

# E – OUTLOOK

ENVIRONMENTAL HOT TOPICS AND LEGAL UPDATES

Year 2022  
Issue 1

Environmental & Natural Resources Law Section  
OREGON STATE BAR

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## ***Summary of Oregon's 2022 Legislative Session: Environmental and Natural Resources Legislation***

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The short 2022 Oregon legislative session came to a close on Friday March 4<sup>th</sup>, three days before the Constitutional deadline. The session was notable for several reasons. For starters, there was a subtle but real shift in relations between the two parties. While on the surface there was still acrimony, particularly in the House where the full text of every bill was required to be read from the outset of the session and the debate over overtime for agricultural workers was heavily charged, the shuffling of several major leadership positions seemed to result in an improved level of communication and respect.

Another noteworthy aspect was the record amount of general fund revenue expended on a variety of programs. Before adjourning, the legislature added almost \$2.7 billion in spending to the budget they passed only a year ago. The outlays included packages containing hundreds of millions of dollars toward housing, homelessness, mental health, climate change resilience and childcare, among other issues. Not to mention \$180 million in one-time payments to lower-paid essential workers and, in an olive branch to Republicans, \$100 million toward over 60 projects in rural, mainly Republican, districts.

From a structural perspective, when Oregon voters agreed to create annual sessions 12 years ago, the storyline was that the even-year short session, limited to just 35 days, would focus on technical fixes, emergency matters and rebalancing the state budget. More complicated legislation would be best served waiting for the next long session, where 160

days could be devoted to developing a consensus bill or at least one that reflected feedback from multiple stakeholders.

As it turns out, that model has never been followed and, with every even-year session, Oregonians again learn how far we are from that original design. Consequential and thorny bills are introduced even when they are not urgent, and the volume of proposals combined with the tight legislative schedule make effective advocacy challenging.

From an individual policy perspective, the headline event for environmental issues was probably the passage of the Private Forest Accord (PFA) bills, likely the most significant updating of the Oregon Forest Practices Act since its inception in 1971. The product of almost 18 months of negotiation resulted in three bills: SB 1501 (main policy bill), SB 1502 (tax credits for small forestland owners), and HB 4055 (renewal of the Forest Products Harvest Tax, with a new fund connected to the PFA agreement) all passing with bipartisan support. Work on the PFA now shifts to agency rulemaking, with a goal of adopting new rules by late 2022. Other significant issues during the short session included the aforementioned agricultural overtime bill, the transition of the Elliott State Forest to a research forest managed by Oregon State University, the elevation of the Environmental Justice Task Force to an Environmental Justice Council, and the introduction of a new concept regarding carbon sequestration on natural and working lands that came out of the Oregon Global Warming Commission.

Below are brief descriptions of some of the most notable bills of the session:

**Environmental Justice, HB 4077 (Passed)**

Transforms the Environmental Justice Task Force into the Environmental Justice Council and directs the Council to create a mapping tool to better identify environmental justice communities and directs agencies to use the tool in decision making and program development. Requires an inclusive community engagement process to receive input from communities around the state in developing the mapping tool. Increases the membership of the Council from 12 to 13 and states that 8 of the members must have experience in environmental justice while possessing knowledge in other areas such as climate resilience, disability rights, agricultural operations and food systems, water planning, and forest management, among other areas. Also provides definitions of “environmental justice” and “environmental justice communities”.

**Environmental Product Declarations, HB 4139 (Passed)**

Specific to Oregon Department of Transportation (ODOT) projects, HB 4139 creates an environmental product declaration (EPD) program for greenhouse gas reduction that

assesses emissions attributable to materials used in construction and maintenance of the state's transportation system, conducts life cycle assessments of certain construction activities, and devises strategies for improving pavement and bridge conditions. Requires ODOT to provide grants to bidders that require financial assistance to prepare EPDs. The bill also establishes a broad stakeholder advisory committee and allows for different assessments in different parts of the state.

### **Forest Products Harvest Tax, HB 4055 (Passed)**

Reauthorizes the Forest Products Harvest Tax, which failed to pass during the 2021 session, with a new component that will fund habitat improvement projects as part of the Habitat Conservation Plan (HCP), an end result of the Private Forest Accord. Landowners will pay more via the harvest tax, starting at \$2.5 million per year until the federal services approve the HCP, at which time the amount will increase to \$5 million annually. As part of the Private Forest Accord, Governor Brown committed the state to a \$10 million contribution for the life of the HCP. All told, the combined contribution to mitigation projects could reach as high as \$750 million over the next 50 years.

### **Private Forest Accord, SB 1501 (Passed)**

Enabling legislation for the Private Forest Accord (PFA) and accompanying 196-page Private Forest Accord Report, the product of a historic agreement between the forest products industry and conservation groups. Directs the Oregon Department of Forestry to engage in comprehensive, expedited rulemaking to update the Oregon Forest Practices Act to reflect the PFA agreement. The PFA was developed via an MOU signed between the two sides in early 2020. The first legislation resulting from the MOU was SB 1602, which passed during the first special session in 2021 and addressed the aerial application of pesticides by increasing buffers around schools, residences, and drinking water intakes as well as creating a new notification system for neighboring landowners. SB 1501 addresses a whole series of other challenging forestry issues, including new fish and non-fish bearing stream buffers, forest roads, steep slope logging, and how to address changes that may be needed in the future via an adaptive management program.

### **Small Forestland Owner Tax Credit/Private Forest Accord, SB 1502 (Passed)**

Companion bill to the Private Forest Accord that creates a new tax credit for small forestland owners to obtain value for opting-in to the newly increased standard harvest buffers that apply to larger industrial landowners. The amount of the credit is based on the stumpage value of timber within forest conservation areas or the area between the new small forestland owner minimum harvest buffers and the new standard buffers.

### **Reach Codes/Task Force on Resilient Buildings, SB 1518 (Passed)**

The original version of this bill would have allowed local jurisdictions to adopt the state's "Reach" code, an optional energy construction standard designed to reduce greenhouse gas emissions. By allowing cities and counties to mandate a standard that is currently optional, there was a fear of patchwork codes being created throughout the state. As a result, the bill was amended late in the session to create the Resilient Efficient Buildings Task Force ("REbuilding Task Force"). The charge of the Task Force is to identify and evaluate policies related to building codes and building decarbonization for new and existing buildings that would enable state to meet greenhouse gas emissions reduction goals (ORS 468A.205), while maximizing certain additional benefits.

### **Elliott State Forest, SB 1546 (Passed)**

SB 1546 creates the Elliott Research Forest and decouples the Elliott from the Common School Fund. It develops a new state authority to manage the forest, establishes a board of directors to advise and approve activities of the forest, and creates standards for the hiring of an Executive Director. It will also allow for active management on a small percentage of the forest. This bill is the result of several years of negotiations and comes on the heels of the State Land Board deciding, after nearly selling the forest to a timber company and tribe in 2017, to keep the forest in public ownership while providing the necessary funding to keep the Common School Fund whole. The bill passed by a somewhat surprisingly bipartisan vote.

### **Seismic Vulnerability Assessments, SB 1567 (Passed)**

Requires bulk fuel terminals to conduct seismic vulnerability assessments from which the Department of Environmental Quality (DEQ) will develop risk reduction plans and mitigation requirements. As amended, this will apply only to facilities in Columbia, Multnomah and Lane counties, which must submit assessments by June 1, 2024. This requires DEQ to review seismic assessments and to require property owners to submit updates every three years under certain circumstances. It requires DEQ to report back to the legislature no later than November 1, 2024 with recommendations for additional legislation based on information received from the seismic assessments, including applying the requirements to additional regions of the state.

### **Biofuel Certifications, HB 4090 (Failed)**

This bill would have required state agencies procuring diesel vehicles to obtain certifications from manufacturers and dealers that the vehicles can operate with a 20% biodiesel mix. Biodiesel is a biodegradable fuel created from vegetable oils, animal fats, or recycled restaurant grease, as opposed to traditional diesel, which is a petroleum product.

Some performance issues related to cold-weather operation have been noted at higher biodiesel blends and that may have contributed to this bill's failure in 2022, though it is expected to return in the longer 2023 session

**Diesel Fuel Phase-Out, HB 4141 (Failed)**

HB 4141 proposed to phase out petroleum diesel and mandate only renewable diesel for use in Oregon by 2029. This bill generated significant attention and pushback over concerns that a mandatory transition to a fuel currently limited in supply would result in market volatility and potential fuel shortages, as well as a disproportionate impact on rural communities. However, while the bill did not move forward, a budget note was added to the budget rebalance bill (HB 5202) that directs the Department of Environmental Quality and Department of Transportation to provide recommendations to help incentivize businesses and individuals to make the transition to other fuels and zero-emission vehicles. The phase-out concept is also expected to be reintroduced in 2023.

**Natural and Working Lands Carbon Sequestration, SB 1534 (Failed)**

This bill would have made it a policy of the state to increase net carbon sequestration and storage in, and the resilience of, the natural and working lands of the state. It created a definition of "natural and working lands" and directed the Global Warming Commission (Commission) to appoint a natural and working lands advisory committee. It also proposed to fund work on a carbon storage and sequestration inventory and direct the Institute of Natural Resources to coordinate with the advisory committee to develop recommendations for a net carbon sequestration and storage baseline for natural and working lands and community-based metrics. The bill required the Commission to accept or modify baseline and metrics and submit the final recommendations for legislation in a report to interim legislative committees no later than September 15, 2023. While it failed in 2022, a workgroup is expected to be formed to bring a new concept forward for the 2023 session.