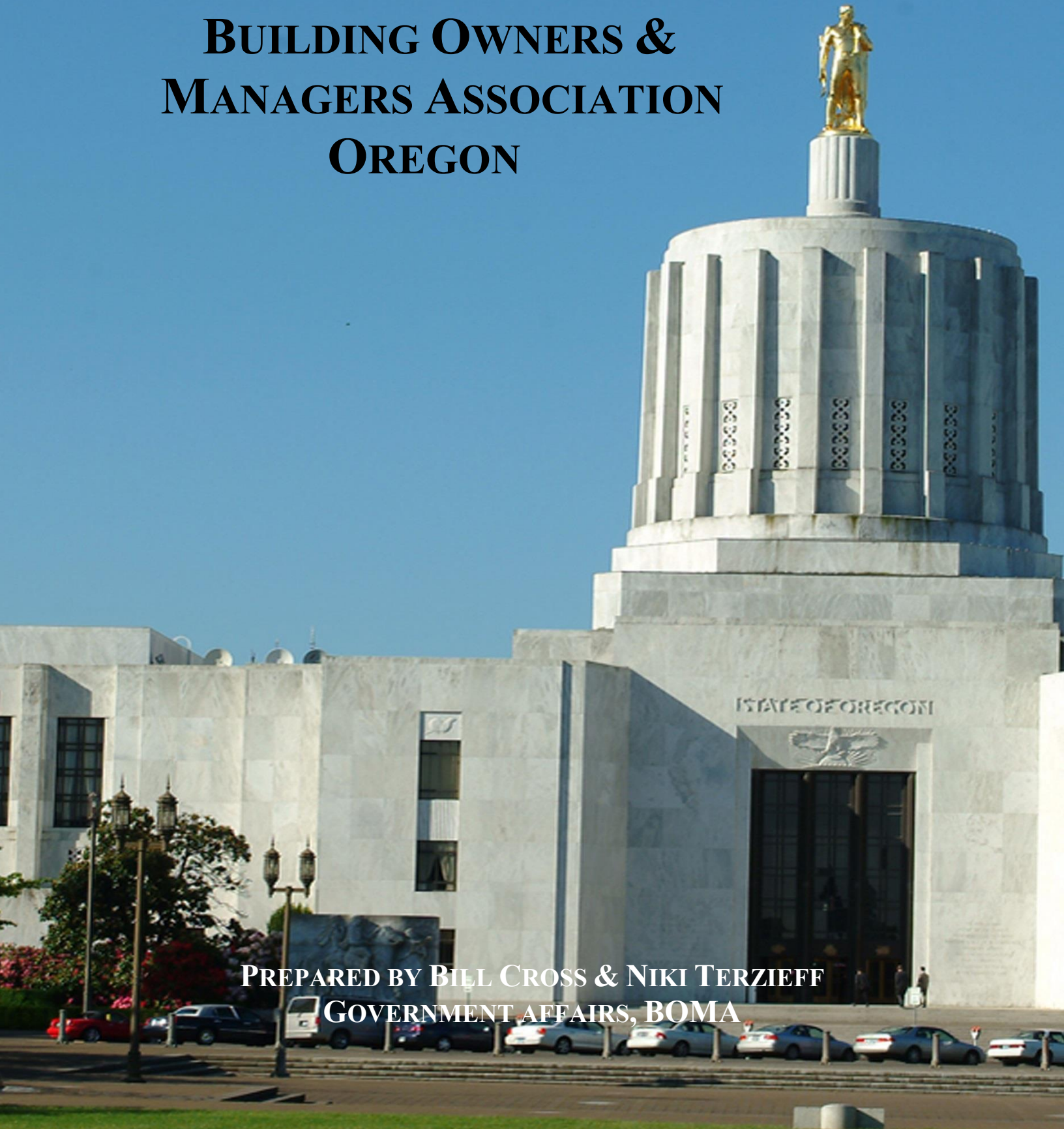


2015 LEGISLATIVE REPORT

BUILDING OWNERS & MANAGERS ASSOCIATION OREGON



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NOT WITH A BANG, BUT WITH A WHIMPER (T.S. ELLIOT)

The small troop of dogged Republicans still serving in the State Legislature were finally released the evening of Monday, July 6th - too late to truly celebrate Independence Day. After six months in Salem, the 25 House and the 12 Senate Republicans were sent home with their tails between their legs, whimpering that it was the “most partisan session in recent history.”

2015 saw a Legislative Session that liberals now laud as one that “put opportunity for working families first,” as characterized by Speaker Tina Kotek (D- North Portland) after adjournment last week. For a handful of Democrats who represent more conservative districts, however, the figurative red fern now sprouts where their political power once ran. Indeed, the fall of 2014 also ushered in the fall of former Governor John Kitzhaber. Before his unprecedented fourth term could even begin to take shape there was an explosion of transgressions and troubles emanating from the Executive Office.

Then First Lady of Oregon, Cylvia Hayes, found herself the centerpiece of his final reelection efforts - for all the wrong reasons. The shared vision for Oregon that these two had nurtured for years was shattered when Ms. Hayes’ missteps proliferated publicly - jeopardizing his legacy in a story line a kin to Fred Gipson’s [classic American tale](#). Kitzhaber’s historic resignation was made public immediately after Oregon’s 156th birthday, February 14th; hardly the Valentine’s Day gift anyone expected. As the Chicago Tribune Editorial Board noted in their [open letter](#) to flummoxed Oregonians: *We’ve lost a mess of governors to the seductions of money, cronyism, clout. We never lost one to love.*

In a transition that some Salem insiders describe as “bizarre” and “tragic,” the gates were then thrown open for Secretary of State Kate Brown to assume the Governorship. An unabashed liberal Democrat, Governor Brown struck a contrasting figure to her predecessor, raising further hopes for the newly energized majority in both chambers. Emboldened, Democrats pushed several key votes in the first days of this long Session, setting an initial tone of partisanship - some even asserted malfeasance. Daily there were public remonstrances and complaints by Republicans in the Senate and the House for what would amount to an overall charge of a hostile work environment.

¹ Realpolitik (from German: real "realistic", "practical", or "actual"; and Politik "politics", German pronunciation: [ʁeˈaːlpoliˌtiːk]) is politics or diplomacy based primarily on power and on practical and material factors and considerations, rather than explicit ideological notions or moral or ethical premises.

Democrats, however, maintain they felt the squeeze of Realpolitik.¹ Stuck between obstinate progressive interests and the looming election cycle (yes, already!), some felt their position difficult at best. In an attempt to thread the needle, leadership often indicated that they were concerned that a reach too far risked the very majority that allowed them to pass a slough of liberal, labor-and-lawyer focused legislation. Working to protect members under the Democratic Big Tent *and* honor perceived electoral commitments was unfortunately only seen by many social justice, environmental, education and union advocates as a slight and indefensible excuse for not being willing to exercise their majority to the fullest.

Oregon maintained its status as foremost in the nation for issues ranging from access to women's reproductive health care and firearm reforms, to fending off global warming and mandating paid sick-leave. Some issues, such as a comprehensive deal on much needed transportation funding, increase in affordability and attainability of working-family housing were staved off by powerful special interests who were able to leverage their relationships with some members of the middle. A hot-list of policies around the implementation of recreational marijuana, banning toxics from being sold in Oregon and the installation of an Earthquake Tsar were handled, though not gracefully, satisfactorily for another six months. Finally, other issues such as minimum-wage hike were left for another day, with the anticipation that the Democrats will not lose control of every branch of government - or just perhaps the U.S. congress will function.²

Although matters of the day in Salem are now complete, the short, 35-day February Legislative Session is right around the corner and there is much to be done ... and probably some to be undone, too.

² NOTE: Your Advocacy Team is not so naive to believe this will happen in the near future, but eternal optimists (and appreciative of an occasional glass of wine) we hope that this did not evoke too much of a bittersweet laugh.

BUILDING OWNERS & MANAGERS ASSOCIATION PRIORITIES

For the Building Owners & Managers Association, it was a fairly successful session considering the circumstances. *Sometimes success in the legislative arena is not measured by bills getting passed but by bills being stopped. Because of BOMA's legislative efforts, no legislation adversely affecting the commercial building industry specifically was passed in 2015.*

The Association's Legislative Team tracked nearly 90 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, staff and advocacy team whose collective efforts helped to enhance the Association's credibility and effectiveness in the Legislative arena.

Some of the more significant legislation that BOMA played an active role in during the 2015 Legislative Session included:

Minimum Wage Increase Legislation

HB 2009 and SB 327 - Failed

There were a number of bills introduced to increase the minimum wage in Oregon – typically in graduated steps over a three to four period to \$13.50 or \$15.00 per hour. Issues of wage disparity and providing family wage sustainability drove the legislation. Concern over the impact on the economy and jobs led BOMA to join with other business organizations to oppose the legislation. Labeled a “job killer” bill along with a number of other worker-friendly bills, we were successful in keeping it from going to either the House or Senate floor for a vote this session. However, this issue will likely be debated again in 2016. In the meantime, it also appears likely that there will be an initiative on the 2016 ballot to increase the minimum wage.

Paid Sick Leave Legislation

SB 454 – Passed

One of the few “employer mandate” bills to pass, SB 454 requires employers to provide sick time for employees. It requires sick time be paid if the employer has at least ten employees (except in Portland where the state will use the City of Portland's current threshold of six employees) and sets the minimum rate of accrual at one hour sick leave for every 30 hours worked. Under the legislation, an employee will be allowed to earn and use up to 40 hours sick leave per year. SB 454 requires employees to give advance notice of intent to use paid sick leave under certain circumstances and allows employers to require medical verification in certain circumstances. It prohibits retaliation or discrimination against an employee who inquires about or uses sick leave and classifies violations as unlawful practices under the jurisdiction of the Bureau of Labor and Industries. The bill also provides for private right of action and preempts local governmental authority on matters related to sick leave. SB 454 goes into effect on January 1, 2016.

Allows Liens on Personal Employer Property

SB 718 - Failed

The bill would have required employers to maintain time and pay records of terminated employees for three years from date of termination, to provide records to an employee if requested and to provide the employee with a written statement of reasons for termination. Designed to address wage theft issues, it would have modified information to be included in an itemized statement provided to the employee each pay period. SB 718 would have established a civil right of action for certain wage claims for unpaid wages, for violation of certain wage statutes and specified a formula to calculate civil penalties. It would have prohibited discrimination by an employer against an employee for certain actions taken by the employee related to wage claims. Most troubling, the bill would have created a dangerous and unfair precedent in the wage-and-hour arena by allowing employees to file liens on an employer's real or personal property based upon alleged, yet unproven, wage claims. BOMA joined with other business and industry advocates to successful defeat this legislation.

Seismic Preparedness Improvements

SB 85 - Passed

BOMA actively worked toward the adoption of this measure which permits local governments to develop financial programs to assist qualifying real property owners for seismic preparedness improvements. The bill conditions financial agreements on written notice to, and consent of, any effected mortgages as specified. The bill went into effect on its passage.

E-Cigarette Regulations

HB 2546 - Passed

The measure regulates inhalant delivery systems (e-cigarettes) including adding them to the Oregon Clean Air Act. BOMA was a part of the work group in 2014 that developed the legislation. E-Cigarettes cause public confusion as to where smoking is allowed, resulting in compliance - and possible perception - problems for building owners. Building owners are also very concerned that the vapor coming from e-cigarettes might be an annoyance or even health risk to non-smokers. Permitting employees to smoke e-cigarettes in buildings where smoking is not allowed may prompt non-smoking employee's question why they cannot smoke. In addition, a statutory change to the Clean Indoor Act would be welcomed by building owners with multiple tenants who can't just unilaterally prohibit e-cigarettes from their buildings. Each lease would have to be renegotiated individually which can be costly and create strife. However, statutory prohibitions are acknowledged in all leases. HB 2546 passed with overwhelming support in both chambers and was signed by the governor. While the bill went into effect upon its passage, the provisions regarding the Oregon Clean Air Act prohibitions won't go into effect until January 1, 2016.

Establish an Oregon Right to Rest Act

SB 629 - Failed

The bill would have established the Oregon Right to Rest Act. It enumerated rights of homeless persons in public spaces: to use, move freely, rest, take shelter, give/receive and eat food, meditate, engage in religious practice, and occupy vehicles, without harassment by law enforcement, security personnel or local government. SB 629 also would have created a private right of action and unlawful practice enforceable via Bureau of Labor and Industries. BOMA successfully opposed the bill this session but expect the sponsors to be back with something similar in 2016.

Ban the Box Legislation

HB 3025 – Passed

As approved by the Legislature, the bill forbids employers from asking about someone's criminal history on a job application form. Seen as a means of easing recidivism by making it easier for ex-convicts to find work, the bill was watered-down from the original proposal which would have forbid employers from conducting background checks until after a conditional job offer was on the table. Other amendments make clear that violations of the new law which will go into effect January 1, 2016, will be handled by the Bureau of Labor and Industries and not the civil court system.

Cease and Desist Legislation

HB 2386 - Failed

The bill would have subjected employers to potentially unjustified imposition of cease and desist orders by the Bureau of Labor and Industries, which, once issued, could require costly court proceeding to have removed. The bill was worked by the House Business and Labor Committee but could not secure enough votes on the House floor to pass.

Inclusionary Zoning Legislation

HB 2564 - Failed

This bill would have permitted local governments to impose conditions on approved permits that effectively establish sales price for up to 30 percent of residential development or limit purchase to class or group of purchasers in exchange for one or more developer incentives. Providing inclusionary zoning authority to local government was a priority for the House Speaker Tina Kotek and though the bill was approved in the House, it did not get out of the Senate Rules Committee due to opposition from the Oregon Home Builders Association, Oregon Realtors Association and BOMA. However, this issue will likely be revisited in 2016.

Mandates Predictive Scheduling

HB 3377 - Failed

This bill would have required the employer to establish a “mutually acceptable work schedule” upon an employee's request for a flexible or predictive work schedule. It would have mandated that employers provide alternative work schedules and included provisions for considerable advance notice before a shift in employee schedules. While the bill failed to get out of the House this session, it appears that legislation on predictive scheduling will likely be back in 2016 or 2017.

Disaster Preparedness Negligence

SB 775 – Passed

This bill makes it explicit that measures undertaken before a disaster to prepare for that disaster cannot be used as evidence of negligence. Evidence of measures taken or vulnerability assessments conducted before a natural disaster occurs that were intended to minimize the impact of, or plan for, the natural disaster will not be admissible to prove negligence or culpable conduct in connection with damage, harm, injury or death resulting from the natural disaster. This statute is in effect now.

Sit/Lie Regulations

SB 382 – 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). SB 382 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. Introduced by BOMA, the bill faced stiff opposition from the America Civil Liberties Union and advocates for the homeless and died in the Senate Judiciary Committee.

OTHER BILLS OF INTEREST

Low Carbon Fuel Standards

SB 324 – Passed

This bills repeals the sunset on provisions related to low carbon fuel standards and makes the adoption of rules by Environmental Quality Commission (Commission) on low carbon fuel standards mandatory. It extends the date by which standards to reduce the average amount of greenhouse gas emissions per unit of fuel energy of fuels by 10 percent below 2010 levels to the year 2025 or later if the Commission determines that the extension is appropriate. SB 324 authorizes the use of liquefied petroleum gas to meet the low carbon fuel standard and removes the requirement for the Commission to issue exemptions and deferrals to mitigate the cost of complying with low carbon fuel standards based on comparisons of fuel costs with Petroleum Administration for Defense District (PADD) 5 region costs. The Commission is required to adopt rules for managing and containing costs of compliance with standards, including but not limited to ensuring people may obtain and trade credits for fuels used as gasoline or diesel substitutes. The bill was among the most tortured and controversial of the session and its passage ended up killing any opportunity to secure the adoption of a comprehensive transportation construction package this session.

Electronic Building Permits

SB 133 – Passed

SB 133 removes the sunset and reauthorizes the electronic building codes permitting program. It also makes E-permitting available to additional local governments that provide construction-related services.

Interagency Agreements

HB 2843 – Passed

This bill 2843 authorizes DCBS and CCB to enter into interagency agreements to perform certain duties on each other's behalf. It provides terms for such agreements related to the use of each other's employees and information to carry out work under these agreements, the sharing of resources, the acceptance and transfer of fees and the reimbursement of expenses.

Modifies Pleading Requirements for Claims Against Design Professionals

Senate Bill 383 – Passed

SB 383 clarifies the certificate of merit statute by amending claim requirements. It does this by: 1) dropping “construction” from the term “construction design professional” to provide consistency as the term is used only in ORS 31.300; 2) defining “design professional” as a person registered under ORS chapters 671 (architects and landscape professionals) and 672 (engineers, land surveyors, photogrammetrists) or a person credentialed in another state; and 3) outlining what standards of professional skill and care a potential expert witness must address. The measure applies only to complaints, cross-claims, counterclaims and third-party complaints filed on or after January 1, 2016.

Regulating Hand Dryers

SB 488 – Failed

The bill was intended to address the needs of populations that have sensory sensitivities. SB 488 would have specified that new construction will only be allowed to have installed in restrooms hand dryers with a decibel level of no more than 84 decibels as identified on the manufacturer’s label. The same would have been true for existing buildings that renovate their restrooms and purchase new hand dryers. These hand dryer specifications would be added to the walkthrough list for inspections done by the Department of Consumer Business and Services. BOMA opposed the bill because currently there are no hand dryers that would meet the proposed standards.

Historic Property Rehabilitation Tax Credit

SB 565 – Failed

This bill would have created a personal and corporate income tax credit for contributions to the State Historic Rehabilitation Fund. The tax credit would be sold at an auction by the Department of Revenue and the State Historic Preservation Officer. It would have limited the amount of the tax credits to be sold at \$12 million per year. The tax credit is nonrefundable but has a five-year carry forward. It would have applied to tax years 2016 through 2021 and the money contributed to the Fund would be used to provide rebates to property owners who complete eligible material rehabilitation projects.

Vehicle Charging Infrastructure at Parking Facilities

HB 2577 – Failed

The bill would have made a legislative finding regarding the benefit of state building code requiring that new construction of certain parking facilities include electrical supply capacity and conduit system capable of supporting electrical vehicle charging.

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