2020. It died there with many other bills.

This bill originally dealt with licensure for unlicensed councilors, like life coaches, hypnotherapists, sexologists and parenting coaches. The House Behavioral Health Committee narrowed its scope to focus on workforce issues.

Rep. Andrea Salinas (D-Lake Oswego), who introduced the bill, plans to create an interim work group to propose solutions for unlicensed counsellors in the 2021 session.

HB 4031 was changed to require OHA to analyze Oregon’s behavioral health workforce, including:

- Which providers provide which services
- What providers Oregon will need in the next 7-10 years

- What regions providers work in
- Recommendations about how many and what type of providers can fill Oregon's unmet need.

HB 4082 – BEHAVIORAL HEALTH ROADMAP

House Behavioral Health Committee Chair Mitch Greenlick's (D-Portland) behavioral health roadmap bill created a commission to:

- Define the ideal behavioral health system
- Detail elements of the existing system
- Establish current government and private expenditures on behavioral health, and those funding sources.

HB 4082 asked for \$0.5 million for OHA to do the needed work. The bill died in Ways and Means.

HB 4149 – IMPLEMENTING A & D STRATEGIC PLAN

Ways and Means appropriated \$200,000 to the Oregon Health Authority to map Oregon's resources and needs to implement the Alcohol and Drug Policy Commission's Strategic Plan.

Rep. Tawna Sanchez (D-Portland) originally asked for \$10 million to fully implement the strategic plan this biennium. Counties and cities were opposed, because it would have taken away their funding. So, Rep. Sanchez "whittled everything down."

Ways and Means approved the \$200,000, but the bill never made it to a floor vote.

SB 1552 – CONTINUE CCBHC PILOT PROJECTS

This bill would have continued the Certified Community Behavioral Health Clinics pilot program through the rest of the biennium, costing Oregon approximately \$15.3 million, while drawing down \$63 million in federal funds.

It also required OHA to evaluate whether CCBHCs increase access to behavioral health services, improve outcomes, lower the cost of care and are complementary to the coordinated care system.

SB 1552 passed out of Ways and Means but was never heard on the floor.

SB 1553 – BARRIERS FOR TREATING CO-OCCURRING DISORDERS

SB 1553 required OHA to report to the legislature on existing barriers for people with co-occurring behavioral health, addiction disorders and/or developmental and intellectual disabilities to seek treatment, and suggestions to improve access long-term.

Ways and Means approved the bill, but it did not make it to the floor.

OTHER ISSUES

HB 4005 – SAFE GUN STORAGE

According to the National Center for Health Statistics and Centers for Disease Control and Prevention, in 2017:

- 486 people in the US died of unintentional gun injuries
- 23,854 committed suicide with a gun
- 14,542 were intentionally killed with a gun.

In 2010:

- 15,576 children were treated for gun injuries in US emergency rooms
- 1,970 of them died.

Among US adolescents and young adults aged 10-24, gun homicides are the 3rd leading cause of death; gun suicides are 2nd.

In response, proponents introduced HB 4005 to require gun owners lock guns using a trigger lock, cable or gun safe. Stolen firearms would have to be reported to police within 72 hours.

If an unlocked gun was used to injure someone, the owner would be liable.

Rep. Sherri Springer (R-Stayton) said, "It feels like the bill is causing lawful gun owners to be afraid to own guns."

House Judiciary Committee Chair Rep. Tawna Sanchez (D-Portland) said, "Simply holding people accountable for not locking up their guns isn't the worst thing."

The committee added an amendment clarifying that if a gun is under the control of the owner or authorized user, and that person is alone at home and the doors and windows are locked, their gun may be left unlocked.

Rep. Ron Noble (R-McMinnville), a former police officer, said, "I don't think this bill is enforceable."

The bill was awaiting a floor vote in the House when the session ended.

SB 1538 – ENABLE LOCAL GOVERNMENTS AND SCHOOLS TO LIMIT CONCEALED FIREARMS

The Oregon Legislature took away local governments' rights to regulate concealed firearms in 1995, said Sen. Floyd Prozanski (D-Eugene). SB 1538 would have given that right back to city, county and metropolitan service districts, school districts, colleges and universities.

Sen. Alan Olsen (R-Canby) said, "This bill should just find its way to the cemetery."

"[It will] create massive amounts of confusion in the public square," added Sen. Dennis Linthicum (R-Klamath Falls).

Sen. James Manning Jr. (D-Eugene) responded, "There are many people who don't carry firearms into public spaces and their needs need to be taken into account."

Sen. Sara Gelser (D-Corvallis) called it a "basic, commonsense safety measure."

The bill passed out of the Senate Judiciary Committee on a straight party line vote but was sent to the Rules Committee where it remained when the session ended.

WORKPLACE/EMPLOYERS

HB 4107 – CASH DISCRIMINATION

This bill, requiring businesses to accept cash payments, had a long and unexpected path, only to die because the Senate floor did not vote on it.

In a rare move, the House agreed to substitute a Minority Report, brought by Rep. Ron Noble (R-McMinnville) during floor debate. The base bill required businesses to accept cash but exempted government services.

Next, the Senate Rules Committee amended HB 4107 clarifying exceptions such as farmers markets and roadside stands; aircraft; banks; insurance; securities; mortgage and escrow transactions; and Department of Revenue regional offices. In addition, the bill exempted health care clinics, as long as they bill patients and accept cash later.

SB 1527 – NONCOMPETE AGREEMENTS

The House Business & Labor Committee took up the noncompete agreement bill that passed the Senate unanimously. It made four changes in an effort to make noncompetes "easier to navigate:"

1. Noncompetes are void and unenforceable for those who should not be covered by them, e.g. hourly employees or those making less than the median income for a family of four

2. Clarified that the median family income for a family of four is \$97,311
3. Reduced the maximum term of noncompetes from 18 to 12 months
4. Required noncompete agreements be written.

The new restrictions would only have applied to noncompetes entered into after the effective date of the bill, early June 2020.

There was no opposition. The bill died because it was never heard on the House floor.

Current law says that when ineligible employees sign noncompete agreements, those contracts are “voidable,” but that means they must hire a lawyer and go to court to get the noncompete thrown out.

POLITICAL CAMPAIGNS

HB 4104 – USING CAMPAIGN FUNDS FOR CHILDCARE

Bill sponsor Rep. Karin Power (D-Portland) said, “I’d love to see more people with kids run for school board and other office.” One challenge for candidates, she said, is paying someone to babysit while a candidate knocks on doors or attends campaign events. HB 4104 makes it clear that campaign funds could be used for those childcare expenses, or to pay for special help needed for a disabled or elderly family member.

The Secretary of State has said this is a permissible use of campaign funds. This would codify that.

Supporters say campaign funds could not be used for routine childcare expenses, just those resulting from active campaigning.

The bill did not move out of the House Rules Committee.

HB 4124 – CAMPAIGN FINANCE TASK FORCE

This establishes a 17-member task force to analyze and make recommendations to the 2021 legislature on campaign contribution limits in Oregon.

It also specifies that if the Oregon Supreme Court rules, in a case now pending, that the Ballot Measure 47 contribution limits passed by voters in 2006 are constitutional, those limits would become effective on July 1, 2021.

The bill was approved by Ways and Means but was in the queue for a House floor vote at adjournment.

STATE BUDGET

REVENUE FORECAST UP AGAIN

Revenues to the state continue to outpace expectation. The State Economist told legislators General Fund and Lottery resources are up \$183 million since the December forecast.

Economists say the fear of recession has diminished. But, they said, recessions are a psychological phenomenon, often driven by “coordinated pessimism.” The biggest threat to Oregon’s economy currently is coronavirus, since 20 to 30% of Oregon exports go to China.

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