

2016 OREGON LEGISLATION HIGHLIGHTS



PUBLISHED BY
OREGON STATE BAR
PUBLIC AFFAIRS DEPARTMENT

*Most bills passed during the 2016 session
have special effective dates. These dates are
noted in the description of each bill.*

*If a special effective date is not proscribed in a
bill, it takes effect on January 1, 2017.*

This handbook may be cited as:
2016 Oregon Legislation Highlights

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Published in the United States of America

Special Thanks to
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FORWARD

The annual *Oregon Legislation Highlights* offers a timely and authoritative resource to help lawyers catch up on the latest legislative developments.

This book highlights more than 50 bills and other measures that were passed by both houses of the legislature. This book does not describe all of the enacted legislation. *Unless otherwise noted, all legislation takes effect on January 1, 2017.*

The information in this book is organized into chapters by subject. If a bill has a special effective date, that date is noted at the end of the discussion of that bill. Please note that in some cases a bill may have more than one effective date. If in doubt about an effective date of a law, always check the enacting legislation.

Each bill is identified – in the chapter outline and in the text – by its bill number and its 2016 Oregon Laws chapter number. A table of bill numbers and Oregon Laws chapter numbers appears at the end of the book for a quick reference to the discussion in the text.

The legislature's website offers additional information that the reader of this book may find useful. This includes measure summaries written by legislative staff, and in some cases supporting documentation submitted during committee hearings. See www.oregonlegislature.gov for more information.

We are grateful to all who were involved in preparing this book. We are appreciative of the efforts of our volunteer authors, who take time away from their practices to contribute to this publication.

We would also like thank the staff of the Oregon Office of Legislative Counsel, both for their volunteer assistance editing and reviewing this publication, and for their ongoing support of the Oregon State Bar.

2016 Oregon Legislation Highlights

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Matt Barber
Judy Parker

Administrative Law

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ADMINISTRATIVE LAW

I. INTRODUCTION

The short session focused on only a few areas of administrative law – the state’s chief information officer, the Secretary of State, Indian Affairs, and a few miscellaneous bills. This chapter covers legislation from the 2016 session that affected state administrative agencies, the rights of individuals licensed by regulatory bodies, and how administrative agencies interact with each other. One significant administrative law bill that passed in 2016, [HB 4128](#), addresses the unlawful practice of law by self-styled “notaries.” Another, [HB 4117](#), revisits the licensure of landscape contractor professionals – an area substantially revised in 2015. Unless otherwise stated, all of the bills summarized in this chapter will take effect on January 1, 2017.

II. CHIEF INFORMATION OFFICER

1. [HB 4135](#) (Ch. 48) Public Records Requests

HB 4135 directs the State Chief Information Officer to develop standards and procedures for public records requests seeking records in electronic form. Effective January 1, 2017, the Department of Administrative Services shall apply these standards and procedures to coordinate the efforts of executive branch agencies in fulfilling public records requests.

HB 4135 took effect on March 14, 2016.

2. [SB 1538](#) (Ch. 110) Security Incidents

[HB 3099](#) (Oregon Laws 2015, Chapter 807) strengthens the state Chief Information Officer’s role and responsibility for information security. SB 1538 requires state agencies to notify the Legislative Fiscal Office of information security incidents and describe how the agency will respond to and recover from an information security incident. State agencies must conduct annual security assessments and share the results with the Joint Legislative Committee on Information Management and Technology.

SB 1538 has an emergency clause and effective date of April 4, 2016. However, the bill have an operative date of July 1, 2016.

3. [SB 1539](#) (Ch. 16) State Contracting Agencies

SB 1539 amends [ORS 279B.030](#) to require all state contracting agencies provide the Legislative Fiscal Office and the state Chief Information Officer with final feasibility determinations and final cost analyses prepared in connection with a procurement for information technology services. In addition, it authorizes the state Chief Information Officer is

required to adopt rules and develop policies for incorporating these analyses into the Officer's information technology oversight and planning functions.

SB 1539 took effect March 3, 2016. The amendments to ORS 279B.030 take effect on June 2, 2016.

III. HEALTH BOARDS

1. [HB 4016](#) (Ch. 5) Health Profession Licensing Boards

Currently, the Oregon Health Authority contracts with one vendor, Reliant Behavior Health, to provide the monitoring for substance abuse and mental health services to the state's health professional licensees through the Health Professionals' Services Program. HB 4016 amends [ORS 676.190](#) to allow the Board of Dentistry, the Board of Nursing, the Board of Pharmacy, the Medical Board and others, to contract directly with a vendor to provide monitoring services as of July 1, 2017. It also creates an Impaired Health Professional Program Work Group, staffed by the Oregon Medical Board, to facilitate the creation and continuation of the impaired health professional program.

HB 4016 took effect March 1, 2016. The amendments to ORS 676.190 become operative on July 1, 2017.

2. [HB 4095](#) (Ch. 41) Board of Dentistry

HB 4095 creates a new process in [ORS chapter 679](#). If an individual is disciplined by the Oregon Board of Dentistry, he or she can request that the board remove from its website, and other publicly available print and electronic publications, all information related to disciplining the individual under [ORS 679.140](#), and any findings or conclusions made by the Board during the disciplinary proceeding, if:

- More than ten years have passed since the discipline,
- The individual was not disciplined for physically or financially harming a patient,
- The individual self-reported the matter,
- The individual has not been subjected to subsequent disciplinary action, and
- The individual complied with all sanctions imposed by the Board.

The bill further directs the Board to adopt rules for making a request to remove an individual's disciplinary information and to notify licensed dentists of the process for making a request.

HB 4095 took effect March 14, 2016.

ADMINISTRATIVE LAW

IV. SECRETARY OF STATE

1. [SB 1583](#) (Ch. 25) Office of Small Business Assistance

The Office of Small Business Assistance was created in 2013 by [HB 3459](#). The Office is tasked with facilitating interactions between small businesses and the state. SB 1583 expands that authority for the Office to coordinate with and assist county and municipal agencies to help small businesses.

SB 1583 took effect March 8, 2016.

V. INDIAN AFFAIRS

1. [HB 4097](#) (Ch. 122) Office of Emergency Management

The Confederated Tribes of the Warm Springs Reservation, a sovereign nation within the State of Oregon's borders, operates one of the many Public Safety Answering Points (PSAP), an emergency communications system, in Oregon. The Department of Justice raised concerns that Oregon's Office of Emergency Management lacked statutory authority to deal with a PSAP which is operated by a sovereign nation within the state's borders.

HB 4097 addresses this concern by authorizing the Office of Emergency Management to enter into an agreement with the Tribe to participate in an emergency communications system serving an area that includes the Warm Springs Indian Reservation.

The bill took effect on April 7, 2016.

2. [SB 1528](#) (Ch. 108) Commission on Indian Services

The Commission on Indian Services is comprised of four legislative members and nine tribal members, each serving a two-year term. All members of the Commission, including the tribal members, are appointed by the Speaker of the House and the Senate President.

SB 1528 amends [ORS 172.110](#) to provide that the Commission's tribal members will now be selected by their respective tribal governing bodies. The amendments to ORS 172.110 also provide that if the tribal members are attending federal or tribal meetings, events, or ceremonies together, they do not constitute a quorum of the Commission.

SB 1528 took effect on April 4, 2016.

VI. MISCELLANEOUS

1. [HB 4117](#) (Ch. 45) Landscape Contracting

[HB 3304](#) (Oregon Laws 2015, Chapter 652) required the Landscape Contractors Board to offer applicants for a landscape construction professional license under [ORS 671.570](#), or a limited or specialty license under [ORS 671.560](#), the option to satisfy the applicable examination requirements by taking an alternate practical skills exam, rather than taking the existing Board-approved written exam and the board's business practices class. The Board formed a committee to guide its implementation of HB 3304, which recommended that the Board prune back the use of alternative practical skills exams and, instead, maintain the same Board-approved written exam.

During the 2016 session, legislators grafted recommendations from several state and national landscaping organizations onto what would become HB 4117. The bill changes the Oregon's licensing landscape again – now, the Landscape Board will offer a practical skills examination for at least two of the types of limited or specialty licenses offered under ORS 671.560 at least once every twelve months. If the Board establishes a practical skills examination for a license it issues, then it must allow applicants the option of satisfying the examination requirement by either taking the standard written exam, or the alternative practical skills examination.

HB 4117 amends ORS 671.561 to provide that the Board's practical exam may include a written component and that applicants who choose to take the practical skills exam may also take the Board's approved business practices class. The legislature also clarified that the Board may not include in a limited or specialty license applicant's practical skills examination tasks that are not authorized by the type of license the applicant seeks.

HB 4117 took effect March 14, 2016. Landscape licensing has proven a fruitful area for legislative review. We anticipate that the Board's report next year will be seeded with more ideas for licensing examinations, such as possibly allowing the Board to include a practical skills component on the written examination.

2. [HB 4121](#) (Ch. 99) Construction Contractors Board

In 2011, [SB 939](#) modified the dispute resolution services program in the Construction Contractors Board. This process requires customers aggrieved by residential contractors to participate in mediation conducted by the Board. If a contractor follows the Board's recommendations during the mediation, the Board must consider that fact during any subsequent disciplinary process. If the mediation fails, and the parties cannot resolve or settle their complaint, then the customer can only recover payment from the contractor's bond by obtaining a final judgment. After receiving a court judgment, the customers must submit that judgment to the Board and to the contractor or the contractor's surety.

ADMINISTRATIVE LAW

SB 939 was originally enacted as a six year pilot program. Since that time the Board has determined that the new process is more effective than the previous system. HB 4121 therefore lifts SB 939's sunset and makes the new process permanent.

3. [SB 1591](#) (Ch. 62) Department of Consumer and Business Services

Oregon's Department of Consumer and Business Services (DCBS) maintains records of any complaints against insurance carriers. Complainants and their records are confidential and may not be used in any action, suit, or proceeding, except to the extent the director of the DCBS considers necessary to prosecute violations of the Insurance Code or other laws.

Section 1 of SB 1591 amends [ORS 731.264](#) to allow the director to provide requesters with information about complaints against insurers for any unfair claim settlement practices described in [ORS 746.230](#), but the director must first remove information that could identify the complainant.

SB 1591 will take effect on July 1, 2016. The amendments to ORS 731.264 made by section 1 of SB 1591 become operative on January 1, 2017, and have a sunset date of January 1, 2021.

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Matthew Shields
Amy Zubko

Business and Employment

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| 2. HB 4058 | (Ch. 39) | Compliance with Shareholder Disclosure Requirements |
| 3. SB 1532 | (Ch. 12) | Minimum Wage Increase |
| 4. SB 1587 | (Ch. 115) | Employee Pay Statements |

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Amy Zubko: 2007 University of Oregon Law School. Member of the Oregon State Bar since 2007.

BUSINESS AND EMPLOYMENT

I. INTRODUCTION

This chapter covers bills related to corporate and business law, as well as to Labor and Employment law, including changes to Oregon’s minimum wage. Unless otherwise specified, all bills take effect on January 1, 2017.

II. BUSINESS AND EMPLOYMENT

1. [HB 4038](#) (Ch. 2) Shareholder Electronic Voting

During the 2015 session, legislators passed Senate Bill 35 which permitted members of cooperatives to vote electronically if a cooperative’s bylaws allowed electronic voting.

HB 4038 allows not only members of cooperatives to vote electronically, it also allow shareholders of cooperatives to vote by electronic means, provided that the method of voting complies with Oregon’s Uniform Electronic Transaction Act.

HB 4038 took effect on February 29, 2016.

2. [HB 4058](#) (Ch. 39) Compliance with Shareholder Disclosure Requirements

Corporations which have shares registered under Oregon or federal securities laws are permitted to reject a vote, consent, waiver, or proxy authorization if a shareholder has not complied with public disclosure requirements under either Oregon or federal securities law.

Under HB 4058, corporations are required to reject the actions of noncompliant shareholders. If a shareholder complies with the disclosure requirements, the corporation is required to accept the actions of the shareholder.

HB 4058 took effect on March 14, 2016.

3. [SB 1532](#) (Ch. 12) Minimum Wage Increase

Senate Bill 1532 replaces the uniform state minimum wage in Oregon with separate minimum wage scales which increase every year for each of three defined regions of the state.

One rate applies only within the urban grown boundary of the Portland Metropolitan Area. Another rate applies in 18 enumerated “nonurban” counties. A base rate applies to the rest of the state. The 18 “nonurban” counties with the lowest minimum wage are: Baker, Coos, Crook, Curry, Douglas, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wheeler.

BUSINESS AND EMPLOYMENT

Date range	(1) "Base rate" for areas not in columns 2 or 3	(2) Rate for urban growth boundary of Portland Metropolitan Area	(3) Rate for "Nonurban" counties
July 1, 2016, to June 30, 2017	\$9.75	\$9.75	\$9.50
July 1, 2017, to June 30, 2018	\$10.25	\$11.25	\$10
July 1, 2018, to June 30, 2019	\$10.75	\$12	\$10.50
July 1, 2019, to June 30, 2020	\$11.25	\$12.50	\$11
July 1, 2020, to June 30, 2021	\$12	\$13.25	\$11.50
July 1, 2021, to June 30, 2022	\$12.75	\$14.00	\$12
July 1, 2022, to June 30, 2023	\$13.50	\$14.75	\$12.50
After July 1, 2023	Adjusted based on CPI	+ \$1.25 base rate	-\$1 base rate

After June 30, 2023, the base rate will be adjusted based on the consumer price index, with Portland’s rate \$1.25 higher than the base rate and the nonurban county rate \$1 lower than the base rate.

SB 1532 took effect on March 2, 2016.

4. [SB 1587](#) (Ch. 115) Employee Pay Statements

SB 1587 makes several changes regarding what information must be included on an itemized pay stub. Under the bill employers must include several additional pieces of information including dates of work covered by the payment, the rate of pay, gross and net pay, and any allowances or deductions made from the pay. The bill permits the pay statement be provided electronically with the consent of the employee.

BUSINESS AND EMPLOYMENT

The bill also requires that employers maintain time and pay records for both current and terminated employees for the period of time required by the federal Fair Labor Standards Act, and provide an employee the opportunity to inspect such records within 45 days of a request.

SB 1587 took effect on April 4, 2016.

Criminal Law

I. INTRODUCTION

II. CRIMINAL LAW AND REGULATION

1. HB 4066 (Ch. 72) Regulation of Drones
2. HB 4082 (Ch. 10) Promoting Prostitution
3. HB 4142 (Ch. 50) Private Security Professionals
4. SB 1567 (Ch. 22) Criminal Impersonation
5. SB 1571 (Ch. 89) Sexual Assault Forensic Evidence Kits
6. SB 1600 (Ch. 120) Statute of Limitations for First Degree Sex Crimes

Channa Newell: 2010 University of Oregon Law School. Member of the Oregon State Bar since 2010.

CRIMINAL LAW

I. INTRODUCTION

This chapter includes primarily bills affecting specific crimes and criminal procedures. It also includes 2016's "drone bill", which while primarily regulatory in nature includes criminal penalties. Unless otherwise noted, all bills take effect on January 1, 2017.

II. CHIEF INFORMATION OFFICER

1. [HB 4066](#) (Ch. 72) Regulation of Drones

An unmanned aircraft system (UAS), often referred to as a drone, is an unmanned flying machine that can range in size from a small bird to a small aircraft.

During the 2013 session, the Oregon Legislature enacted [House Bill 2710](#), which provides guidance and restrictions on the use of drones within Oregon. HB 2710 drew a distinction between UASs and model aircrafts. The measure restricted law enforcements' use of UASs to situations in which law enforcement has a warrant, has obtained consent, or for search and rescue and emergency situations. HB 2710 prohibited public bodies from weaponizing UASs and created a new felony for using a drone to fire a bullet or other projectile at another aircraft while in the air. It also created a civil right of action for individuals who do not want UASs operated over their property. In order for the private right of action to come into effect, the UAS operator must have flown the machine over the property on at least one prior occasion and have received notice from the owner or lawful occupier of the property that the owner or occupier does not wish for flights over their property. The private right of action does not apply to UASs in take-off or landing, or those on lawful flightpaths for landing or takeoff at an airport or runway. Finally, HB 2710 required all UASs operated by public bodies to be registered with the Department of Aviation.

House Bill 4066 addresses continued concerns raised by the growth in UAS use by public bodies and the general public. The measure applies a prohibition on weaponizing UASs to all users and creates a new violation for interfering with the flight of another aircraft. Under the bill, it is a Class A misdemeanor to operate a weaponized UAS.

HB 4066 also requires public bodies that use UASs to develop policies and procedures for safeguarding the information gathered from UAS operations. Finally, the measure allows flights over private property by Federal Aviation Administration authorized UASs and creates a violation for flying a UAS over a critical infrastructure, such as a power station, chemical plant, dam, or prison, unless there is prior written permission.

HB 4066 took effect March 29, 2016.

2. [HB 4082](#) (Ch. 10) **Crime of Promoting Prostitution**

Prior to enactment of House Bill 4082, a person committed the crime of promoting prostitution if the person:

- Knowingly owns or maintains a place of prostitution
- Induces or causes a person to engage in prostitution or remain in a place of prostitution; or
- Receives or agrees to receive money or property derived from prostitution, other than compensation to the prostitute.

The crime of promoting prostitution is a Class C felony.

House Bill 4082 adds new language to the description of the crime of promoting prostitution to include receiving or agreeing to receive goods, services, or something else of value that is derived from prostitution. This change is necessary to allow law enforcement to charge a person with promoting prostitution in cases in which prostitution is bartered for goods or services and money or property does not change hands.

3. [HB 4142](#) (Ch. 50) **Private Security Professionals**

The Department of Public Safety Standards and Training is responsible for certifying a wide range of law enforcement and security service professionals, including private security professionals. Unarmed private security professionals must have at least a high school diploma or GED and pass a background check and complete a 14 hour live classroom training. By contrast, basic police training requires successful completion of a 640 hour (16 week) Basic Police Course.

House Bill 4142 prohibits a company that employs private security professionals from using a name that implies the company is associated with a law enforcement agency. This restriction was created in order to prevent misrepresentation to the public. The bill grandfathers in businesses currently in operation and provides rulemaking authority to the Board of Public Safety Standards and Training on the issue.

HB 4142 took effect March 14, 2016. Sections 1 and 2 become operative on July 1, 2016.

4. [SB 1567](#) (Ch. 22) **Criminal Impersonation**

Criminal impersonation is when a person intentionally poses as another and by so doing induces a third party to act upon that representation without the knowledge or consent of the victim and with the intention to injure the victim. Oregon's statutory crime of identity theft, [ORS 165.800](#), prohibits impersonating another with the intent to deceive or defraud and has been interpreted by the Court of Appeals to include a financial element.

CRIMINAL LAW

The financial component has resulted in some instances of prosecutors being unable to charge a person who impersonates another with the intent to humiliate or harass. For example, a person may not have committed identity theft if the person impersonates an individual and invites third parties to the individual's home to engage in sexual activity, even though the individual did not know of or consent to the impersonation or the invitation for sexual activity.

Senate Bill 1567 creates a new crime of criminal impersonation that applies when a person impersonates another to a third person with the intent to injure, humiliate, or harass. The new offense is a Class A misdemeanor. It also creates a statutory private cause of action for victims harmed by this impersonation.

Additionally, the phrase "criminal impersonation" currently used in [ORS 162.365](#) is renamed "criminal impersonation of a public servant".

5. [SB 1571](#) (Ch. 89) Sexual Assault Forensic Evidence Kits

Sexual assault forensic evidence kits (SAFE kits) are the collection and retention system for obtaining DNA evidence following an allegation of rape or sexual assault. A victim provides evidence for the kit through a lengthy, and often invasive, medical examination. After collection, the kits are collected by law enforcement and sent to the Oregon State Police for testing. According to an inventory completed by the Oregon State Police in September of 2015, there are approximately 5,652 untested SAFE kits in Oregon. Processing these kits may assist in identifying sexual assault suspects and in prosecuting sex crimes.

Senate Bill 1571 requires the Department of State Police to adopt rules for the processing of untested kits. Anonymous kits, or those submitted by individuals who do not wish to participate in or are undecided on participation in prosecution of the sexual assault, are exempted from the testing requirement. The measure appropriates \$1.5 million from the General Fund to the Oregon State Police Forensic Division to add staff capacity to process additional sexual assault forensic evidence kits. The measure further provides that by July 1, 2018, the Department will ensure that upon completion of testing, any results will be immediately entered into the Combined DNA Index System.

The measure requires every law enforcement agency in Oregon implement procedures regarding the collection, testing, retention, and destruction of sexual assault forensic kits. These procedures must include requirements that kits are obtained from the medical facility within seven days and provided to the Department of State Police for testing within 14 days. All kits, including anonymous kits, must be held for no less than 60 years. Additionally, each law enforcement agency must adopt procedures for providing information to victims concerning sexual assault forensic evidence kits, including that a single person be designated within an agency to receive all telephone inquiries regarding kits and to serve as a liaison to the Department of State Police.

Additionally, SB 1571 creates a Task Force on the Testing of Sexual Assault Forensic Evidence Kits. It sets forth membership of the task force, including two members of the Senate, two members of the House of Representatives, and 12 members appointed by the Governor. The Task Force is charged with examining the process for gathering and testing sexual assault forensic evidence kits and identifying grants and funding opportunities to offset the costs associated with this process. The Task Force must submit a report with recommendations for legislation to the interim Committees on Judiciary no later than December 1, 2018. The Task Force sunsets on June 30, 2019.

SB 1571 takes effect on March 29, 2016 with the exception of Section 4 which has an operative date of January 1, 2017.

6. [SB 1600](#) (Ch. 120) Statute of Limitations for First Degree Sex Crimes

SB 1600 provides that the prosecution may bring a charge for a first-degree sex crime at any time, if they have obtained additional corroborating evidence of the crime after the statute of limitations has expired.

The bill specifies the types of corroborating evidence that are required in order to be permitted to charge after the SOL has run. Acceptable forms of corroborating evidence include:

- Physical evidence other than a DNA sample.
- A confession of a defendant.
- An oral or written statement made by the victim in temporal proximity to the commission of the crime.
- A report made by a different victim to a law enforcement agency alleging that the defendant committed another crime of the same or similar character such that the two crimes could be charged in the same charging instrument.

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Diane Henkels
Alexander Wall

Environment and Sustainability

I. INTRODUCTION

II. ENVIRONMENT AND SUSTAINABILITY

1. HB 4040 (Ch. 36) Gray Wolf Delisting Bill
2. HB 4046 (Ch. 37) Increased Penalties for Unlawful Taking of Wildlife
3. SB 1547 (Ch. 28) Elimination of Coal from Oregon Electric Supply

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ENVIRONMENT AND SUSTAINABILITY

I. INTRODUCTION

The major piece of environmental legislation passed in 2016 was SB 1547, which focused on renewable portfolio standards and the elimination of coal generated electricity in Oregon. This chapter covers that bill as well as two wildlife and hunting bills, including the Gray Wolf Delisting bill. Unless otherwise specified, bills take effect on January 1, 2017.

II. ENVIRONMENT AND SUSTAINABILITY

1. [HB 4040](#) (Ch. 36) Gray Wolf Delisting Bill

House Bill 4040 ratified a decision previously made by the State Fish and Wildlife Commission to remove gray wolves from the state endangered species list. The gray wolf is still listed as endangered under the federal Endangered Species Act in western and central Oregon.

At the time of passage, there were legal challenges to the Commission's decision to remove gray wolves from the state list of threatened or endangered species.

SB 4040 took effect on March 14, 2016.

2. [HB 4046](#) (Ch. 37) Increased Penalties for Unlawful Taking of Wildlife

House Bill 4046 makes a number of changes. It increases the statutory damages for unlawful taking a wide variety of wildlife. In addition, specifies that each single animal killed unlawfully constitutes a separate unlawful taking under the statute.

The bill further requires that the Fish and Wildlife Commission revoke all licenses, tags and permits issued to a person who commits a number of named offenses, and subjects repeat offenders to forfeiture of guns, traps, vehicles and other implements used in unlawful takings.

3. [SB 1547](#) (Ch. 28) Elimination of Coal from Oregon Electric Supply

SB 1547 establishes a statutory framework for electricity providers to eliminate coal from Oregon's electricity supply by January 1, 2030 and increase the Renewable Portfolio Standard ("RPS"). This bill amends [ORS 469A.052](#) by gradually increasing the requirement of deriving electricity from renewable energy -generated electricity provided by large electric companies (who serve more than 3% of the state's electricity consumers) to 50% by 2040. The renewable sources of electricity identified as "qualifying electricity" remain the same as in the original RPS legislation.

To achieve its purpose, the bill covers multiple major topics amending certain existing statutes and adding new provisions. The bill provides for a modification of the depreciation schedule of coal plants, amends provisions related to acquisition of electricity service territories, adds to the existing RPS compliance schedule, requires implementation planning, adjusts Renewable Energy Credit (REC) banking and allows using bundled and unbundled RECs to satisfy the requirements, identifies related expenditures as prudent for purpose of cost recovery, incorporates a mechanism to ensure electric grid reliability, reaffirms the role of energy efficiency, mandates and otherwise amends the community-based renewable energy goal, enables community solar with a low income reservation, and promotes transportation electrification.

Similar to the original RPS legislation, the Oregon Public Utility Commission (“PUC”) oversees implementation of this new legislation to further implement and ensure conformity with the rest of the statute. Oregon Department of Energy will continue to manage the REC-related matters.

The requirements of the legislation apply to electric companies as defined in [ORS 757.600](#), which are entities engaged in the business of distributing electricity to retail electricity consumers in this state. The requirements only address consumer-owned utilities in certain circumstances. A definition of “acquires service territory” is included in Section 3 to facilitate the acquisition of the facilities and infrastructure by electric companies. Section 8 amends [ORS 469A.055](#) to adjust the rules relating to acquisition of service territory so that smaller electric utilities that surpass the 3% market threshold by acquiring more service territory will then become subject to the RPS. The statute also applies the RPS requirement to consumer-owned utilities and electric utilities if they acquire the territory of other electric utilities without their consent, and prevents a municipal electric utility from acquiring territory of a people’s utility district organized under [ORS Chapter 261](#). Sections 17 and 18 are intended to prevent cost shifting associated with the loss of service territory of an electric company from a consumer-owned electric utility to an electric company. These sections also require any projected state or federal production tax credits to be included in an annual forecast of said credits for the purpose of being included in the forecasting of any rates by the PUC.

The compliance schedule to achieve a 50% RPS is set forth in Section 5 and summarized as follows: 5% - 2011-2014, 15% - 2015-2019, 20% - 2020-2024, 27% - 2025-2029 (25% for consumer-owned utilities), 35% - 2030-2034, 40% - 2035-2039, and 50% - 2040.

Section 6 adds requirements for planning and evaluating competitive bidding processes. Electric companies subject to the bill must submit implementation plans every two years detailing how they plan to comply and include, among other information, the estimated cost of meeting the targets. Planning is subject to public comment and PUC acknowledgment process. The section recognizes the overlap with the Integrated Resource Planning that already occurs regularly which identifies least-cost least-risk acquisition of resources. As in the original RPS legislation, this legislation provides for competitive bidding allowing for diverse ownership of the renewable generation sources.

ENVIRONMENT AND SUSTAINABILITY

Regarding cost recovery, the amendments maintain the 4% cost cap from the original legislation in [ORS 469A.100](#), but amend the existing cost recovery rules to allow additional costs be considered “prudent” investments. Costs may include construction of renewable energy projects, related transmission, interconnection, distribution infrastructure, and energy storage incurred in complying with the Renewable Portfolio Standards. Cost recovery and automatic adjustments may be contested by interested persons.

Sections 12 and 13 of the bill allow electric companies to seek exemptions from compliance with the statute in order to maintain electricity grid reliability per the North American Electric Reliability Corporation. The PUC will decide whether or not to allow such exemption, and any exemption granted would be temporary and require the company to file a six-month progress report.

The bill amends [ORS 469A.210](#) which had set an 8% goal of the RPS be met with community-based renewable energy consisting of PURPA-regulated projects of 20 MW or less. PURPA, or the federal Public Utility Regulatory Policies Act of 1978 and its state counterpart [ORS 758.505-758.555](#), regulates independent power producer generation sales to utilities. The current version mandates this goal but changes how the 8% should be counted from nameplate to aggregate capacity, and specifies that biomass co-generation facilities may also satisfy the obligation.

An energy efficiency provision in Section 19 restates existing energy efficiency policy.

A major portion of the bill, in Sections 20 and 21 covers the Transportation Electrification Program. Several legislative findings support the purpose of increasing the use of electric vehicles by providing that electrification is a necessary step to reduce the use of fossil fuels. The findings also identify the electric companies as necessary partners in the promotion of the use of electric vehicles. The electric companies are required to submit programs to the PUC designed to increase ownership of electric vehicles and spur innovation and competition, providing consumers with choices in charging equipment, vehicles, and charging facilities. This section of the bill also authorizes the PUC to reject additional funding if market barriers exist that are preventing the use of electrification infrastructure such that unrecoverable stranded costs would result. The legislation applies to infrastructure installed on or after July 1, 2016, and applications for the transportation electrification are due from the utilities/electric companies by December 31, 2016.

A Community Solar Project Program is created in Section 22 which also authorizes the PUC to implement rules for the program. Among other requirements, the program shall include:

ENVIRONMENT AND SUSTAINABILITY

- Eligibility requirements for community solar,
- Certification of program and project managers,
- Rules or orders requiring electric companies to enter into 20-year power purchase contracts with community solar projects,
- Provide incentives for consumers to be owners or subscribers, and
- Provisions that minimize cost-shifting to ratepayers who are not participants.

Community solar projects must be located in Oregon, available to consumers in Oregon, within the territory of electric companies, and must generate 25 kilowatts at a minimum. The section also provides guidelines for the sharing of ownership of community solar projects, and requires electric companies to credit electricity bills for the value of electricity generated. The PUC must complete rulemaking to implement community solar by July 1, 2017, and must report to the Legislature regarding community solar projects by January 1, 2019.

Finally, the PUC is responsible for investigating and reporting on impacts of the RPS on rates, greenhouse gas emissions, reliability, risk, cost recovery, and the resource procurement process during 2020 or 2021.

SB 1547 took effect on March 8, 2016. Some sections, however, have different operative dates.

5

Susan Gary
Eric Wieland
Walker Clark

Estate Planning and Probate

I. INTRODUCTION

II. ESTATE PLANNING AND PROBATE

1. HB 4102 (Ch. 42) Probate Modernization
2. SB 1554 (Ch. 19) Uniform Fiduciary Access to Digital Assets Act

Susan Gary: 1981 Columbia University School of Law. Member of the Oregon State Bar since 1989.

Eric Wieland: 2006 University of Missouri School of Law. Member of the Oregon State Bar since 2006.

Walker Clark: 2014 University of Oregon Law School. Member of the Oregon State Bar since 2015.

ESTATE PLANNING AND PROBATE

I. INTRODUCTION

This short chapter contains two important bills of consequence to attorneys who practice in the areas of estate planning and probate law. Both the Probate Modernization bill and the Digital Assets bill are the products of efforts that have gone on for several sessions, and which attracted wide interest from practitioners.

II. ESTATE PLANNING AND PROBATE

1. [HB 4102](#) (Ch. 42) Probate Modernization

HB 4102 was a product of the Probate Modernization Work Group of the Oregon Law Commission. As the name suggests, the bill was intended to update and modernize the rules of probate in Oregon.

A. Definitions

HB 4102 updates a number of definitions in [ORS 111.005](#):

Advancement. In the common law, the doctrine of “advancement” developed to indicate when a gift received during life would reduce the share the donee would otherwise receive in intestacy. The terms “satisfaction” and “ademption by satisfaction” were used for a similar situation when the decedent died testate. The ORS has codified these doctrines, with Chapter 111 using the term advancement for intestate situations and Chapter 112 using the term satisfaction for testate situations.

Increasingly the term advancement has come to be used, by practitioners and others, to cover both situations. HB 4102 changes the terminology in the statutes to conform to common usage. The amended definition applies the term to testate and intestate situations. The bill also makes changes in the sections that provide the substantive rules for advancement and satisfaction.

Decedent. HB 4102 deleted the limitation that a “decedent” refers to a person who has died “leaving property that is subject to administration.” In most situations covered by the statutes the decedent will have left property subject to administration, but a probate proceeding might be opened in a wrongful death action for a decedent who left no probate property. The term should be clear in context without the limiting language.

Descendant/Issue. HB 4102 replaces the term “issue” with the term “descendant” throughout the statutes. Descendant is the word more commonly used in modern

documents. The definition of issue remains in the statutes, because many older documents will continue to use the term. The definition of descendant will continue to confirm that the term includes adopted children.

Devise (as a noun), devise (as a verb), and devisee. These definitions were changed to delete references to legacy, bequest, bequeath, legatee and beneficiary. There is no intent to change the meaning of the definition. Rather, the extra words were deemed unnecessary.

Funeral. Most people and their lawyers think that the word “funeral” includes a memorial service and not just the disposition of remains. The definition now makes that clear.

Heir. The definition was amended to clarify that an “heir” can be determined whether a person is living or deceased. A living person’s heirs do not take property, of course, but may be identified for other purposes. The clause confirming that the term heir can include a surviving spouse was removed as unnecessary and no change is intended by the removal of the unnecessary words.

B. Probate Commissioners

HB 4102 amends [ORS 111.175](#) to require that any deputy commissioners be appointed by the judge, and not by the probate commissioner as under current law. The revision requires that the judge prescribe the duties and responsibilities of the probate commissioner and any deputies by rule or order, to avoid uncertainty about the authority of the probate commissioner.

[ORS 111.185](#) lists several things a probate commissioner or deputy may do, if authorized by the judge, and the bill adds the authority to appoint court visitors to the list.

Further revisions to ORS 111.185 clarify the rule that a judge can set aside or modify any order or judgment made by a probate commissioner or deputy within 30 days. The judge can act on his or her own or in response to an objection. The bill adds a subsection clarifying that any interested person may object to an order or judgment within 30 days, without going through a full-scale appeals process.

C. Harmless Error

Technical corrections have been made to the provisions that indicate who should receive notice of a petition to provide better coordination with the notice provisions of Chapter 113. Also, the bill deletes a subsection that was included in this section in error (former subsection (4)). In addition, a new subsection clarifies that after a will is admitted to probate under [ORS 112.238](#), an interested person can still challenge the

ESTATE PLANNING AND PROBATE

will under any ground for a will contest provided under [ORS 113.075](#), other than ineffective execution, within the time provided by ORS 113.075.

Changes to [ORS 112.045](#) (intestacy) and 112.238 (harmless error) took effect on March 14, 2016. The remainder of the amendments will be effective January 1, 2017.

2. [SB 1554](#) (Ch. 19) Uniform Fiduciary Access to Digital Assets Act

The term “digital assets” incorporates both a person’s digital property and their electronic communications. This can include Facebook accounts, online banking, email accounts, photos stored on the “cloud,” Instagram and Twitter feeds, just to name a few. Access to these assets is generally controlled by a terms-of-service agreement as opposed to traditional property law, which has proved troublesome once the user dies. The companies that store these assets, referred to as “custodians,” are often hesitant to give access to the personal representative of the deceased and would frequently only grant access pursuant to a court order. This can draw out the probate process and increase the overall costs, not to mention add frustration to an already emotional time period in someone’s life.

HB 1554 adopts the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) to address this problem. Under the act, users can now dictate what they want to happen to their accounts once they die or become incapacitated. Users can do this in two ways, either by using an online tool provided by the custodian or by will, trust, power of attorney, or another similar written document. The online tool must be separate from the terms-of-service and requires the user to affirmatively state their wishes. For example, Facebook now has a function in their settings called “legacy contact.” This allows the user to name someone to manage their account after they pass away. There is also a box the user can check if they want their Facebook account permanently deleted after they pass away.

If the custodian does not provide an online tool or if the user does not use the one provided, then the user can include their wishes in their estate planning documents. The online tool trumps what is expressed in the written document and they both override any contrary provisions in the terms-of-service. If the terms-of-service do not provide anything related to fiduciary access, then the default rules of RUFADAA apply. This law does not limit a fiduciary’s ability to obtain a court order granting the same level of access. In fact, the law expressly provides for such judicial relief and gives fiduciaries alternatives means to reach the same end.

HB 1554 does not grant fiduciaries unfettered access to the user’s digital assets. Custodians have discretion when it comes to what information they provide. If they choose, custodians may give a fiduciary full access to the account, or they may choose to only grant partial access so that a fiduciary may perform its duties. The custodians may also choose to give a fiduciary a copy of the record, like bank statements, without allowing the fiduciary any online access. For example, Facebook only lets a legacy contact respond to friend requests, update profile and cover photos, and write a post to the profile. They cannot log in to the account as the user or read private messages. However, if the user consents to disclosure of more

information or the court orders it, then the custodian must comply. At the bare minimum, the RUFADAA requires disclosure of digital assets but fiduciaries may be granted access or even control, depending on the user's wishes.

This statute will become effective on January 1, 2017. However, it will retroactively apply to wills, trusts, powers of attorney, and other documents created before the effective date. In addition, custodians can choose to honor the legislation before the January 1, 2017 effective date. Therefore, if any user passes away, or becomes incapacitated, between now and the effective date, the custodian may choose to follow the terms in the user's estate planning documents. So far, the RUFADAA has been introduced in twenty seven states and, of those, seven have enacted it.

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Amy Zubko
Judy Parker

Judicial Administration and Attorney Regulation

I. INTRODUCTION

II. JUDICIAL ADMINISTRATION

- | | | | |
|----|---------|----------|---|
| 1. | HB 4074 | (Ch. 95) | Juvenile Court Records |
| 2. | HB 4093 | (Ch. 78) | County Funding for Courthouse Construction and Renovation |
| 3. | HB 5201 | (Ch. 65) | Lottery Allocation |
| 4. | HB 5202 | (Ch. 66) | Bonding Limits and County Courthouse Construction |
| 5. | SB 5701 | (Ch. 82) | Budget Rebalance |

III. ATTORNEY REGULATION AND RESPONSIBILITIES

- | | | | |
|----|---------|----------|--|
| 1. | HB 4067 | (Ch. 73) | Affirmative Defense for Whistleblowers |
| 2. | HB 4128 | (Ch. 47) | Notaries Public |

Amy Zubko: 2007 University of Oregon Law School. Member of the Oregon State Bar since 2007.

Judy Parker: 2006 Willamette University School of Law. Member of the Oregon State Bar since 2006.

JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

I. INTRODUCTION

The Judicial Administration chapter addresses legislation related to the operation of the Oregon Judicial Department and to the court system in general. In 2016, the legislature passed significant legislation that followed up on previous legislation addressing such issues as completing Oregon eCourt and continuing funding for courthouse renovation and construction. This chapter also includes bills related to attorney-client privilege and additional efforts to eliminate notario fraud.

II. JUDICIAL ADMINISTRATION

1. [HB 4074](#) (Ch. 95) **Juvenile Court Records**

For discussion of HB 4074, addressing access to court records in juvenile cases, please see the Juvenile Law chapter.

2. [HB 4093](#) (Ch. 78) **County Funding for Courthouse Construction and Renovation**

HB 4093 was proposed by Multnomah County. During the 2013 session, the legislature passed [SB 5506](#) which, among other things, required the state and the counties to be equal financial partners in the construction and renovation of county courthouses. HB 4093, as introduced, would have allowed some counties to institute up to a 15 percent surcharge on court filing fees and up to a \$5 surcharge on fines and violations to raise funds for the counties' share of the courthouse construction and renovation costs. HB 4093 was subsequently amended to remove the 15 percent surcharge on court filing fees, leaving the \$5 surcharge.

Under the bill, the presiding judge may direct imposition of the surcharge only if requested by the local county commission and only with the approval of the Chief Justice. Additionally, this process is only available in counties that receive Article XI-Q bond proceeds for county courthouse repair or replacement. At the moment this applies to a limited number of counties, but others may seek legislative authority in the future. There will likely be an interim workgroup on court filing fees in the coming months.

HB 4093 took effect on March 29, 2016.

3. [HB 5201](#) (Ch. 65) **Lottery Allocation**

HB 5201 makes and adjusts a number of allocations of the net proceeds of the Oregon State Lottery. These include allocations to the Department of Administrative Services and allocations to the Problem Gambling Treatment Fund.

JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

The bill increases the allocation of Criminal Fine Account revenues by \$3.8 million to the Department of Public Safety Standards and Training (DPSST) and to the State Court Facilities and Security Account. The bulk of the allocation will go to DPSST and the remainder will go to the State Court Facilities and Securities Account for compensation plan changes.

HB 5201 took effect on March 29, 2016.

4. [HB 5202](#) (Ch. 66) **Bonding Limits and County Courthouse Construction**

HB 5202 amends the bonding limits established during the 2015 legislative session. The bill addresses a number of projects, including funding for a new courthouse in Lane County. Under HB 5202, the Department of Administrative Services Article XI-Q general obligation bond authority was increased by a little over \$81 million. \$1.4 million has been earmarked for the planning and design of a new Lane County Courthouse through the Oregon Judicial Department's Oregon Courthouse Capital Construction and Improvement Fund.

HB 5202 took effect on March 29, 2016.

5. [SB 5701](#) (Ch. 82) **Budget Rebalance**

SB 5701 is the omnibus General Fund budget reconciliation bill for the 2016 legislative session. Funding for a number of programs and projects within the Oregon Judicial Department as well as the Department of Justice and Legal Services Program was appropriated in this bill.

Courthouse Renovation and Construction.

The efforts to construct or renovate Oregon's courthouses continues with the legislature earmarking \$2.8 million for the design of the Lane County Courthouse and an additional \$45,000 for the cost of issuing bonds for the project through the passage of SB 5701. In addition, per a budget note, the Chief Justice has been asked to prioritize courthouse capital construction projects and projected costs for the next 12 years and report back to the legislature. Additional discussion of funding for courthouse construction can be found under [HB 4093](#) and [HB 5202](#).

Elder Abuse Prosecutor.

The Department of Justice received \$676,971 for the creation of an elder abuse prevention program. The program will be staffed by one full-time senior assistant attorney general and two criminal investigators. The cost of the program in the next biennium is expected to be \$1.2 million.

JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

Judicial Compensation.

During the 2013-2015 biennium, the legislature provided two \$5,000 salary increases for Oregon's judges. In 2015, the legislature tied a cost-of-living-adjustment (COLA) for judges to any positive COLA granted to employees defined as management service in the executive department.

This session, Chief Justice Thomas Balmer submitted [HB 4145](#) as the Oregon Judicial Department's priority bill. The bill would have put into statute the cost-of-living adjustment for Oregon's judges which was passed at the end of the 2015 legislative session, as well as instituted a compensation increase. While HB 4145 did not pass during the 2016 session, SB 5701 included \$630,000 for judicial compensation, or a \$5,000 salary increase per judge. The fiscal impact for this increase in judicial compensation for the 2017-2019 biennium is expected to be \$2,520,000.

Legal Aid.

The Oregon State Bar Legal Services Program (Legal Aid) received \$200,000 for low-income legal assistance for affordable housing-related issues.

Oregon eCourt.

Responding to increased use of the Oregon eCourt eFiling system, SB 5701 releases an additional \$5.33 million to the State Court Technology Fund for the costs of maintaining and supporting the state court electronic systems and providing electronic service and eFiling services.

The State Court Technology Fund (SCTF) is not expected to have sufficient resources to cover costs in future years without an increase in revenues or a reduction in ongoing operating costs. There will likely be an interim workgroup on civil court filing fees, part of which are currently directed to the SCTF.

SB 5701 took effect on March 29, 2016.

III. ATTORNEY REGULATION AND RESPONSIBILITIES

1. [HB 4067](#) (Ch. 73) Affirmative Defense for Whistleblowers

HB 4067 expands protections and creates an affirmative defense for employee whistleblowers who disclose, in good faith with an objectively reasonable belief, information on perceived violations of state, federal, or local law, rule or regulation. The bill applies generally to government employees and to employees of some nonprofits.

JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

The affirmative defense applies only to disclosures made to certain named entities, including law enforcement and regulatory agencies. The affirmative defense also applies if the disclosure is made to an attorney in the course of seeking legal advice.

The affirmative defense may not be asserted if the employee in question is an attorney, or an individual employed, retained, supervised or directed by an attorney, if the information disclosed relates to the representation of a client. However, a public employee who is at attorney may report violations to the Attorney General, if to do so would not violate the OSB Rules of Professional Conduct.

HB 4067 takes effect on January 1, 2017.

2. [HB 4128](#) (Ch. 47) Notario Fraud

HB 4128 addresses the *notario* fraud affecting Oregon's Latino, Hispanic, and immigrant communities. "*Notarios*" hold themselves out as qualified to provide legal services, such as drafting wills, or help individuals with immigration matters. They prey on individuals, particularly those from Latin American countries, who are familiar with the term "*notario*" or "*notario publico*," - titles used in several Latin American countries for individuals with legal training who act in capacity similar to that of an American attorney - and the terms' similarity in pronunciation and spelling to "notary public." In Oregon, the only professionals legally qualified to give immigration advice are (1) members of the Oregon State Bar, or (2) immigration consultants authorized by the federal government. ([ORS 9.280](#)) Unlike a *notario* or *notario publico*, Oregon's notaries public, who are regulated by the Secretary of State, may only authenticate documents and signatures; they cannot provide legal services or give immigration advice.

When a *notario's* victims appear before immigration authorities, they often believe they are in accord with the immigration laws. Those victims can face serious harm, including monetary loss, loss of eligibility for immigration benefits or relief, the filing of false or frivolous immigration applications, and loss of documents containing sensitive and personally identifiable information. The victims are often threatened by the *notarios*.

HB 4128 is the product of a taskforce made up of immigration attorneys, criminal defense attorneys, prosecutors, law enforcement, the Oregon Department of Justice, the Oregon Secretary of State, and advocacy groups. It tracks the issue of *notario* fraud in several ways.

First, it expands the crime of obstructing governmental or judicial administration, [ORS 162.235](#), to include acting as a notary public or an immigration consultant without authorization and with the intent to defraud.

Second, HB 4128 amends [ORS 164.075](#) – theft by extortion – in several ways. First, it includes compelling or inducing a person to refrain from reporting unlawful conduct to a law

JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

enforcement agent. In addition, it adds the reporting of immigration status as one of the ways in which a person could induce or compel a victim of extortion. The bill also renames the crime “theft by extortion” to simply “extortion,” in accordance with [State v. Robertson, 293 Or. 402 \(1982\)](#).

As notaries public are regulated by the Secretary of State under [ORS chapter 194](#), HB 4128 also amends how that agency regulates the licensure of notaries public. Under this bill, a person is not qualified to be a notary public if they have been convicted of impersonating a notary public, obstructing governmental or judicial administration, or of engaging in the unlawful practice of law. Likewise, a person is also not qualified to be a notary public if a court has found that the person practiced law without a license, engaged in an unlawful trade practice, or has entered into an assurance of voluntary compliance for comports to be an immigration consultant without being a member of the Oregon State Bar. HB 4128 gives the Secretary of State the authority to revoke, deny, or suspend a notary public’s commission.

Juvenile Law

I. INTRODUCTION

II. DELINQUENCY

- 1. HB 4074 (Ch. 95) Juvenile Delinquency Sex Offender Registration

III. DEPENDENCY

- 1. HB 4074 (Ch. 95) Access to Juvenile Court Records
- 2. HB 4080 (Ch. 76) Foster Care Advisory Commission
- 3. SB 1515 (Ch. 106) Appearance by Attorney in Juvenile Court Proceedings

JUVENILE LAW

I. INTRODUCTION

This chapter contains bills covering delinquency actions against juveniles as well as several bills effecting the provision of services to children in dependency proceedings. Unless otherwise noted, all bills take effect on January 1, 2017.

II. DELINQUENCY

1. [HB 4074](#) (Ch. 95) Juvenile Delinquency Sex Offender Registration

HB 4074 relates to sex offender reporting and registration and amends [ORS 163A.010](#), [163A.025](#), [163A.030](#), [163A.040](#), [163A.130](#), and [163A.135](#). The bill requires that a person must report as a sex offender in the two listed scenarios below if adjudicated or found responsible except for insanity by a juvenile court for an act that, if committed by adult, would constitute felony sex crimes:

- 1) The juvenile court or Psychiatric Security Review Board jurisdiction over person ended prior to August 12, 2015, or
- 2) If ordered by court after a hearing.

The court must hold a hearing to determine the question of registration if the person was adjudicated after August 12, 2015, or if they were adjudicated before that date but were still under the jurisdiction of the juvenile court or the Psychiatric Security Review Board on April 4, 2016.

HB 4074 was passed in part to address unforeseen consequences of [HB 2320](#) from 2015.

This portion of the bill (Sections 1 through 6, 10) took effect on April 4, 2016. See Section III – Dependency for further discussion of the bill.

III. DEPENDENCY

1. [HB 4074](#) (Ch. 95) Access to Juvenile Court Records

In addition, HB 4074 modifies the law regarding inspection or copying of the record of the case or supplemental confidential file in a juvenile court proceeding.

The bill adds the Office of Public Defense Services and the Oregon State Bar as entities authorized to access juvenile court records for specified purposes, and provides procedures for certain persons or entities not authorized to inspect or copy the record of the case or supplemental confidential file to obtain a court order allowing inspection or copying. HB 4074

applies to juvenile court proceedings pending or commenced before, on or after September 30, 2016.

This portion of the bill (Sections 7 through 9, 11) takes effect on September 30, 2016. See Section II – Delinquency for further discussion of the bill.

2. [HB 4080](#) (Ch. 76) Foster Care Advisory Commission

HB 4080 establishes a Governor's Child Foster Care Advisory Commission to advise the Governor and Director of Human Services regarding improving the foster care system in Oregon and to make specific recommendations for legislation.

The bill directs the Governor to appoint eleven commission members who have experience and expertise in the foster care system and specifies the duties and powers of the Commission.

This bill took effect on March 29, 2016.

3. [SB 1515](#) (Ch. 106) Appearance by Attorney in Juvenile Court Proceedings

SB 1515 amends a wide range of statutes, many relating to the Department of Human Service's authority to license, regulate, and inspect private child caring agencies as well as statutes relating to child abuse and neglect investigations that occur at such a facility. Under the revised statute, DHS may take immediate enforcement action against programs that jeopardize the health, safety, or welfare of children, authorizes civil penalties, and imposes reporting requirements.

The bill defines "substantial compliance" for purposes of determining whether a private child caring agency's license can or should remain in effect under certain circumstances and conditions. The bill also authorizes state agencies and other governmental entities to share information related to child abuse and neglect investigations in licensed facilities.

SB 1515 further requires department officials to act affirmatively when information about certain licensing violations are known. Failure to act is grounds for official misconduct.

The bill took effect on April 4, 2016, however, many provisions of the bill become operative on July 1, 2016.

Marijuana Regulation

I. INTRODUCTION

II. MARIJUANA REGULATION

- 1. HB 4060 (Ch. 71) Industrial Hemp
- 2. HB 4094 (Ch. 97) Financial Institutions Serving Marijuana Businesses
- 3. SB 1524 (Ch. 107) Medical Marijuana Cards for Veterans

Courtney Moran: 2011 University of St. Thomas School of Law. Member of the Oregon State Bar since 2011.

MARIJUANA REGULATION

I. INTRODUCTION

This chapter covers bills related to recreation and medical marijuana businesses in Oregon, as well as other businesses serving the marijuana industry. The chapter also covers bills related to the cultivation and regulation of industrial hemp. Unless otherwise specified, all bills take effect on January 1, 2017.

II. MARIJUANA REGULATION

1. [HB 4060](#) (Ch. 71) Industrial Hemp

HB 4060 brings the regulation of industrial hemp in line with traditional agricultural regulation in Oregon, by providing updates and clarifications to the existing statutes, [ORS 571.300 – 571.315](#). Industrial hemp is defined as Cannabis that contains an average THC concentration that does not exceed 0.3 percent on a dry weight basis.

HB 4060 removes acreage requirements, and provides cultivation and propagation flexibility. Oregon registered industrial hemp growers are now authorized to use any propagation method (i.e. seeds, clones, cuttings, starts) and any cultivation method (i.e. direct seed in field, use of greenhouses, hoop houses, other agricultural buildings). The existing licensing structure is changed to an annual registration structure, compliant with the Agricultural Act of 2014, Section 7606.

Registered growers are authorized to retain agricultural hemp seed for propagation for future years. Only registered agricultural hemp seed producers may sell agricultural hemp seed.

Oregon industrial hemp growers are subject to all agricultural laws and regulations in Oregon (i.e. pesticide and water quality regulations).

Private testing labs accredited by the Oregon Health Authority (OHA) and licensed by the Oregon Liquor Control Commission are authorized to conduct THC testing, to ensure Registrants are compliant with the 0.3 percent THC concentration limit.

Handlers of industrial hemp are required to register with the Oregon Department of Agriculture.

All industrial hemp products intended for human consumption (ingestion, inhalation, or topical use) are subject to mandatory testing by accredited labs, according to OAR 333-007-0300 to 490 and OAR 333-064-0100 to 0110 the testing requirements established by OHA for marijuana items.

The Oregon Department of Agriculture is in the process of developing rules to implement the changes to the Oregon Industrial Hemp Program.

HB 4060 took effect on March 29, 2016.

2. [HB 4094](#) (Ch. 97) Financial Institutions Serving Marijuana Businesses

HB 4094 is intended to help address problems financial institutions run into in providing services to marijuana businesses that are operating legally under Oregon law.

The bill exempts financial institutions providing financial services to such businesses from certain criminal laws. Additionally the bill requires the Oregon Liquor Control Commission, the Oregon Health Authority, and the Department of Revenue to provide certain documentation on marijuana businesses to financial institutions in order to help them comply with federal requirements. The financial institutions are prohibited from sharing this information except as provided for in the bill.

HB 4094 took effect on April 4, 2016.

3. [SB 1524](#) (Ch. 107) Medical Marijuana Cards for Veterans

Under current law, individuals with medical marijuana cards are required to see a physician every year in order to maintain their eligibility under the program. SB 1524 carves out an exemption to this requirement for some service-disabled veterans.

Under SB 1524, a veteran is exempted from the requirement to see a physician every year if either:

- They have been assigned a total and permanent disability rating for due to a service-connected disability, or
- The Department of Veterans Affairs has assigned them a 100 percent disability rating for an injury incurred during active military service.

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Judy Parker
Robert Manicke

Real Estate

I. INTRODUCTION

II. HOUSING

1. HB 4079 (Ch. 52) Local Government Affordable Housing Pilot Program
2. HB 4143 (Ch. 53) Rental Increases
3. SB 1533 (Ch. 59) Inclusionary Zoning

III. PROPERTY TAX

1. HB 4081 (Ch. 40) Exemption for Certain Low-Income Housing Leased to Individuals
2. HB 4084 (Ch. 96) Opt-In Brownfields Exemption
3. SB 1513 (Ch. 56) Opt-In Exemption for Homestead Occupied by Surviving Spouse of First Responder Killed in Line of Duty
4. SB 1565 (Ch. 112) Opt-In Exemption for New Industrial Property in Rural Area

Judy Parker: 2006 Willamette University School of Law. Member of the Oregon State Bar since 2006.

Robert Manicke: 1992 University of Illinois School of law. Member of the Oregon State Bar since 1995.

I. INTRODUCTION

The 2016 short session produced relatively few real estate bills, limited to attempts to fix the housing crisis facing Oregon. Unless otherwise noted, all bills take effect on January 1, 2017.

II. HOUSING

1. [HB 4079](#) (Ch. 52) Local Government Affordable Housing Pilot Program

HB 4079 requires the Land Conservation and Development Commission (LCDC) to establish and implement an affordable housing pilot program for local governments to site and develop affordable housing. The bill requires LCDC to establish, by July 1, 2017, a site selection process to select two pilot projects nominated by local governments, one from a city with a population less than 25,000 and one from a city of with a population of more than 25,000. Clackamas, Multnomah and Washington counties and cities are not eligible for this pilot program.

This need for affordable housing is underscored by the [2015 Report on Poverty, released by the Oregon Housing and Community Services Department](#), which concludes that there are approximately 615,000 Oregonians living below the poverty line. Rural counties in particular face poverty rates over 20 percent. Housing costs likewise have been rising. Although Oregon relies on federal housing and rent subsidies, such as Section 8, an estimated 2,000 housing units may expire in the 2015-2017 biennium.

HB 4079 took effect on March 15, 2016.

2. [HB 4143](#) (Ch. 53) Rental Increases

HB 4143 makes several changes to landlord-tenant law in Oregon. The bill prohibits rent increases during the first year of a month-to-month tenancy. Additionally, the bill requires a notice of at least 90 days prior to any increase in rent after the first year of occupancy for month-to-month tenants. For a week-to-week tenancy, the landlord must provide seven days' notice of the rent increase.

This bill took effect on March 15, 2016.

3. [SB 1533](#) (Ch. 59) Inclusionary Zoning

SB 1533 was introduced as part of a larger housing package. After the bill was amended it became the session's inclusionary zoning bill. Inclusionary zoning is a tool for local jurisdictions to require developers to offer a portion of new units at affordable levels for purchase or rent.

SB 1533 permits certain cities and counties to adopt land use regulations to establish sales or rental pricing for affordable housing for up to 20% of multifamily structures in exchange for one or more developer incentives. SB 1533 also requires a city or county that adopts such a land use regulation to provide an option for developers to pay in-lieu fees; those developers which elect not to pay the in-lieu fee can seek other incentives in a percentage of affordable housing units.

In addition, SB 1533 offers cities and counties the ability to impose a construction excise tax on certain projects. Half of the funds raised through those taxes must be used to fund developer incentives; 15% goes to Housing and Community Services Department to fund home ownership programs; and the remaining 35% may stay within the city or county for programs and incentives related to affordable housing.

This bill has an effective date of June 2, 2016, but the operative date for cities or counties adopting the regulations is 180 days after that; November 29, 2016.

III. PROPERTY TAX

1. [HB 4081](#) (Ch. 40) Exemption for Certain Low-Income Housing Leased to Individuals ([Corvallis Neighborhood Housing Services, Inc. v. Linn County Assessor](#))

This bill extends the exemption from property tax for property that was granted by [HB 4039](#) (Oregon Laws 2014, Chapter 7) to low-income housing that was rented by a nonprofit corporation directly to low-income tenants. The Tax Court held in 2013 that exemption was unavailable under [ORS 307.130](#) because the tenants were individuals. The Supreme Court vacated the decision, and the parties settled.

HB 4039 allowed exemption through the 2017-18 tax year. HB 4081 now extends the exemption through the 2021-22 tax year.

The bill takes effect on June 2, 2016.

REAL ESTATE

2. [HB 4084](#) (Ch. 96) **Opt-In Brownfields Exemption**

This bill authorizes certain local governments to opt-in to property tax incentive programs that grant either or both of the following: special assessments to brownfields, or exemptions to new and existing improvements and personal property on brownfields for up to 10 years. The local ordinance may provide for an additional period up to five years based on locally adopted criteria. Some property is specifically excluded.

The incentives must end when the sooner of these two events occurs: (a) end of the time period called for in local ordinance or (b) the total tax benefit exceeds eligible cleanup costs. The law caps the dollar amount of benefits at the specified eligible costs for property. The bill requires prior approval of 75 percent or more of the local taxing districts, measured by tax rate.

HB 4084 takes effect on June 2, 2016. The authority to adopt ordinance or resolution sunsets on January 2, 2037.

3. [SB 1513](#) (Ch. 56) **Opt-In Exemption for Homestead Occupied by Surviving Spouse of First Responder Killed in Line of Duty**

This law allows counties to adopt an ordinance exempting up to \$250,000 of assessed value of a homestead owned and occupied by the surviving spouse of a firefighter or police officer killed in the line of duty. The exemption must end upon the remarriage of the surviving spouse.

The bill takes effect on June 2, 2016.

4. [SB 1565](#) (Ch. 112) **Opt-In Exemption for New Industrial Property in Rural Area**

SB 1565 allows a city or a county to provide, by ordinance, a property tax exemption or deferral for newly constructed or installed industrial improvements with a cost of initial investment of at least \$1 million and located in a rural area, if the applicant increases local employment by 10 percent or at least one employee.

The bill fills a gap in the suite of locally approved property tax exemptions for economic development purposes by applying only to property with a cost of initial investment of \$25 million or less. The ordinance may specify an exemption for any number of years not greater than five, and it may apply to a percentage of the real market value of the property. The bill requires prior approval of 75 percent or more of the local taxing districts, measured by tax rate.

The bill takes effect on June 2, 2016. The authority of a county or city to provide exemption and deferral sunsets on January 2, 2024.

Taxation Law

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1. HB 4081 (Ch. 40) Exemption for Certain Low-Income Housing Leased to Individuals
2. HB 4084 (Ch. 96) Opt-In Brownfields Exemption
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3. HB 4025 (Ch. 33) Reconnection to Internal Revenue Code
4. HB 4110 (Ch. 98) Qualifications of Director of Department of Revenue

Robert Manicke: 1992 University of Illinois School of Law. Member of the Oregon State Bar since 1995.

I. INTRODUCTION

This chapter includes bills addressing income and property taxes in Oregon, as well as procedural issues relating to the Oregon Department of Revenue and the connection to the federal code. Most bills in this chapter have special effective dates when are specified below. Unless otherwise noted, all bills take effect on January 1, 2017.

II. INCOME TAX

1. [HB 4110](#) (Ch. 98)

A. Increase in Earned Income Credit

Sections 1 and 2 of this bill increase the Oregon Earned Income Tax Credit from 8% of the federal credit to 11% for taxpayers with a dependent under the age of three at the close of the tax year.

This change applies to tax years 2017 through 2019.

B. Withholding on Conveyance of Oregon Real Estate

Section 3 of this law declares that a transfer of fee title of less than an entire parcel of property for state highway, county road, or city street purposes is not a “conveyance” subject to withholding of income tax.

C. Qualifications of Director of Department of Revenue

Sections 4 and 5 of HB 4110 are addressed under Section V – General Tax Issues.

D. Oregon Energy Conservation Tax Credit at Malheur Wildlife Refuge Center

Sections 6 and 7 of this law extends the validity of a preliminary certification for the credit, if the project is in a county larger than 10,000 square miles (Harney County) and the certificate was scheduled to expire on June 28, 2016. The project was affected by the occupation of the Malheur Wildlife Refuge Center.

HB 4110 takes effect on June 2, 2016.

2. [SB 1507](#) (Ch. 29) Changes to Other Income Tax Credits

This bill follows up on the legislature’s review of income tax credits in the 2015 session, and makes the following changes to tax credits:

- **Rural medical.** Eliminates the concept of “highway miles” when determining how far the physician’s practice is located from a metropolitan center. Applies to tax years beginning on or after January 1, 2016.
- **Personal kicker.** Requires offsets of debt to be applied before personal kicker credit can be donated to education funding. Applies to surplus refund credits allowed after June 2, 2016.
- **Alternative energy devices.** Changes internal cross-references to provisions for the personal income tax credit allowed for residential alternative energy devices such as solar panels. Applies to alternative energy devices certified on or after January 1, 2016, and to tax years beginning on or after January 1, 2016.
- **Individual development accounts.** Caps the amount of credit allowed for a donation to individual development account at \$500,000 per taxpayer, in addition to the existing overall cap of \$7.5 million per tax year. Applies to tax years beginning on or after January 1, 2016.
- **Film production.** Various amendments to the film production credit, including changes in revenue use and changes in expenditures eligible for the credit. Various effective dates.
- **“Certain” kinds of biomass.** Reduces the credit available for a particular form of biomass from \$5.00 to \$3.50 per “wet ton” and adds anti-fraud protections related to the transfer of the credit. Retroactively effective for certifications in tax years beginning on or after January 1, 2007.

SB 1507 takes effect on June 2, 2017.

III. PROPERTY TAX

1. [HB 4081](#) (Ch. 40) Exemption for Certain Low-Income Housing Leased to Individuals ([Corvallis Neighborhood Housing Services, Inc. v. Linn County Assessor](#))

This bill extends the exemption from property tax for property that was granted by [HB 4039](#) (Oregon Laws 2014, Chapter 7) to low-income housing that was rented by a nonprofit

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corporation directly to low-income tenants. The Tax Court held in 2013 that exemption was unavailable under [ORS 307.130](#) because the tenants were individuals. The Supreme Court vacated the decision, and the parties settled.

HB 4039 allowed exemption through the 2017-18 tax year. HB 4081 now extends the exemption through the 2021-22 tax year.

The bill takes effect on June 2, 2016.

2. [HB 4084](#) (Ch. 96) Opt-In Brownfields Exemption

This bill authorizes certain local governments to opt-in to property tax incentive programs that grant either or both of the following: special assessments to brownfields, or exemptions to new and existing improvements and personal property on brownfields for up to 10 years. The local ordinance may provide for an additional period up to five years based on locally adopted criteria. Some property is specifically excluded.

The incentives must end when the sooner of these two events occurs: (a) end of the time period called for in local ordinance or (b) the total tax benefit exceeds eligible cleanup costs. The law caps the dollar amount of benefits at the specified eligible costs for property. The bill requires prior approval of 75 percent or more of the local taxing districts, measured by tax rate.

HB 4084 takes effect on June 2, 2016. The authority to adopt ordinance or resolution sunsets on January 2, 2037.

3. [SB 1506](#) (Ch. 105) Food Processing Equipment Exemption

[HB 3125](#) (Oregon Laws 2015, Chapter 827), which passed during the 2015 session, expanded the existing property tax exemption for qualified machinery and equipment used in food processing to include machinery and equipment used to process grains, bakery products, dairy products and eggs. HB 3125 required qualified machinery and equipment to have a “real market value” of at least \$100,000 at the time the machinery was placed in service in order to qualify for exemption.

In order to address confusion regarding the value of the equipment at the time it was placed into service, SB 1506 measures the \$100,000 by “total cost of initial investment”. Proponents hoped this change would help avoid disputes over the equipment’s real market value.

HB 1506 takes effect on June 2, 2016.

4. [SB 1513](#) (Ch. 56) **Opt-In Exemption for Homestead Occupied by Surviving Spouse of First Responder Killed in Line of Duty**

This law allows counties to adopt an ordinance exempting up to \$250,000 of assessed value of a homestead owned and occupied by the surviving spouse of a firefighter or police officer killed in the line of duty. The exemption must end upon the remarriage of the surviving spouse.

The bill takes effect on June 2, 2016.

5. [SB 1565](#) (Ch. 112) **Opt-In Exemption for New Industrial Property in Rural Area**

SB 1565 allows a city or a county to provide, by ordinance, a property tax exemption or deferral for newly constructed or installed industrial improvements with a cost of initial investment of at least \$1 million and located in a rural area, if the applicant increases local employment by 10 percent or at least one employee.

The bill fills a gap in the suite of locally approved property tax exemptions for economic development purposes by applying only to property with a cost of initial investment of \$25 million or less. The ordinance may specify an exemption for any number of years not greater than five, and it may apply to a percentage of the real market value of the property. The bill requires prior approval of 75 percent or more of the local taxing districts, measured by tax rate.

The bill takes effect on June 2, 2016. The authority of a county or city to provide exemption and deferral sunsets on January 2, 2024.

IV. TRANSIENT LODGING TAX

1. [HB 4146](#) (Ch. 102) **Statewide Rate Increase, Spending Requirements, Work Group**

This bill increases the statewide rate of transient lodging tax from 1 percent to 1.8 percent, effective for “consideration rendered” on or after July 1, 2016 and before July 1, 2020. The rate declines to 1.5 percent as of July 1, 2020.

The bill also makes a number of changes to existing restrictions on the use of the funds raised by the statewide lodging tax. It also creates a work group, with a reporting deadline of December 9, 2016, to address expenditures and other issues.

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The work group may consider issues relating to standardization and centralization of local lodging taxes, which presently differ in the tax base, reporting periods and in other substantial respects.

The bill takes effect on June 2, 2016.

V. GENERAL TAX ISSUES

1. [HB 4025](#) (Ch. 33) Reconnection to Internal Revenue Code

HB 4025 updates the connection date to federal Internal Revenue Code and other provisions of federal tax law. Oregon passes a version of this bill most biennia. The new connection date is December 31, 2015.

HB 4025 takes effect on June 2, 2016.

2. [HB 4110](#) (Ch. 98) Qualifications of Director of Department of Revenue

Sections 4 and 5 of this law broaden the allowable qualifications for the Director. Formerly, the Director was required to be “skilled and expert in matters of taxation.” As revised, the law requires the Director to be skilled in taxation “or financial administration.” See Section I, Income Tax for additional information on HB 4110.

HB 4110 will take effect on June 2, 2016.

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