

# E – OUTLOOK

ENVIRONMENTAL HOT TOPICS AND LEGAL UPDATES

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*Editor's Note: The following is a summary of the 2019 Oregon Legislative Session and a list of enacted environmental, natural resources, and energy-related bills from the session. The bill summaries contained in this article are general descriptions only and should not be used for purposes of providing legal advice. For those who prefer to view this article in PDF format, a copy will be posted on the Section's website at: <https://enr.osbar.org/newsletters/>.*

## ***Summary of Oregon's 2019 Legislative Session and Environmental, Natural Resources, and Energy Legislation***

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Oregon's 2019 Legislative Session came to a close, finishing merely hours before the constitutional deadline—June 31, 2019. In November of 2018, Oregon re-elected Democrat Governor Kate Brown and elected 38 Democrats and 22 Republicans in the House of Representatives and 18 Democrats and 12 Republicans in the Senate. This gave Democrats supermajorities in both the House and Senate, allowing for significant Democrat control over legislative committees and agendas.

Going into session, Democrats organized around legislative priorities, including new, dedicated funding for education, the passage of a carbon cap-and-trade program, paid family leave mandates, and new employment laws in response to the “Me Too” national movement against sexual harassment. While some bipartisan bills passed, numerous party-line, divisive bills captured the state's attention and took a toll on minority legislators.

Consequently, in the middle of session, Senate Republicans—feeling the mounting frustration of being in a super minority—left the Senate in a standstill for a week. In order to achieve a quorum (required to do Senate business), Democratic leadership agreed to set aside two bills (mandatory vaccination laws and a bill that would have changed gun storage requirements) and “reset” the conversation on the greenhouse gas emissions cap-and-trade program. Upon securing this agreement, Republicans

returned as the legislature swiftly passed the top priority for many—a new commercial activities tax to fund public education, again on party lines.

Then a week-and-a-half before the constitutional end of session (called Sine Die) as leadership worked to pass agency budgets and wrap-up the session, Senate Republicans rebelled over HB 2020 (the controversial cap-and-trade bill) by again denying a quorum in the Senate. While Republicans had spent most of the 2019 session working on the bill, they were unsatisfied with the final legislative language and had concerns about the impact the program would have on their constituents. As a result, lacking votes and with little tools to influence the legislation, the Republicans again left the state, denying the necessary quorum to do business in the Senate.

During the “walkout,” thousands of Oregonians demonstrated at the Capitol. Protests included proponents and opponents of cap-and-trade. After nine (9) days without a quorum, Senate Democrats negotiated a return of Senate Republicans by signaling the death of HB 2020.

In the end, with Republicans returning, Democratic leadership achieved many of their policy priorities for the session, with the notable exception of cap-and-trade. Nevertheless, one day after the session ended, Governor Kate Brown (D), addressing the media, vowed to finish the job by continuing to negotiate the future passage of cap-and-trade with the program’s most vocal opponents, rural manufacturers, the transportation sector, and Senate Republicans. Expect more on this topic in the future.

With cap-and-trade taking center stage, many other environmental and natural resource bills either passed without significant attention or were set aside for future sessions. Below are brief descriptions of notable bills and a link to a more exhaustive list of bills from this session:

### **Environmental and Natural Resource Bills**

Cap-and-Trade, [HB 2020](#) (Failed): HB 2020 established an economy-wide greenhouse gas reduction program that put Oregon on an aggressive path toward decarbonization. Generally, the bill authorized a regulatory program designed to put a market price on greenhouse gas (GHG) emissions by placing an overall cap on GHG emissions (or an emission budget) and then selling allowances (or permits) that collectively would not exceed that GHG cap (or a GHG budget). Over time, the economy-wide cap (and number of available allowances) would shrink to meet emissions reduction targets.

In order to comply with the program, regulated entities would have been required to purchase enough allowances at a State-sponsored auction (or, to a limited extent, purchase offset credits) to cover the amount of GHG emissions for a specific compliance period. The most notable regulated sectors were transportation fuels, electric utilities, and manufacturers, which would have been regulated differently under the bill.

Ultimately, the bill proponents' goal was to join the Western Climate Initiative (WCI) and participate in the auctions with other WCI jurisdictions like California and Quebec. WCI would host quarterly auctions and then, every three years, covered entities would be required to turn-in the requisite number of allowances that equal the number of tons of GHGs emitted (measured by Metric Tons of Carbon Dioxide Equivalent or MtCO<sub>2e</sub>).

For large, trade-exposed manufacturers (over 25,000 MtCO<sub>2e</sub>), the proposed legislation would have allocated up to 95% free allowances if the facility met Best Available Technology (BAT). Similarly, electric utilities over 25,000 MtCO<sub>2e</sub> would receive free allowances either up to their estimated emissions to meet the renewable portfolio standards (RPS) or up to a benchmark based on historic emissions that would decline with the cap over time. Natural gas utilities, on the other hand, would receive some free allowances for consignment that would also decline with the emissions cap.

And lastly, for transportation, the State opted to not provide free allowances for that sector. Instead, the legislature passed [SB 1051](#) (Passed) which, under a cap-and-trade program, would provide refund credits for eligible low-income Oregonians for the purpose of mitigating the carbon price indirectly paid through purchase of gas and diesel prices. For eligible drivers, this would be a tax credit based on average miles driven in the county in which they reside, average carbon price on fuel, and median number of gallons used in a county. Separately, off-road farming and forestry operations also would have been eligible for a credit against their fuel purchases based on the actual amount of fuel used and the average carbon price per gallon of fuel determined by ODOT. Unlike the top down regulatory approach, this would have required anyone claiming a credit to apply with the State.

Daylight Saving, [SB 320](#) (Passed): Abolishes annual one-hour change in time from standard time to daylight saving time and maintains Oregon on daylight saving time except in the portion of Oregon on the Mountain Time Zone. In order for this to be permanent, however, California and Washington must go to daylight saving time and Congress must authorize this time change.

Anti-Rollback Bill, [HB 2250](#) (Passed): Requires Department of Environmental Quality and Oregon Health Authority to regularly assess final changes to the federal clean

water, clean air, and safe drinking water acts to determine whether changes are “significantly less protective” of public health, environment, or natural resources than standards and requirements contained in those federal environmental laws, as in effect on January 19, 2017.

Conflict Minerals, [SB 471](#) (Passed): Requires prospective contractors to state in their bid for a public contract whether they will use conflict minerals in performing the contract and whether their disclosures, policies, practices, and procedures with respect to procuring conflict minerals comply with the Organization for Economic Cooperation and Development’s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Diesel Engine Standards, [HB 2007](#) (Passed): Compromise legislation that establishes new diesel standards for medium and large trucks in the Portland metro counties (Washington, Multnomah, and Clackamas). The bill also targets Volkswagen settlement funds to help governments and businesses transition to newer, cleaner burning diesel engines.

Dairy Regulation Bills, SB 103; SB 104; SB 876 (Failed): Environmental advocates introduced three separate bills that would have placed new regulations on large dairies. SB 103 and SB 104 would have classified dairies exceeding a certain size as “industrial facilities” which would have applied new industrial regulations to these dairies. SB 103 and 104 did not gain significant support. However, SB 876 came from an interim workgroup chaired by the Senate Environment Committee Chair, Senator Dembrow, which included input from the Oregon Department of Agriculture (ODA). Ultimately, legislators were unable to negotiate final passage of SB 876 due to opposition from ag and environmental interests.

Transportation Electrification, SB 1044 (Passed): This bill establishes legislative findings related to transportation electrification. It directs the Oregon Department of Energy (ODOE) to submit a biennial report on the adoption of zero-emission vehicles and associated greenhouse gas reductions. Additionally, the bill directs State agencies to make 25 percent of new light-duty vehicle purchases zero-emission vehicles, with exceptions, and to include information on these purchases in annual reports. This requirement is expanded to all vehicles purchased by 2029.

Ditch Cleaning, HB 2437 (Passed): Allows farmers to clean dry drainage ditches with a simple notification to the ODA and provides funding to ODA, the Oregon Department of Fish and Wildlife, and Oregon State University to fund the program and a research study.

Dam Safety, HB 2085 (Passed): Modifies the dam safety statutes in several respects.

Partial 404 Assumption, HB 2436 (Passed): Allows the Department of State Lands to assume fill-and-removal permitting from the Army Corps of Engineers for development activities within the urban growth boundary, excluding agricultural and forestry activities.

Navigability, HB 2835 (Passed): Requires State agencies to look for opportunities for public access to waterways on public lands.

Forestry in Drinking Watersheds, HB 2656; HB 2493 (Failed): HB 2656 banned forestry in drinking watersheds. HB 2493 banned aerial applications in the Santiam and McKenzie watersheds.

Pesticide Bills (Failed): Aerial Notification (HB 3044): Required an unworkable notification system for aerial applications of pesticides. Aerial Application on State-Owned Lands (SB 926): Banned aerial applications on state-owned lands. Neonicotinoids and Chlorpyrifos (SB 853; HB 3058; HB 2619): SB 853 and HB 3058 banned chlorpyrifos and made neonicotinoids restricted use. HB 2619 initially banned neonicotinoids and was subsequently amended to ban chlorpyrifos. Forestland Notification (SB 931): Required a notification and reporting program for pesticide applications on forestlands.

Seed Liability for Patent Holders, HB 2882; SB 434 (Failed): Held seed patent holders of GE crops financially liable if their seed was found on neighboring land.

Stay of Water Rights Decisions, SB 977; HB 3420 (Failed): Disallowed automatic stays in OWRD proceedings.

Harmful Algal Blooms, HB 2944; HB 3326; HB 3340 (Failed): Required the Department of Environmental Quality to evaluate and respond to harmful algal blooms. This issue will now go to an interim workgroup with anticipated future legislation.

Transfer of Stored Water, SB 51; SB 903; SB 946 (Failed): SB 51 would have only allowed transfer of a storage water right in limited circumstances. SB 903 would have allowed transfer of a storage water right more broadly. SB 946 would have created a path for allowing transfer of stored water more broadly.

For more environmental and natural resource bills and additional information about the bills listed above, please click [here](#).

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If you would like to contribute to E-Outlook or have any comments, please contact the E-Outlook Editor, Ashley Carter, at [ashley.carter@portlandoregon.gov](mailto:ashley.carter@portlandoregon.gov) or (503) 823-3054.