

OSBA Legislative Highlights



the Promise
OF OREGON

June 16, 2017

TAX REFORM

The Legislative Revenue Office calculated the net Oregon revenue increase from the provisions in HOUSE BILL 2830:



Gina Hutchinson, OSBA

Credit: Legislative Revenue Office

Tax reform bill put under intense public and committee scrutiny

The Joint Tax Reform Committee rolled out [House Bill 2830](#) in two public hearings Tuesday. The hearings were held before packed rooms, with overflow seating for lobbyists and the public to listen. Passionate arguments were made for and against proposed changes to Oregon's tax structure. HB 2830 is a compromise between Democrats in the House and Senate, both of whom had put forward comprehensive revenue proposals earlier in the session.

HB 2830, the "bridge plan," would temporarily increase the corporate income tax until a new commercial activity tax (CAT) would begin. The plan's estimated net revenue impact in the 2017-19 biennium is \$898 million. Revenue generated from the activity tax would be directed into a new Education Strategic Investment Fund, about \$470 million in the next biennium.

Legislative Revenue Officer Paul Warner walked the committee through amendments that reflected its work over the past several weeks. The committee looked at simulations of how the tax would affect businesses and corporations while generating revenue at different percentages of the tax rates. The amendments would bring the activity tax online on Jan. 1, 2019. Different sectors would be taxed at different rates. The sector categories would be

services, retail and trade, wholesale, natural resources, and "all others." There would be a flat \$250 tax for receipts of less than \$3 million. The \$3 million threshold would exempt most Oregon small businesses.

Anthony K. Smith, representing the small-business association National Federation of Independent Business, testified that "the very concept of taxing a business on its gross sales is objectionable to entrepreneurs," and he said nearly all the group's Oregon members oppose the corporate tax plan.

Smith's testimony during the hearing ignited a discussion that continued into the committee hearing later in the week. The committee spent most of its time talking about the impact the activity tax would have on small businesses.

During the Thursday hearing, Rep. Pam Marsh (D-Ashland) and Rep. Barbara Smith Warner (D-Portland) urged their colleagues to keep in mind the human effects from the bill.

"There are other residual benefits that come to this in the increase in funding of education, human services, etc.," Smith Warner said. "Just a reminder to always look at the broader perspective and not just stick with the economists who only have two opinions because they have that many hands."

Tax reform continues to be the major issue this session along with cost containment. The two topics are linked, and if one is brought for a vote, the other is expected to be voted on as well. The



Legislative Revenue Officer Paul Warner provides the Joint Tax Reform Committee on Thursday with the expected impacts of the tax changes in House Bill 2830. (Photo by Jake Arnold, OSBA)

sticking point is whether the proposals can go far enough to gain traction from either the Republicans on the cost containment side or the Democrats for a revenue package.

OSBA continues to support tax reform and HB 2830 to help fund chronically underfunded schools if tax reform is paired with cost-containment measures.

A [recent poll](#) conducted for OSBA returned clear results. Oregonians care deeply about fully funding education and would support changes to the state's revenue system to do so. They strongly support K-12 education, and they believe both education funding and high-quality education should be priorities for the Legislature. Furthermore, most voters would prefer large businesses and corporations pay more taxes to do so.

House Bill 2830 is scheduled for a hearing again Monday, June 19, and is expected to be moved to the full House.

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Legislature restores recreational immunity for school districts

A bill preserving recreational immunity for public landowners, one of OSBA's major legislative priorities, cleared the House 54-4 Wednesday after being passed unanimously by the Senate.

[Senate Bill 327](#) would fix a loophole created by the Oregon Supreme Court's 2016 ruling in *Johnson v. Gibson*.

The case involved a blind jogger's personal injury claim after stepping in a hole created by a city employee in a Portland park. The city has the legal

defense of so-called "recreational immunity," established under the Oregon Public Use of Lands Act. The basic idea of recreational immunity is that a landowner – such as a city, county or school district – can permit people to use land for recreation. As long as no fees are charged, the landowner is legally immune from injury lawsuits. In exchange for the landowner opening the land and facilities for public use, those who use the land or facilities cannot sue if they are harmed.

Recreational immunity is important to public and private landowners alike for public benefits such as hiking trails on private land, school playgrounds used outside school hours, and city and county parks. It makes access possible without overwhelming insurance costs.

The Johnson ruling punched a major hole in the doctrine. The Supreme Court held that the Public Use of Lands Act protected the city but did not extend that protection to the employee. Because the city will indemnify the employee and pay for all costs, this presented an alternative method to sue the landowner. Landowners, including school districts, would face the choice of closing properties to the public or facing potentially increased insurance costs.

SB 327 would extend recreational immunity to employees, volunteers and others working on a landowner's behalf. After intense lobbying by advocates for the bill, including OSBA, cities, counties, and private landowners, the bill needs only Gov. Kate Brown's signature to become law.

"This allows school districts to leave the campuses and playgrounds open so the public can continue to use them," said Lori Sattenspiel, OSBA interim director of legislative services.

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Pause for a look at the Legislature before mad dash to sine die

Sine die: without any future date being designated (as for resumption); indefinitely. (merriam-webster.com)

The last thing that the Oregon legislative chambers do each session is pass the motion to *sine die*. This is how the Legislature officially ends business. Constitutionally, there is a limit on the number of days the Legislature can be in session. This year the constitutional *sine die* is Monday, July 10.

The session could end before July 10. At the session's start, legislative leadership set the target *sine die* for Friday, June 23, but that looks unlikely.

KEY DATES FOR LEGISLATURE

APRIL 7
Bills not posted
for a work
session die*

APRIL 18
Last day for policy
committees to
move bills from
their chamber*

MAY 19
Second-chamber
bills not posted
for a work
session die*

JUNE 2
Last day for policy
committees to
move bills from
opposite chamber*

JULY 10
Constitutional
end of odd-year
session

*Does not apply to Ways and Means, revenue or rules committees

The Legislature still has a lot of business to do. Although it is unclear exactly how many days are left, it is safe to say that *sine die* is imminent. As we approach the end, OSBA is offering a look at what is left.

Revenue reform and cost control are the two most important pieces of legislation that will be settled between now and *sine die*. The budget has an approximate \$1.4 billion gap for current service levels for the 2017-19 biennium, which begins July 1. Democrats, supported by most labor and some business groups, want a new corporate tax to raise revenue. Republicans, supported by many business groups, will not even discuss a new tax unless serious cuts to state spending are also agreed upon. Democrats have a majority in both chambers, but tax increases require a three-fifths majority. That means Democrats need at least one Republican vote in each chamber.

The devil is in the details, the subject of meetings between members in leadership from both chambers. The specific tax plan that has moved forward in [House Bill 2830](#) is a gross receipts tax, meaning that the tax would be on a company's total revenue, not its reported profit. This version would require all businesses to pay some tax but would hit harder those companies with over \$3 million in revenue. The tax also contains a variable rate depending on the sector, with service companies (e.g., doctors, lawyers) being taxed at the highest rate and agriculture taxed at the lowest rate.

This kind of tax has been successful in a few other states, notably Ohio, and has the potential to smooth out Oregon's roller-coaster-style funding stream. Also, it is worth noting that this is the kind of tax OSBA members discussed and endorsed, along with cost-control mechanisms, in our 2016 fall regional meetings.

The other details under discussion regard cost control. Proposals target the amount the state spends on health care and retirement benefits. Health care benefits have drawn extra attention recently, after a few studies indicated Oregon spends considerably more on health benefits than Washington or Idaho.

Other cost-control ideas include reducing the number of state employees by lowering the existing cap from 1.5 percent of the population to 1 percent, limiting the highest level of salary possible for Public Employees Retirement System calculation purposes, and possible structural changes to collective bargaining processes statewide. The details of a cost-containment bill have not been as thoroughly fleshed out as the tax bill, so there is still a lot of guessing about what will be included in the final plan.

Because the Legislature is still at a standoff about revenue reform and cost control, other major initiatives have been bound up in the talks and are now in trouble. A major transportation plan, a plan for "clean diesel" related to the federal Volkswagen lawsuit settlement, and other initiatives are on hold. If there is no agreement on revenue and cost control, those initiatives will probably die as well.

The bill funding K-12 public education, [Senate Bill 5517](#), is scheduled for a vote in the House on Tuesday. It has already passed the Senate. SB 5517 would appropriate \$8.2 billion for the State School Fund, but legislators say they will add to that if other legislation opens up more money.

The next step for legislative leadership is counting votes. Assuming all Democrats vote "yes" on any new tax plan, then at least one Republican in each chamber would have to join them to pass a tax measure. In the House, Rep. Greg Smith (R-Heppner) is a likely candidate. Although it is not OSBA custom to speculate

about what any specific legislator will do, he has said that if his conditions (a low tax rate for the agricultural sector and a cost-containment plan passing) could be met, he would vote yes on the bill. The hard part legislatively is, of course, meeting those conditions.

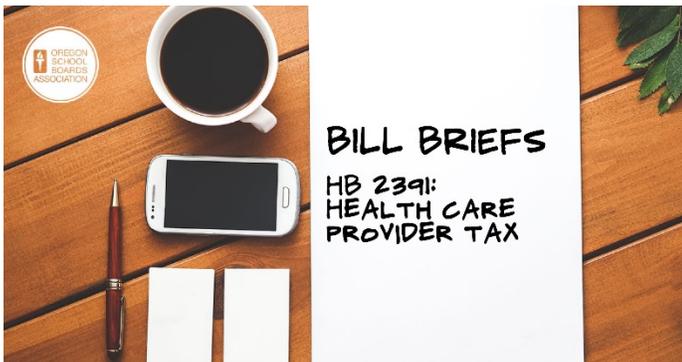
In the Senate, no Republican has stepped forward. There is a lot of talk in the halls among lobbyists and advocates about which Senate Republican is most likely to join the Democrats – this moderate Republican or that because they do or do not owe someone a favor or because this is their last term and they do not expect to stand for another election, etc. But the talk is just speculation. All Senate Republicans have said that they will not vote for new taxes without cost containment, and this position is the one imperiling the prospects for a deal.

An informal survey of other lobbyists puts the prospects for some sort of deal, or grand bargain, as not good. “70-30 against” was the common response. This is probably due to the mood in the building, which is tense.

Discussions are really just beginning. *Sine die* is imminent, but there is still a lot of work to do.

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Bill Briefs



Health care provider tax

[House Bill 2391](#)

What it does: The bill would establish the Health System Fund and appropriate money for the Department of Consumer and Business Services to administer the Oregon Reinsurance Program. Assessments on hospitals, providers and insurers would generate resources for the fund. The assessments are intended to help close Oregon’s \$1.4 billion budget deficit. Medicaid expansion and a lack of federal funding to support it constitute a significant share of the state’s 2017-19 budget gap.

What’s new: The House passed HB 2391 Thursday with a 36-23 vote, picking up one Republican for the required three-fifths vote for tax bills. Still unknown is how the 1.5 percent assessment on insurers might impact school districts. There is speculation the assessment might be passed onto schools through higher premiums in the upcoming biennium. That potential impact is estimated at \$23 million.

What’s next: The bill is headed for a vote of the full Senate, expected next week.

The Week Ahead



June 19

8:30 a.m. Joint Tax Reform Committee holds a work session on reforming business and personal taxes ([HB 2830](#)).

11 a.m. Senate holds third reading on:

- Authorizing child abuse investigations on school premises ([SB 101-C](#)).
- Providing credits for advanced placement exams ([SB 207-B](#)).
- Developing statewide ethnic studies standards ([HB 2845-B](#)).

June 20

11 a.m. The House holds third reading on funding K-12 public education ([SB 5517](#)).

Items may be added to legislative committee agendas during the week. The Oregon Legislature keeps an updated page of committee agendas at: <https://olis.leg.state.or.us/LIZ/Committees/Meeting/List>

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