



2018 OSBA/COSA LEGISLATIVE — REPORT —

When Oregon voters approved annual legislative sessions in November 2010, the plan was to focus primarily on fixing problems that arose from bills passed in the regular session and respond to budget issues caused by sudden economic swings or unanticipated emergencies. The short February sessions now look a lot more like a full-fledged session squeezed into 35 days or less.

In January, legislators were concerned that the February session could include significant budget shortfalls and divisive debates. Ballot Measure 101 held the possibility that the state could lose more than \$1 billion in revenue and federal matching funds. Some legislators strongly supported taking on a highly controversial cap-and-trade proposal, promising significant lobbying on both sides.

Ultimately, Measure 101 passed and budgets were not affected, while cap and trade fizzled at the end of session. The session was generally conducted along bipartisan lines with the usual partisan flare-ups corresponding with an election year. Somewhat surprisingly, the Legislature adjourned more than a week early on Saturday, March 3.

OSBA and COSA identified several bills that could cause problems. An Oregon Education Association bill (House Bill 4113) to make class size a mandatory subject of collective bargaining was probably the most concerning. Besides increasing acrimony during local bargaining and raising fiscal problems, the bill could have created workforce requirements that couldn't be met with available licensed teachers and facility shortages in the face of additional classroom requirements. It did not offer a clear boost to student success either. OSBA and COSA representatives opposed the bill at hearings, and it initially appeared stalled in the House. Aggressive OEA lobbying and leadership support finally pushed it out of the House on a split vote. Once it reached the Senate, though, it failed to move out of committee. The bill is likely to be back in 2019 after interim review.

Other issues that kept us busy included a proposal from Gov. Kate Brown (Senate Bill 1566) to establish a statewide side account for K-12 Public Employees Retirement System obligations that was passed along with a matching fund program to help local districts reduce their unfunded actuarial liability. The immediate impact on PERS rates will be minimal, but the legislation created funds that could grow into significant difference-makers. Senate Bill 1522, which passed unanimously, helped clarify the rules allowing districts to provide transition services for students receiving modified diplomas.

This report identifies 27 bills that affected school districts, education service districts and community colleges. Generally, COSA and OSBA members should be pleased with the session, which was highlighted by the defeat of the “class size” bill and no losses on the State School Fund, Measure 98 or any of the other important programs funded in 2017.



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OF OREGON SCHOOL
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TABLE OF CONTENTS

2018 SESSION REVIEW	1
OPERATIONS BILLS	4
PROGRAMS BILLS	5
PERSONNEL BILLS	7
FINANCE BILLS	9

BILL INDEX

SENATE BILLS

SB 1520.....	7
SB 1522.....	6
SB 1528.....	10
SB 1529.....	10
SB 1540	8
SB 1547	5
SB 1563.....	5
SB 1566.....	8
SB 5703.....	11

HOUSE BILLS

HB 4012.....	7
HB 4023	4
HB 4035	5
HB 4036	5
HB 4043.....	5
HB 4044.....	5
HB 4046.....	7
HB 4047	4
HB 4053	6
HB 4059	9
HB 4067	6
HB 4080.....	9
HB 4117	9
HB 4130	4
HB 4150	7
HB 4159	7
HB 4163	9
HB 5201.....	9

Gov. Kate Brown has until April 13, 2018, to act on all bills passed by the Legislature. She may sign a bill, veto a bill, or not take action, in which case the bill becomes law. She has not signaled that she will veto any of the following bills. All effective dates listed are conditional on the bill becoming law, and chapter numbers will be updated later.

BILL SUMMARIES

(BY CATEGORY)

OPERATIONS

House Bill 4023, effective on passage, creates provisions and amends ORS 276A.406 and 276A.412. The bill directs the Oregon Broadband Advisory Council to conduct a study to identify ways to highlight a “local broadband champion” program and potential funding needs to make broadband more affordable and effective across the state. The report is due to the Legislature by Dec. 1, 2018. The bill also creates the Connecting Oregon Schools Fund to provide matching funds to school districts that receive federal funding for broadband access. No funds were allocated in the session, but the Oregon Department of Education anticipates asking for funds at the May Emergency Board meeting based on school district requests. The state board must adopt rules for this program, and ODE must consult with the Office of the State Chief Information Officer before releasing funds to school districts. Other provisions in the bill allow the information office to provide broadband communications services upon request to local governments, special districts and federally recognized tribes in Oregon based on rules adopted by the office. Those rules must be presented to the Legislature for review prior to adoption.

HB 4047, effective Jan. 1, 2019, creates provisions and amends ORS 336.585 and ORS 336.590. Under statute and administrative rule, Oregon students must complete certain requirements (e.g.: 24 credit hours of coursework) to receive a diploma. School districts can add additional requirements. HB 3067 (2017) required school districts or public charter schools to grant waivers for additional graduation requirements to foster children, homeless students or runaways, children in military families, children of migrant workers, and children enrolled in the Youth Corrections Education Program or Juvenile Detention Education Program programs. The requirements of HB 3067 (2017) did not apply to ESDs, which often contract with school districts and ODE to administer programs for students in the corrections system. HB 4047 extends the intent of HB 3067 (2017) to include ESDs, and it prevents them from imposing additional diploma requirements on students enrolled in those programs.

HB 4130, effective July 1, 2018, creates provisions and amends ORS 801.455. The bill establishes a grant program for extracurricular transportation costs. These costs, commonly associated with “activity bus” activities, occur beyond distributions from the State School Fund. The bill allows ODE to award grants for up to 50 percent of the additional transportation costs for grades 9-12. The bill makes a one-time general fund appropriation of \$250,000 to ODE for this program for the 2017-19 biennium.

Senate Bill 1547, effective on passage, amends ORS 336.485 and 417.875. The bill expands the list of qualified health professionals who can provide a medical release for a student athlete suspected of having a concussion, including licensed chiropractic physicians, naturopathic physicians, psychologists, physical therapists, occupational therapists, physician assistants and nurse practitioners. Oregon Health & Science University will develop an online training component by July 1, 2020, that must be completed by the expanded list of qualified health professionals before they can participate in releasing student athletes back to play. OHSU will report on the progress of the online certification by Oct. 1, 2018.

SB 1563, effective on passage, creates provisions and amends ORS 357.287. The bill extends so-called “tuition equity” provisions for undocumented student university tuition costs created by SB 2787 (2013). SB 1563 removes the requirement that undocumented students apply for an official federal identification document to be eligible for resident tuition at public universities and allows those students to receive scholarships, grants and other financial aid from the Higher Education Coordinating Commission.

PROGRAMS

HB 4035, effective on passage, creates provisions to establish a tuition assistance program for qualified Oregon National Guard members and appropriates \$2.5 million to HECC for tuition assistance payments for the 2018-19 academic year. Guard members who maintain a GPA of at least 2.0 and are working toward either an associate’s or bachelor’s degree at an Oregon community college or public university are qualified. The program will pay for up to 90 credits at a community college and 180 hours at a public university. The bill authorizes the commission to create rules to administer the program.

HB 4036, effective on passage, amends ORS 339.460. The bill is a follow-up to SB 208 (2017), which allowed homeschool and charter school students to participate in Oregon School Activities Association sanctioned activities in grades 9-12. The bill changes the statutory definition of “interscholastic activities” by adding language that requires school districts to allow for homeschool and charter school students enrolled in grades K-8 to participate in before- and after-school activities such as athletics, music, speech, clubs or other similar activities. It does not require school districts to allow these students to enroll in classes during the school day. Districts may charge charter schools up to 5 percent of the school district’s General Purpose Grant weighted average daily membership (ADMw) to participate in the activity. The bill clarifies that the homeschool and charter school students are subject to the same rules for participation (tryouts, waiting lists, etc.) as students enrolled in the neighborhood school.

HB 4043, effective on passage, creates provisions. Legislative testimony indicated that many community college students experience basic needs insecurity, including housing and food insecurity. HB 4043 instructs community colleges to investigate best practices for integration of benefits and ensuring student access to available financial supports and to report findings of the study to the Legislature by Feb. 1, 2019.

HB 4044, effective June 2, 2018, creates provisions to require the Chief Education Office to conduct a study “on the recruitment, retention, mentoring and professional development of educators who serve students in public preschool through grade 12 in this state who are from student groups that

may be at risk for experiencing an achievement gap when compared to other student groups.” Student groups to be included in the study include diverse students (as defined in ORS 342.433); students attending schools that rank low in performance; and students enrolled in alternative education programs, English language learner programs, early childhood special education services or special education services, and Talented and Gifted programs. The Chief Education Office must also study and review professional development, mentoring or other programs supporting the educators who serve these students and how the programs are funded. The study asks for identification of effective programs in improving recruitment, retention, mentoring and professional development of educators. The report is due to the Legislature before June 30, 2019.

HB 4053, effective on passage, creates provisions and amends section 72, chapter 774, Oregon Laws 2015. This legislation is a first step to address the transfer of college credits attained while in high school to Oregon public higher education institutions. The Chief Education Office and Higher Education Coordinating Commission are required to develop an annual report on the transfer of credits earned while in high school, which includes information about the number of credits accepted or not accepted by Oregon public higher education institutions. The report is a statistical sample and not a comprehensive data collection. The first report is due Dec. 1, 2018. HECC is also required to “develop statewide standards for public postsecondary institutions of education to make information related to accelerated college credit programs available on each institution’s internet website.” To provide transparency around credits for students, this posting must include:

- The policies, methods and procedures used for determining when to accept credit from an accelerated college credit program and whether the credit will be accepted as credit toward general education;
- The process for appealing any determinations related to the acceptance or use of credit from an accelerated college credit program; and
- A list of courses, if available, that apply toward the completion of a certificate or degree.

HB 4067, effective July 1, 2019, amends ORS 343.035. Under statute, children from birth to kindergarten can receive early intervention services due to a developmental delay. ORS 343 defines developmental delay and includes a delay in cognitive, physical, social, emotional or adaptive development. HB 4067 adds developmental delay to the list of conditions eligible for special education services for children in kindergarten through third grade.

SB 1522, effective on passage, creates provisions and amends ORS 327.026, 339.115 and 340.005. SB 20 (2017) inadvertently included language that ultimately prevented school districts from accessing State School Fund dollars for students who received a modified diploma and wanted to continue receiving transition services until age 21. The State Board of Education has adopted a temporary rule to ensure there are no disruptions this school year. SB 1522 will update statutes to ensure that students who receive modified diplomas continue receiving additional assistance transitioning to life after high school and allow school districts to continue receiving state school funds to provide needed transition services. The bill also contains provisions allowing modified diploma recipients in Youth Corrections Educational Programs to be eligible for transition services and modified diploma recipients to be eligible for the Expanded Options Program.

PERSONNEL

HB 4012, effective June 2, 2018, amends ORS 238.082, which extends the exemption on the limitations of hours for employment of certain PERS retirees imposed by ORS 238.082. The bill permits Tier One and Tier Two PERS members to return to work full time (in excess of 1,039 hours) for a school district as a career and technical education instructor. The bill repeals the exemption on June 30, 2023.

HB 4046, effective on passage, amends ORS 238.005, 238A.005, 341.556 and 353.270. In preparation for retirement, PERS calculates monthly benefits using the formula 1.5 percent x years of retirement credit x final average salary. Normal retirement age for general service members is age 65, or age 58 with 30 years of retirement credit. The bill clarifies that any outside compensation received by a public employee cannot be used in calculation for final average salary upon retirement. Only compensation paid to the employee by the public institution will be used in calculating a public employee's final average salary. This new provision applies to employees of public universities, Oregon Health & Science University or a community college.

HB 4150, effective July 1, 2018, creates provisions and amends ORS 342.400 and 342.704. School districts are required to have sexual harassment policies. The bill adds and expands the notification requirements school districts use when completing any investigation of a sexual harassment complaint. If a violation of the sexual harassment policy occurred, the notice must be in plain language and include to the extent allowed under state and federal confidentiality laws a clear, easy-to-read handout on rights, legal and disciplinary options, and any other available resources. The sexual harassment policy extends to persons who are on or immediately adjacent to school grounds, school-sponsored events and official school bus stops. The State Board of Education will adopt minimum requirements for extension of the district policy to third parties.

HB 4159, effective on passage, adds to ORS 238A and directs the Public Employees Retirement System Board to adopt rules that allow a PERS member in the Individual Account Program to make limited decisions about investment selections of their account once a year, beginning on Jan. 1, 2019. The bill requires the state treasurer to notify the PERS Board by Dec. 31, 2018, if legal and fiduciary standards prohibit implementation of this bill.

SB 1520, effective on passage, creates and amends provisions. The Senate Education Committee will sometimes, in short sessions, draft an "omnibus" measure to address broadly agreed-upon technical changes to education law. SB 1520, the 2018 omnibus bill, makes changes requested by agencies and stakeholder groups. The bill:

1. Allows the Teacher Standards and Practices Commission to re-create the same expedited process for teachers and administrators as was in place prior to passage of SB 205 (2017).
2. Removes unnecessary references to institutions of higher education in public charter school law.
3. Clarifies that school districts offering full-day kindergarten programs may not be compelled to also offer half-day kindergarten programs.
4. Extends the sunset on so-called "dorm schools" formula weighting provisions by two years.
5. Removes the sunset on the provision that virtual public charter schools may contract with a for-profit entity to provide educational services if the employee is an administrator and meets other requirements.
6. Clarifies requirements for Oregon Department of Education mentoring grants.

These changes, as well as others included in the bill, are all technical, have no opposition on the record, and can be considered “housekeeping” changes.

SB 1540, effective on passage, amends ORS 419B and 430.735.419B to authorize the Department of Human Services or law enforcement, with proper identification, to investigate on school premises a report of child abuse. School district personnel cannot notify any person about the investigation, and results of the investigation are not part of the student’s school record. The bill expands the definition of “adult,” community health program and sexual abuse for reporting about adults with mental illnesses or development disabilities. The bill also helps clarify and allow investigations of reports of abuse of adults in centers being treated for severe mental health illness and adults receiving treatment for substance use disorders.

SB 1566, effective June 2, 2018, creates and amends provisions to address the ongoing PERS funding challenges. The bill:

- Establishes the Employer Incentive Fund, which will allow one-time matches of 25 cents for every \$1 on contributions made by all municipal employers to pay down existing unfunded PERS liability costs. The minimum contribution from the employer is \$25,000, and the maximum would be up to 5 percent of an employer’s liability or \$300,000, whichever is greater. The employer must apply no later than Dec. 31, 2019, and the employer’s lump sum payment must be made by July 1, 2023. An employer contribution may not be from borrowed funds. A related measure, SB 1529, distributed \$25 million to this fund.
- Establishes the School Districts Unfunded Liability Fund, the proceeds of which will be used by the PERS Board to offset rising PERS costs for school districts in the upcoming biennia. A related measure, SB 1529, distributed \$115 million to this fund.
- Makes changes aimed at reducing the impact of the unfunded PERS liability, which was more than \$20 billion in 2017, including changes to lump-sum payment amortization and employer rate calculation processes.

The intent is for both funds to receive ongoing funding, and the text of the bill designates four potential future sources of funding for the Employer Incentive Fund, including debt collection, capital gains taxes, estate taxes and interest on unclaimed property. However, these sources are all general fund revenue, and the allocation of that revenue will be up to future legislatures.

FINANCE

HB 4059, effective June 2, 2018, creates and amends provisions. The bill is the follow-up to last year's transportation package, HB 2017 (2017). The transportation package is expected to raise more than \$5 billion in new revenue over the next decade. Part of that \$5 billion will be deposited, beginning in 2019, in the Statewide Transportation Improvement Fund. For 2019, the approximate value of the fund will be \$100 million-\$120 million, and it is expected to grow each year. The fund money is to be directed to transit districts for investment in programs to improve ridership and infrastructure. HB 4059, among other things, dedicates 1 percent of the fund every year for student transportation passes, such as for buses or light rail, for districts that do not have programs to do so. The bill makes this money available to grade 9-12 students and requires that student transportation be one of the main criteria for any transit entity's plan for the funds.

HB 4080, effective June 2, 2018, creates provisions and amends ORS 178.375 and 316.680. Section 4 applies to tax years on or after Jan. 1, 2018, and updates the connection date to the Internal Revenue Service code from Dec. 31, 2015, to Dec. 31, 2017. Oregon allows an income tax subtraction for contributions made to Oregon 529 College Savings Network accounts for higher education. Federal tax law change expanded the definition of qualifying expenses to include public, private and religious elementary or secondary schools, with a maximum of \$10,000 per taxable year. The bill changes Oregon statute so that withdrawals from an Oregon 529 savings account that are used for elementary or secondary school expenses must be added back for inclusion in Oregon income taxes along with untaxed earnings and gains.

HB 4117, effective July 1, 2018, creates provisions and amends ORS 327.011. The bill increases the cap on local property tax revenues through voter approved local option levies that school districts can keep outside the State School Fund formula to the lesser of:

- The amount received,
- 25 percent of the formula revenue a district receives, or
- \$2,000 per extended weighted average daily membership (extended ADMw) of the district.

The new limit takes effect July 1, 2018, and the \$2,000 limit per ADMw will be increased by 3 percent annually. Portland Public Schools exceeded the current cap for several school years, and the bill allows the district (or any other district that may have exceeded the current cap) to retroactively keep the funds rather than count those levy dollars collected over the cap as local revenue under the State School Fund formula.

HB 4163, effective on passage, amends and repeals provisions. HB 4163, known as the "program change" bill, makes changes necessary to implement the 2017-19 legislatively adopted budget. Program changes for higher education, public safety, human services, judicial and the Department of Administrative Services are contained in the bill. The measure also requires the secretary of state to conduct an independent actuarial review of PERS once every four years and specifies items to be included in the review, such as actuarial methods, demographic and economic assumptions used, and PERS-system valuation methodology. The secretary of state is to submit the review to the PERS Board and the Legislature by Feb. 15 of the year the review is initiated.

HB 5201, effective on passage, creates provisions and amends section 1, chapter 594, Oregon Laws 2017 and repeals section 1, chapter 589, Oregon Laws 2017; section 2, chapter 594, Oregon Laws

2017; and section 21, chapter 655, Oregon Laws 2017. The bill is the omnibus budget reconciliation bill for the 2018 session, often referred to as the “Christmas tree” bill. Major changes related to education included:

- Removing \$70,961,313 in general funds from the State School Fund and replacing that revenue with \$70,961,313 in lottery funds. This is a funds shift and does not impact the overall \$8.2 billion allocation.
- Providing \$1,980,708 in general funds to the Office of Child Care to add 14 positions and pay for testing for lead in water in child care facilities.
- Providing approximately \$4.5 million in funding to pay for staff and operations of the Chief Education Office for 2018-19.
- A \$250,000 appropriation to the Mike McLaran Center for Student Success in Salem-Keizer Public Schools.
- The legislation also included two budget notes for the Oregon Department of Education:
- ODE is instructed to use one-time funding from the Network for Quality Teaching and Learning to provide up to \$100,000 to support the Civic Scholars program under HB 2955 (2015) for the annual Oregon Civic Education for Teachers Day for the 2018-19 school year. This program provides ongoing professional development for civics teachers across the state.
- Before disbursing any matching funds from the Connecting Oregon Schools Fund to provide schools with broadband access, ODE shall consult with the Office of the State Chief Information Officer to prioritize the disbursement of matching funds so as to leverage existing public fiber assets to the greatest extent possible. ODE shall provide a report on the disbursement of funds to the Joint Committee on Information Management and Technology during the first Legislative Days after the disbursement of funds. The report shall identify the schools benefitting from the matching funds, the status of any broadband deployments, the broadband speed available per user, and the extent to which the disbursements leverage existing public fiber.

SB 1528, effective June 2, 2018, creates provisions and amends ORS 314.752 and 318.031. The federal tax cuts passed in December 2017 included a provision allowing specified pass-through entities a deduction generally equal to 20 percent of their qualified business income. Because Oregon tax law is connected to the federal definition of taxable income, the 20 percent deduction was set to become part of Oregon’s tax code and cost the state general fund over \$250 million in the 2017-19 biennium and over \$400 million in the 2019-21 biennium. SB 1528 disconnects Oregon tax law from this federal deduction and prevents the loss of state revenue.

The bill also creates a tax credit against personal or corporate income/excise taxes for taxpayers who make certified Opportunity Grant contributions to the Opportunity Grant Fund. The credit is capped at \$14 million per fiscal year and sunsets after the 2023 tax year.

SB 1529, effective June 2, 2018, creates, amends and repeals provisions. In 2011, Oregon enacted a continuing connection, or “rolling reconnect,” to the federal definition of “taxable income,” as well as other federal tax laws and definitions. The Tax Cuts and Jobs Act of 2017 enacted sweeping changes to federal tax law. As a result, Oregon faced an unanticipated revenue shortfall of potentially hundreds of millions of dollars. SB 1529, along with the companion bill SB 1528, de-couples many Oregon tax laws from federal tax laws. The bill uses some of the reclaimed revenue from these changes to fund the Employer Incentive Fund and the School Districts Unfunded Liability Fund, as detailed under SB 1566.

SB 5703, effective on passage, amends sections 3, 4, 6, 7, 8, 10, 13, 17, 20 and 23 of chapter 598, Oregon Laws 2017. The bill adjusts allocations for lottery funds, the Criminal Fine Account and the Oregon Marijuana Account. There are two changes of relevance to education:

- Lottery revenues are projected to increase by approximately \$110 million from assumptions made in the 2017-19 legislatively adopted budget. Since 18 percent of lottery funds are sent to the Education Stability Fund, an additional \$19,862,945 is projected to be deposited in the fund.
- The lottery funds allocation for the State School Fund is increased by \$70,961,313 (see HB 5201 in this report). This is a funds shift (an equal amount of general funds was removed from the school fund) and not an increase to the State School Fund.

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OSBA helps identify and implement policy changes required by new legislation

Some of the laws enacted by the 2018 Legislature require school districts, education service districts, charter schools and community colleges to make policy changes.

The Oregon School Boards Association has created sample policies to help you make these changes. For more information, contact OSBA Policy Services, 800-578-6722 or 503-588-2800, email info@osba.org, or visit www.osba.org/policyservices.