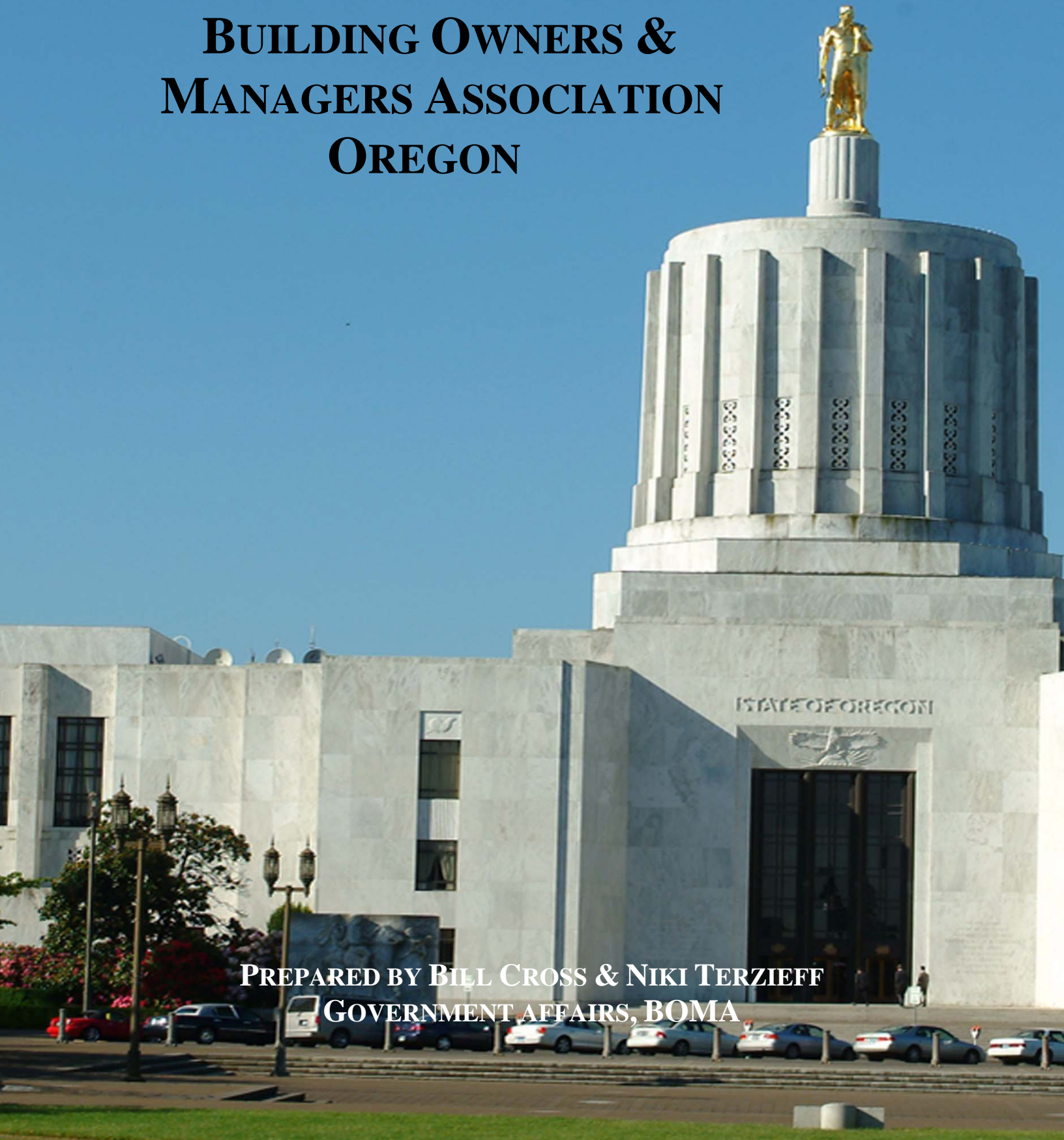


2013 LEGISLATIVE REPORT

BUILDING OWNERS & MANAGERS ASSOCIATION OREGON



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GENERAL SUMMARY

The 77th Legislative Session convened early this year with a bang (of the gavel) and has now adjourned with the same conviction and sense of order. On either side of the July 4th holiday, Oregon's citizen legislators toiled in Salem to produce an agenda and timeline that concluded business five days in advance of the constitutional deadline on July 13th. With positive economic forecasts and multiple cost-saving reforms on the table, there seemed a renewed energy for tackling the Legislature's chief constitutional requirement: balancing the budget.

Since the Great Recession, the Legislature has struggled to adopt a budget that fulfills even the most basic levels of human services needs, public safety requirements, top-notch education provisions, and economic investments. With the proverbial wind at their backs, the Co-Chairs of Ways & Means (Sen. Richard Devlin of Tualatin & Rep. Peter Buckley of Ashland) issued "The Turning Point Budget" and laid out an aggressive expenditure plan that was reliant upon full implementation of many controversial and historically difficult reforms. Their plan did not stray too far from the Governor's Recommended Budget, also ambitious but reflective of being only a portion of his 10-year budget plan.

In fits and starts, the Legislature ultimately approved a General Fund budget of approximately \$17 billion (13% more than last biennium), which represents projected collections of current taxes and lottery proceeds, and anticipated savings from reforms in Public Employees Retirement System (PERS), Education, Health Care and Public Safety sectors (all General Fund or taxpayer dollars). Although a couple of key revenue negotiations did not yield the amount of savings that the majority was seeking, enough ground was gained that a healthy list of investments and expenditures gave everybody something to take back to district.

The Senate returned long-time officers and senior members of the body to their leadership posts, making Senator Peter Courtney one of the longest serving Senate Presidents in Oregon history. Democrats retained the majority for another cycle by one vote (16-14) and reinstalled Diane Rosenbaum (D-SE Portland) as the party leader. The Senate Republicans re-elected Ted Ferrioli (R-John Day) to head up their caucus, but gave early indications of shifting sands as Senators Tim Knopp (R- Bend), Brian Boquist (R - Dallas) and Larry George (R - Hillsboro) played more prominent roles.

The House Chamber took a different tack and the era of peace, power-sharing and co-chairs from 2011 faded away. Democrats won back the majority in the most recent campaign cycle, leaving a few of their freshman class teetering precariously between hard-fought legislative districts and difficult votes to take. Tina Kotek (D-North Portland) was elected as the first openly gay

Speaker in the nation and assumed the gavel as one of only a handful of women to have it. As Caucus Leader, another woman, Val Hoyle (D-Eugene/Junction City) balanced the bench with a more rural and conservative Democratic voice.

Mike McLane (R-Powell Butte) and Julie Parrish (R-West Linn), elected caucus leadership for the House Republicans along with Sherrie Sprenger (R-Scio) shared pretty much only one thing with their Democratic counterparts: none had navigated these waters before. House Republicans who were once in power, like Tim Freeman (R-Roseburg) and Kevin Cameron (R-Salem), splintered off on more than one occasion, sometimes causing headaches within their own caucus.

Despite some communication breakdown and moments of high drama, both chambers seemed to grit their teeth and bring some very controversial bills over the finish line. Some policy and budget highlights from the 2013 Legislative Session include:

- *Health Care:* With the Governor's Community Care Organizations (CCOs) in full-swing, this Legislature made some small fixes to implementation and oversight laws, but generally tried to stay away from changes to a fledgling system, allowing it room to stabilize. Now serving almost 1 million Oregonians, this innovative health care delivery system was given a second layer with Cover Oregon, a health insurance pool for all Oregonians. As part of this ongoing reform conversation, the Legislature passed HB 3260, a bill that will have a private entity examine several different financing structures and delivery systems for Oregon, including "single-payer" options. To help provide all of these services, the Legislature created a scholarship and tax-credit program that will encourage primary care providers to practice in rural, underserved areas.
- *Economic Growth:* For the first time in several years Oregon was able to flex some economic muscle by providing \$800 million in state-backed bonding for construction projects on university/college campuses, to build a new state hospital in Junction City, for overdue repairs to the Supreme Court building and for seismic re-engineering for government buildings. The Oregon Legislature also examined and passed a contingency plan to help rural Oregon counties in financial distress because of expiring federal timber payments.
- *Education:* The public education budget was funded at \$6.75 billion dollars - more than \$1 billion over what last biennium provided for students. This is the largest increase in state funding for public schools in the history of Oregon. In Higher Ed, students who are children of undocumented immigrants are now able to pay in-state tuition rates, making a college education more affordable and accessible for all citizens. Also, Oregon University System will offer dual-credits to help increase the use of college credits by those high-school students who excel and/or take a different pathway to higher ed.
- *Public Safety:* Justice Reinvestment was the mantle given to a bill that passed which reduced mandatory minimum sentences for some non-Measure 11 offenses and flat-lined prison growth for the next five years. Nearly \$90 million in savings from the Department of Corrections and the avoided-cost of building a new prison were re-allocated to county

level Community Corrections departments, community based crime victims services organizations, as well as into courtrooms, prosecutors' offices, etc.

- *PERS*: SB 822 passed this session and was an adjustment to pay-out for PERS that saved about \$460 million in the budget. This bill retained benefits for those retirees who are earning less than \$20,000 a year, but makes a decrease in the 2% Cost of Living Adjustment for higher earning retirees. Additionally, another \$400 million was saved by directing the PERS board to defer payment for some retirees by two years. Public unions are challenging the constitutionality of this in the State's Court.
- *Taxation*: Negotiations to significantly change the tax structure and to increase revenue from those who are in the higher income brackets failed a few different times this session. Whether tied to PERS reforms or as stand-alone policies, Republicans were simply not going to allow Democrats the political latitude. The Governor pushed some for a sales tax conversation this session, but the real story may prove to be his continued efforts over the next six months or so on the Grand Bargain.
- *Transportation*: Oregon legislators approved the \$450 million investment required to pull down matching and augmenting funds from the Federal government to complete the new I-5 bridge project. Washington counterparts failed to approve their portion, so it appears this project has stalled out for now.

Lawmakers will return in February of 2014 for a session constitutionally limited to 35 days. Issues not settled this year that could reappear include: income tax "kicker" and capital gains tax reforms, juvenile justice reforms and perhaps some additional fixes to the major reforms that were passed in 2013.

BUILDING OWNERS & MANAGERS ASSOCIATION PRIORITIES

For the Building Owners & Managers Association, it was a successful session. *Sometimes success in the legislative arena is not measured by bills getting passed but by bills not getting passed. Because of BOMA's legislative efforts, no legislation adversely affecting the commercial building industry was passed in 2013.*

The Association's Legislative Team tracked nearly 200 bills that affected our industry. A summary of all the bills monitored by BOMA and their history can be viewed by going to [**<insert link to report on BOMA's website>**](#).

In addition, BOMA worked closely with a number of other business organizations to add leverage on many bills. BOMA would like to thank the Legislative Committee members whose collective efforts helped to enhance the Association's credibility and effectiveness in the Legislative arena. The Committee was chaired by Jon Bradford.

Some of the more significant legislation that BOMA played an active role in during the 2013 Legislative Session included:

Paid Leave Legislation

HB 3390 - Failed

Portland, Seattle, Washington D.C., and the State of Connecticut require private employers to provide paid sick leave to employees. The Portland City Council approved the standards for paid and unpaid earned sick leave for employees working in the city on March 13, 2013. HB 3390, patterned after the Portland provisions, would have required employers of six or more employees to implement a sick leave policy that allows eligible employees to accrue paid sick leave at a rate of one hour per 30 hours worked. Unused paid sick leave could be carried over from one calendar year to the next. All employees would be eligible to take paid sick leave except for those who have worked for the employer for fewer than 90 days. The leave could be used to recover from, or seek treatment for, an illness or injury; to care for an infant or newly adopted or foster child; to care for a seriously ill or injured family member; to care for a child that requires home care; or to take leave when a victim of domestic violence, harassment, sexual assault, or stalking.

The measure also specified when an employer could require advance written notice or medical verification, when an employee could take leave without prior notice and the record keeping requirements for the employer. HB 3390 would have made denial of paid sick leave or discrimination against employee for inquiring about or using paid leave an unlawful practice.

BOMA joined with other business organizations to oppose the legislation and were successful in keeping it from going to the House floor for a vote. Sponsors will likely reintroduce this legislation again although there may be an interim work group tasked to address paid leave issues.

HB 2903 - Passed

In 2007, the Legislative Assembly required an employer with six or more employees to allow an eligible employee to take a reasonable amount of unpaid leave for purposes of obtaining legal or law enforcement assistance, medical attention or services of a domestic violence shelter or rape crisis center, psychological counseling or relocation. This type of unpaid leave is available to victims of domestic violence, harassment, sexual assault or stalking, or to the parent or guardian of a minor child or dependent who is the victim in such cases. To qualify, the employee must have worked an average of more than 25 hours per week for at least 180 days. Employees may utilize accrued paid vacation leave during this period of leave first.

Approved by the Legislature and signed into law, HB 2903 extends protected leave to victims who are new and part-time employees. The measure also requires that the employer post, in a conspicuous and accessible place, a summary of the statutes and administrative rules that govern the protected leave. The Bureau of Labor and Industries (BOLI) is directed to make the summary available to employers; currently, all mandated workplace posters can be downloaded at no charge from BOLI's website, while composite posters may be purchased for between \$10 and \$15.

Energy Legislation

HB 2801 - Passed

Contractors are subject to licensure by the Construction Contractors Board (CCB). Currently, home energy assessors are not required to be licensed by the CCB prior to delivering a home energy assessment. HB 2801 will require that home energy assessors be trained and licensed while creating standards for home energy assessments. The Act also requires that a state licensed or certified appraiser consider improvements made to the structure of a building that make the building more energy efficient when issuing an opinion on the value of property.

The measure was the primary energy efficiency and performance measurements bill this session and was principally aimed at residential structures. However, it was amended at the very end to include two references to non-residential buildings.

- Section 1 allows an entity (third party, owner, or otherwise) who wants to install energy efficiency in their building the option of packaging measures together to determine cost effectiveness. For example, under current law, a building owner would have to justify that both an HVAC upgrade and an insulation upgrade each meet the cost effectiveness test to get an incentive. Under the new law, the owner could basically take the average cost effectiveness across the two as a package to get the incentives. It's permissive, not required, and should lower the hurdles to getting incentives.
- The other reference in Sections 13-16 simply asks appraisers to do what they are already doing: take into account the energy performance of a building in their appraisal. That is routinely done for commercial buildings but not as much for residential. The bill is asking the Appraiser Certification and Licensure Board to come up with ways to help appraisers do this better and with more consistency across the board.

HB 2322 – Passed but Governor Line Item Vetoed Public Purpose Charge Fund Change

HB 2322, an omnibus agency budget balancing bill that passed in the last hours of the session, contained a section that would have taken \$4.8 million public purpose charge fund dollars from the Low Income Electric Bill Payment Assistance Fund and put it in the Clean Energy Development Fund. BOMA joined with the private utilities and other business organizations to request that the Governor veto this section because the proposed use of public purpose charge fund for this purpose is inappropriate. On August 14, the Governor signed the bill into law but did a line-item veto of this section stating that “The use of public purpose charge fund for this purpose is inappropriate,” Kitzhaber wrote in his veto statement to the Secretary of State’s office. “Public purpose charge funds are rate-payer dollars designated for specific purposes outlined in statute and held in trust ... If this section of the bill were to become law the effort would very likely result in lengthy and costly litigation.”

SB 692 – Passed

In 2005, the Legislative Assembly passed legislation setting minimum energy efficiency standards for 11 types of appliances. SB 692 adds televisions, battery chargers, and some specific electric lamps to Oregon’s appliance standards statute effective January 1, 2014. A person will be prohibited from selling, offering to sell, or installing for compensation television, large battery charger system, inductive charger system, or small battery charger systems unless the energy efficiency of new product meets or exceeds the standards specified in SB 692. It establishes minimum energy efficiency standards for high light output double-ended quartz

halogen lamp effective January 1, 2016, and prohibits a person from selling, offering to sell, or installing for compensation high light output double-ended quartz halogen lamp unless the energy efficiency of the new product meets or exceeds standards specified in Act.

IRC 1031 Sales Transactions

HB 3433 - Failed

BOMA opposed HB 3433 which was introduced to include as Oregon taxable income, capital gains from the exchange of like-kind properties, if they are excluded from federal taxable income. Under current law, this source of capital gain income is excluded from federal taxation. Because of Oregon's connection to federal taxable income, this federal exclusion flows through to Oregon and the income is also exempt from Oregon tax. When business or investment property is exchanged for property of a "like-kind," no gain or loss is realized, so no tax on any appreciation is paid at that time. The tax is deferred until the property is ultimately sold. These transactions tend to be concentrated in the real estate sector, though they may include personal property.

In testimony before the House Revenue Committee, BOMA underscored the enormous hardship on the commercial real estate industry that uncoupling Oregon law from the federal law would create. Passage of HB 3433 will likely cause individuals to be reluctant to sell commercial property and pay tax to Oregon; commercial real estate activity will decline; prices will escalate and supply declines with few investors willing to sell and pay the tax; escalating prices will result in fewer sales; higher costs will affect the economics of renting and related construction; expect less construction as rental property becomes less profitable vis a vis other states; and, everyone will be impacted through reduced economic activity. Fortunately the bill died in committee.

Real Estate Fees/Taxes

HB 2869 - Failed

This legislation would have changed the limit for recording fees to go to the Public Land Corner Preservation Fund from \$10 to the actual cost to the county of recording deeds, mortgages, powers of attorney, contracts affecting the title to property, certificates of sale of real property, certified copies of death certificates of landowners, instruments recognized affecting title to or interest in real property, and orders from a county forestland-urban interface classification committee. BOMA and other real estate-related stakeholders worked to defeat this proposal.

HB 2417 – Passed

HB 2417 raises property filing and recording fees by five dollars for the purpose of assisting veterans with housing needs. As approved by the Legislature, the county clerk property filing and recording fees will increase from fifteen dollars to twenty dollars for purposes of assisting veterans. The bill requires that a minimum twenty-five percent of the moneys deposited in Emergency Housing Account are to assist veterans at risk of becoming or currently experiencing homelessness. It allocates twenty-five percent of the Home Ownership Assistance account fund minimum to serve low income veterans and families of veterans.

ADA Assistance Animal Legislation

SB 610 - Passed

SB 610 conforms Oregon's laws with the federal Americans with Disabilities Act (ADA) by limiting assistance animal definition to dogs and miniature horses. Under the ADA, State and local governments, businesses and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. Service animals must be leashed or harnessed unless the devices interfere with the service animals' work. Only limited inquiries are allowed by staff members about service animals. A staff person may ask if it is a service animal and, if it is, what service it provides. No questions about a persons' disability or requiring documentation is allowed. An owner can only ask a service animal to leave the premises if the animal is out of control or not housebroken.

Currently, Oregon has no limitations on what can be considered a service animal. The federal law states that dogs and miniature horses must be allowed as assistance animals. SB 610 adopts that definition but also enables BOLI to make rules allowing other animals to be considered service animals.

Public Accommodations

HB 2668 - Passed

The legislation expands the definition of public accommodation to places that are open to public and owned or maintained by a public body and services provided by a public body regardless of whether the place or service is commercial in nature. Currently, the limitation of public accommodation laws is to business or commercial services.

Oregon's Public Accommodation Law, first enacted in 1953, prevented discrimination on "race, religion, color, or national origin" in any hotel, restaurant, or place offering "public entertainment, recreation, or amusement." It was primarily concerned with discrimination against African Americans. In a 1976 case, the Oregon Supreme Court heard a challenge to the Boy Scouts' policy of limiting membership to boys. *Schwenk v. Boy Scouts of America*, 275 Or. 327 (1976). The Court found the phrase "place or service" to be ambiguous and referred to legislative history to determine the legislature's intent. They found that the focus of the legislation was on "business or commercial services which offer goods or services to the public." *Id.* at 334. Thus, the statutes did not apply to an organization like the Boy Scouts.

The limitation of public accommodation laws to business or commercial services has prevented certain challenges under the law. In *C.O. v. Portland Public Schools*, 406 F. Supp.2d. 1157, 1172 (2005), a complaint against the school district was dismissed in part because the school was not considered a "place of public accommodation" because it was not a business or commercial enterprise. HB 2668 will expand that definition.

Sidewalk Regulations

HB 2693 - Failed

The bill would have provided that state law may not be construed implicitly to preempt a city's authority to control or regulate use of sidewalks. The Oregon Constitution allows local governments to legislate on the same subject matter as the state so long as the legislation does not conflict with state law - *City of Portland, v. Jackson* 316 Or.143 (1993). HB 2963 stated that

as it relates to the regulation of sidewalks, local legislation is in conflict only if state law expressly conflicts with the local regulation. It would have allowed a city to impose a penalty no greater than a \$250 fine under municipal laws relating to use of sidewalks. While the bill passed the House, it faced stiff opposition from the America Civil Liberties Union and advocates for the homeless and died in the Senate Judiciary Committee.

Towing Regulations

HB 2824 – Passed

This measure allows a tower to tow parked vehicle without contacting owner of the vehicle if the vehicle violates prominently posted no parking sign that warns parking is prohibited 24 hours a day. Current statute specifies certain circumstances in which a tower may tow a vehicle without first contacting the owner of the facility at which a vehicle is parked, including when a vehicle blocks entry to a premises or access by emergency vehicles, blocks a parked motor vehicle, parks without permission in a restricted apartment parking area, or parks in violation of a posted parking prohibition. HB 2824 clarifies that the posted parking prohibition must be a sign that warns that parking is prohibited 24 hours a day.

Tax Compliance Requirements for Licensees

HB 2871 - Passed

Originally, HB 2871 was designed to make permanent a pilot project that requires certain licensees to demonstrate and maintain tax compliance as a condition of issuance or renewal of license. BOMA and numerous other trade and professional organizations objected to the bill which would impact nearly one million Oregonians who rely on their licensure to maintain employment. As introduced, it would have placed the burden on individual licensees to prove they are compliant as opposed to current law that allows the Department of Revenue to go after bad actors through licensure. The bill would set up a new state technology project as well as a communications campaign at the expense of all taxpayers. Questions around the cost of this system or how it would have actually operated were raised by a coalition of associations representing a cross-section of licensee types. Licensure is meant to serve as a consumer protection mechanism and not as a tax compliance tool. Removing the ability for a licensee to obtain their license clearly endangers the ability of the taxpayer to remain employed making it even more challenging for the individual to pay back their taxes.

Due to this opposition, the bill was amended to require the Department of Revenue to prepare a report on its progress in implementing the occupational licensee pilot project. As passed by the Legislature, it will require that the report be completed by February 1, 2014, and include a plan to further develop and improve the program based on the department's experience with the pilot project. The department is tasked to recommend methods by which the pilot project may be extended to other state agencies.

Industrial Lands

SB 246 - Passed

This bill establishes the Oregon Industrial Site Readiness Program Fund and continuously appropriates moneys from the Fund to Oregon Business Development Department. SB 246 directs the Department to establish and administer the Oregon Industrial Site Readiness Program to enter into tax reimbursement arrangements with, and to make loans to, qualified project

sponsors for development of certified, regionally significant industrial sites. It allows the Department to forgive portions of loans in cases where the project sponsor contracts with an eligible employer. The bill limits loans forgiveness to the lesser of the percentage of eligible site preparation costs or the estimated incremental income tax revenues.

SB 253 - Passed

This bill creates the Oregon Industrial Site Readiness Assessment Program Fund and continuously appropriates moneys in the Fund to the Oregon Business Development Department (OBDD). The new program authorizes the Department to establish two competitive grant programs. The first grant program, which receives 80% of the funds available to the Oregon Industrial Site Readiness Assessment Program, provides funds to public entities to perform due diligence assessments and to create detailed development plans for regionally significant industrial sites that are publicly or privately owned. The second grant program, which receives 20% of available funds, provides funds to public entities to develop industrial land inventories and to prioritize sites for due diligence assessment and site preparation assistance. SB 253 restricts OBDD to operating the Oregon Industrial Site Readiness Assessment Program solely with monies specifically designated for that purpose by the Legislative Assembly. Because the bill does not specifically provide or designate monies for the program, it will not become operational unless funding for it is authorized in another bill.

Building Codes

SB 625 – Passed

SB 625 allows the Director of the Department of Consumer and Business Services (DCBS) or local building officials to determine whether a building, completed or in plans, meets the state building code standards including fire and life safety standards. The measure allows the State Fire Marshal or local fire officials to provide advice to local building officials or DCBS employees concerning state building code standards and requires the consideration of such advice, so long as it does not conflict with state building codes. The measure does not affect residential building plans or inspections.

HB 2698 - Passed

In 2009, the Legislative Assembly created a pilot program for the purposes of cross-training building inspectors so that an inspector could perform an inspection in more than one specialty code. These inspectors are referred to as specialized building inspectors. The pilot program, scheduled to sunset on January 1, 2016, was designed to address the shortage of building inspectors in some regions of the state, particularly in certain specialty codes. HB 2698 eliminates the sunset date on the program to continue the training, qualification and certification of specialized building inspectors.

SB 582 - Passed

This bill allows the Department of Consumer and Business Services (DCBS), at request of affected municipalities, to enter into agreement, combine resources, and share fee revenue with the local government for DCBS to assist local government to administer and enforce all or part of building inspection program for specified period or project. SB 582 directs DCBS to adopt rules that the Department will charge same fees and hourly rate for services that were charged by county before assumption of services by Department if Department assumes administration and

enforcement of county manufactured dwelling services, building inspection program or part of building inspection program when county abandons or is unable to administer programs due to budget constraints resulting from reduced or eliminated federal timber payments. It authorizes DCBS to take action necessary to ensure efficient and responsive state building code system, including utilizing and hiring municipal or Department personnel and expending resources for purposes of carrying out administrative and enforcement duties according to agreement.

SB 582 also requires the Director of Department of Consumer Business Services to give special consideration to needs of rural and remote regions when adopting state building code. The bill authorizes DCBS to provide plans and specifications for structures exempt from engineering and architect statutes and metal or wood frame Use and Occupancy Classification Group U structures. A building official or inspector will be permitted to provide plans and specifications for exempt structures.

Zoning

HB 2839 - Passed

This bill authorizes a public entity to rezone land within an urban growth boundary to a zoning classification allowing industrial uses and removes the requirement to pay landowner compensation if the industrial classification reduces the fair market value of property. It exempts certain landowners from entitlement to compensation if land is planned and rezoned to industrial zoning classification within urban growth boundary or is planned and rezoned for inclusion within urban growth boundary. The proponents were addressing vacant lands locked up on residential zones that are being underutilized; however, land commercially zoned is not exempt which is an issue BOMA may address in a future Legislative session.

Fund Sweeps

BOMA monitored several bills which would have provided the Legislature with statutory and constitutional authority to “sweep” funds from boards and agencies and transfer to the state’s General Fund. BOMA objects to sweeps of licensure or dedicated program funds such as the real estate transfer tax to be used by the Legislature for other programs and services.

This report has been prepared by BOMA’s government affairs advocates Bill Cross and Niki Terzieff.