

2015 LEGISLATIVE SESSION REPORT

A Legislative Session Unlike Any Other in Recent Memory

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A LEGISLATIVE SESSION UNLIKE ANY OTHER IN RECENT MEMORY

On Monday, July 6, the 2015 Oregon Legislature finished its business. Most observers agree this was unlike any session in recent memory. Before the session really got underway, Governor John Kitzhaber was forced to resign on February 18 and was replaced by Oregon's newly appointed Governor Kate Brown. This shift in the political landscape, combined with a dominant majority party (Senate: 18 Democrats, 12 Republicans; House: 35 Democrats, 25 Republicans), led to what many observers agree was one of the most contentious and partisan sessions.

AGC's Public Affairs Team closely monitored over 250 of the 2,600 bills introduced. Bills most critical to our industry and members included: the expansion of prevailing wage rates to private work, multiple additional responsible bidding requirements, and attempts to impose California-like off-road clean diesel requirements on our industry. AGC was able to defeat or modify all of the most critical bills directly aimed at our industry. AGC also worked closely with its industry and business partners to defeat or mitigate many bills dramatically impacting the broader business climate in Oregon. These bills included: the expansion of Bureau of Labor and Industries (BOLI) authority, mandated paid sick leave, workers' compensation, and flexible scheduling regulations.



*Oregon State Capitol Building
Salem, Ore.*

Legislative decisions regarding budget investments in career technical education (CTE) and a failed proposed transportation infrastructure funding bill came in the closing two weeks of the 2015 session. AGC with its coalition partners led an aggressive and successful effort to double Oregon's current CTE investment from \$10 million (est.) to \$20 million (est.) in the next biennium. A late session bipartisan effort to increase transportation funding and undo the recently passed low carbon fuel standard (LCFS) failed when environmental groups refused to negotiate an alternative to the LCFS that passed in March. The industries most directly impacted by the LCFS have already filed two court challenges and initiated the first steps necessary to overturn the law at the ballot in the 2016 election.

This report is intended to provide highlights on the bills and issues most critical to our industry and members. If you have questions on these bills or on AGC's positions, please contact [John Rakowitz](mailto:John.Rakowitz@agc-columbia.com), 503-317-1781. AGC's Public Affairs Team operates using the chapters Core Policy Issues, which can be found [here](#).

A MESSAGE FROM PRESIDENT LARRY GESCHER



Larry Gescher
2015 AGC President

I hope and believe we have demonstrated once again how our association can help shape our industry's future. In the 2015 session, as always, our fundamental guiding principle remains *maintaining as level a playing field as possible for our members and all sectors of our industry*. In addition to defeating proposed new laws that would have damaged our industry in significant ways, AGC played a critical role in securing career technical education funding and pushing for a bipartisan transportation funding bill. Unfortunately, the transportation funding bill was defeated by the environmental community late in the 2015 session. Going forward, AGC's Public Affairs Team will continue to work with the governor's office, business partners, and legislators to underscore the overwhelming need to increase Oregon's investment in its transportation system.

We owe special thanks to all those members who participate in our Legislative Committee Forums and help our chapter's leadership define our core policies and positions. This is the tool that our Public Affairs Team relies most on to represent our members and our industry at large. I want to recognize our Legislative Committee Forum Chair Dee Burch and Legislative Committee Forum Vice-Chair Tom Gerding, as well as AGC Executive Director Mike Salsgiver for their active engagement in the many issues facing AGC in this legislative session. Also, a special thanks to John Rakowitz, Mike Eliason, Drew Hagedorn, and Sarah Coghill for being our gold standard Legislative Team.

GAME CHANGERS: CLEAN DIESEL EQUIPMENT & APPRENTICESHIP MANDATES

Clean Diesel Equipment

AGC, along with a broad coalition of stakeholders including the Oregon Trucking Associations (OTA), the Oregon Concrete and Aggregate Producers Association (OCAPA), the Oregon Building Trades Council, and public owners, opposed an attempt to import the California-like off-road clean diesel requirements proposed in [Senate Bill 824](#). In its original form, SB 824 would have: (1) authorized the Department of Environmental Quality (DEQ) to adopt California's emission regulations; (2) allowed individual local governments to impose unique truck idling restrictions; (3) required the DEQ registration of off-road equipment; and (4) dedicated one percent of all public improvement contracts to a fund for diesel engine retrofitting and repowering. The coalition's opposition to SB 824 led to an [amendment](#) that proposed the creation of a task force to evaluate the impacts of diesel equipment and review potential regulations to reduce **on and off-road** diesel equipment emissions. This amended version of SB 824 did not move forward.



Caterpillar equipment on a jobsite

AGC's core policy and position is to advocate an incentive-oriented approach that covers the full cost for emissions reduction equipment and opposes California's strict off-road emissions equipment rules. AGC's Public Affairs Team is already in contact with AGC of America's environmental team to utilize their expertise in how other states have fashioned incentive-oriented off-road diesel programs in hopes of shaping Oregon policy in the future.

GAME CHANGERS CONTINUED...

Apprenticeship Mandates

Mandated apprenticeship requirements remain one of the most contentious legislative issues that AGC faces. In 2015, Senate Bill 809 proposed a new responsible bidding apprenticeship requirement that AGC had no choice but to oppose. AGC strongly supports apprenticeship as one strategy to meet the industry's future workforce shortage that contractors have already begun to experience. AGC's core policy supports a phased-in, achievable utilization goal on large, state agency projects only. SB 809 would have required a bidder for public works to meet a new responsible bidder requirement in one of two ways: (1) by an individual company demonstrating a ten percent apprenticeship utilization for all hours worked in the previous calendar year on private or public work, or (2) by joining a local Joint Apprenticeship and Training Committee (JATC) that could demonstrate the same ten percent apprenticeship utilization in the previous calendar year for all hours worked by the JATC member companies. This bill would have added a mandated prequalification requirement into the responsible bidder law, disqualifying many contractors from bidding on public works in Oregon. AGC led a coalition of construction industry associations and public owners that defeated this bill. AGC Past President Tom Gerding, a member of the 2014 Apprenticeship in State Contracting Task Force, used his knowledge of the complicated issues surrounding apprenticeship to provide an industry perspective in multiple hearings on SB 809 and related CTE hearings in the capitol.



*Tom Gerding
Vice Chair, Legislative
Committee Forum*

MONEY MATTERS: CTE INVESTMENTS & TRANSPORTATION INFRASTRUCTURE

CTE Investments

AGC helped lead a broad CTE coalition that worked from the first days through the final days of this session to successfully grow permanent investments in career technical education (CTE). This effort led to a dedicated \$20 million CTE investment in the Department of Education's budget (House Bill 5016), passed in the final days of the session. The other major achievement supporting the revitalization of CTE in high schools was the passage of House Bill 3072. This bill creates pilot programs to grow CTE instructors and test ways to elevate CTE courses to the same level as all other core high school curriculum.

AGC, other business associations, and most labor organizations that participate in the CTE-STEM funding coalition rejected an attempt to establish a new payroll tax (cents per hour) for employers to pay for CTE. This coalition's perspective was and is that high school career technical education classes remain a core General Fund responsibility.



*Students from Sherwood's Mobile FabLab
participating in CTE Day at the Capitol*

MONEY MATTERS CONTINUED...

Transportation Infrastructure

The Oregon Legislature failed to deliver on a transportation funding package despite AGC and the broader business community's efforts advocating for this key investment. Coming into the 2015 session, Oregon's leadership, Republican and Democrat alike, called a transportation funding package a "must do" of the session. Unfortunately, the Democratic majority immediately forced the passage of the low carbon fuel standard (LCFS) in March. Based on the state's own estimates, the LCFS program will increase the cost of fuel by up to 18 cents per gallon upon full implementation—without one cent of it going toward the funding of roads, bridges, and streets. The passage of this legislation effectively halted the discussion of a transportation funding package.



The industries most directly impacted by the LCFS demanded a modification of this legislation as a condition of supporting a transportation funding package. AGC continued to work with our business partners, legislators, and the governor's office in hopes of finding a way to move forward on a transportation funding package that included a replacement of the LCFS. In May, Governor Kate Brown convened a bipartisan group to craft a bill that would accomplish both goals: repeal the clean fuels law and replace it with new carbon reduction measures and the raising of taxes and fees to fund state highways and bridges, county roads, and city streets.

In late June, a special committee for the Sustainable Transportation Act that would have accomplished the above goals held a nearly four hour hearing. The package was a carefully negotiated agreement by a group of bipartisan legislators convened by the governor. AGC supported the agreement, which would have resulted in transportation infrastructure investments, new consumer protections to fuel price increases, and technically feasible carbon reduction strategies.

In short, the package would have:

- Reduced greenhouse gas emissions
- Created new funding
 - * \$206 million per year for state and local roads
 - * \$80 million per year for transit improvements
 - * \$2.5 million per year for airports
 - * \$55 million for ConnectOregon VI
- Gas tax increase of four cents per gallon (phased in over two years)
- Increase in title, license, and registration fees
- Required ODOT to study and report on how it would redirect \$50 million per year toward operations and maintenance of state highways

After intense environmental opposition to the package, 19 House Democratic members signed a public letter declaring their opposition to any modifications to the LCFS passed in March. Within days, Governor Kate Brown publicly declared the Sustainable Transportation Act dead. This failure by Oregon's leadership does not change, and in fact only underscores, the ever growing need to discover a way to fund our state's infrastructure. In the interim, AGC will continue to advocate for the necessity to fund our transportation system.

NATIONAL LABOR AGENDA FINDS HOME IN OREGON

The Democrats' overwhelming majority led to a national labor movement's pursuit of an employee-driven agenda. This included priorities like statewide mandated paid sick leave, minimum wage increases, and a state-mandated retirement program for employees. Other national labor priorities included: mandated flexible scheduling requirements, workers' compensation system changes, so-called "wage theft," and increased regulatory and enforcement authority for the Bureau of Labor and Industries (BOLI). AGC and the general business community were successful in stopping or mitigating many but not all of these concepts. Below is a recap of the bills with the most impact on our industry and the general business climate in Oregon:

Paid Sick Leave:

Statewide mandated paid sick leave ([Senate Bill 454](#))—the top priority in 2015 for organized labor—ultimately passed after going through a highly contentious process that led to nearly 50 amendments being introduced. Due to the vigorous opposition of an industry coalition that included AGC, the final bill was scaled back considerably from early versions. AGC argued strongly that Oregon's construction industry, especially smaller contractors, would not be able to absorb this new mandate without impacting the bottom line. This new law will require Oregon employers with 10 or more employees to provide at least **five paid sick days** per year. Employers with less than 10 employees must provide at least **five unpaid sick days** per year. The final negotiated bill allows employers with existing PTO or other policies that are "substantially equivalent" to the requirements of SB 454 to be deemed in compliance with the new law.



Portland and Eugene's existing sick leave ordinances are completely preempted. The only exception is in Portland, where the paid sick leave mandate will apply to employers with six or more employees as opposed to 10 or more. In addition, collective bargaining agreements are exempted from this new paid sick leave mandate. This portion of the law was designed to apply mainly to the construction industry.

Flexible Scheduling Mandate Preemption:

[Senate Bill 968](#) establishes a two-year preemption on local governments, preventing them from enacting ordinances related to workplace scheduling. This was intended to prevent a proposed City of Portland ordinance on mandated flexible scheduling requirements that would have set the stage for a statewide law in either the 2016 or 2017 legislative sessions.

Mandated State-Run Retirement Plan:

[House Bill 2960](#) establishes a state-run retirement program administered by a newly created Oregon Retirement Savings Board. This program will require employers without any current retirement plan options to open a defined contribution plan that can be accessed through employee payroll and require employees to automatically enroll and make contributions, while also allowing for an opt-out process. The board must report back to the legislature by December 31, 2016 and provide answers to questions regarding what the program will look like and whether it would trigger the Employee Retirement Income Security Act of 1974 (ERISA). If independent legal analysis concludes the program would trigger ERISA and the associated liability to employers, the board will not be allowed to implement the plan.

Attorney Fees for Workers' Compensation Trial Attorneys:

[House Bill 2764](#) raises certain attorney fee caps for claimant's attorneys and allows several new avenues for claimant's attorneys to receive fees. Early versions of the bill were estimated by a national firm to potentially raise overall Oregon Workers' Compensation System costs by up to five percent. However, in the final bill, the same firm estimated that the changes approved would have a negligible effect on overall system costs.

DEFEATED BILLS

Employer Mandates:

Senate Bill 718: This bill attempted to punish employers for a variety of alleged unfair practices and would have allowed employees to file liens against their employers without establishing proof of a wage violation. It also would have eliminated the accepted definition of “independent contractor,” and would have changed prevailing party attorney fee language to allow attorney fees to be awarded only to prevailing plaintiffs.

Senate Bill 19: Proposed to establish joint and several liability on employees who aid or abet their employer in carrying out wage claim violations.

Senate Bill 888/House Bill 2010: Would have required certain employers (including construction employers) to allow employees to request flexible or predictable schedules. It also would have required employers to engage in an “interactive process” with employees regarding flexible schedules and pay them extra wages if their work shifts did not remain as previously scheduled.

BOLI Authority:

A number of bills were introduced that were aimed at increasing BOLI’s authority to enforce alleged wage and hour violations. Many of these bills were defeated, including House Bill 2386, which would have subjected employers to potentially unjustified imposition of cease and desist orders by BOLI. These orders would have required costly court proceedings in order to be lifted.

Public Contracting Bills:

House Bill 2540: AGC and public owner partners defeated another attempt to redefine public works in Oregon by expanding prevailing wage to private work.

House Bill 2617: This bill would have increased government agency regulation and intervention into the private contractual relationship between general contractors and their subcontractors.

OTHER BILLS OF NOTE THAT PASSED

House Bill 2716: Requires a contractor to provide as a condition in their subcontracts that all minority, women-owned, and emerging small businesses (MWESBs) remain certified for the life of the contract. If an MWESB loses certification during the life of a contract, the contracting agency can require the contractor to terminate the subcontractor. AGC successfully inserted an amendment into the bill protecting emerging small businesses from losing certification simply because of growing too large.

House Bill 3303: Expands eligibility for disadvantaged business entity (DBE) certification to include service-disabled veteran-owned businesses, making them eligible for certain preferences in public contracting.

Senate Bill 137: Addresses a definition issue in existing prevailing wage law. The law now clarifies that prevailing wage applies to a public-private partnership project where the private entity is leasing publicly-owned land and also receiving over \$750,000 in public funds. It does not change the definition of “public funds” or alter the existing \$750,000 trigger.

Senate Bill 491: Requires Department of Administrative Services (DAS) to establish an online training module that all contractors (including goods, services, and construction) must go through to demonstrate their knowledge of pay equity laws before bidding on public contracts. Requires employers with more than 50 full time workers to participate in online training and receive a DAS certificate.

Senate Bill 584: Allows a local contracting agency to investigate and prospectively suspend the ability of a minority, woman-owned, or emerging small business (MWESB) contractor who is deemed to not provide a “Commercially Useful Function.” AGC successfully inserted an amendment into the bill requiring local agencies to make any suspension prospective, in order to not interrupt ongoing projects.



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