

A REPORT TO OUR MEMBERS: OREGON'S FIRST SPECIAL SESSION OF 2020



Photo credit: OPB

The Oregon State Legislature's First Special Session of 2020 adjourned the evening of Friday, June 26 after passing 22 bills in a whirlwind session lasting three days. Legislators convened wearing masks and maintaining social distancing while the public (and lobbyists) were not allowed to enter the Capitol. The governor called the legislature into session for the purpose of addressing law enforcement oversight, legislation directly related to COVID-19, and limited bills left over from the 2020 Legislative Short Session.

From an industry view, the session was defined more by what the Oregon Legislature **did not** address.



On the upside, no legislation was considered related to declaring COVID-19 cases a workplace injury and in effect, guaranteeing the approval of all workers' compensation claims regardless of where the virus may have been contracted. Instead, the governor formally requested an analysis of the system be conducted by the Management Labor Advisory Committee (MLAC).



On the downside, despite bipartisan support, no action was taken to provide private and public employers legitimate liability protection related to potential COVID-19 litigation. Instead, the state's leadership elected to form a taskforce to consider liability protection in advance of an anticipated second special session later this summer.



Despite a May 20 Legislative Revenue Office Forecast predicting a \$2 billion shortfall for the current two-year budget cycle, and a \$10.5 billion shortfall for the next five years, the legislature took no action related to the budget or historic revenue shortfall.

Below is an overview of the bills and amendments most important to the construction industry that **did not** pass.

Workers' Compensation Presumption/Guarantee

- **Issue:** The COVID-19 pandemic is creating difficult situations for both employees and employers, particularly as it relates to the handling of positive cases. Currently, employees must follow the same procedure as for all workers' compensation claims and demonstrate their injury was work-related. A handful of public unions and allies continue to aggressively advocate for a presumption (guarantee) for workers' compensation claims related to COVID-19.

- **Background:** The issue came off the table for the first special session after receiving significant pushback from employers—public and private alike. The governor has **asked** the Management Labor Advisory Committee (MLAC) (a 10-member citizen panel established to ensure a fair, stable, and balanced system) to examine the issue and report back with recommendations on how to proceed by mid-July. AGC is working closely with SAIF, other workers' compensation insurers, and a broad coalition of industries to educate legislators and MLAC members on Oregon's robust, nationally recognized workers' compensation system. Creating a presumption would have the effect of requiring all COVID-19 cases to be covered by workers' compensation resulting in increased rates regardless of whether a case or outbreak was spread through other community sources. This is particularly problematic given COVID-19 is transferred by asymptomatic hosts. Several states that have recently adopted new workers' compensation related presumptions have, in effect, put in place what Oregon's workers' compensation system already covers.
- **Next Steps:** The coalition defending the current workers' compensation system is actively engaged in the MLAC analysis review process to ensure any changes to the system are driven by data, not by a particular agenda.

Board member Kimberly Wood with Perlo Construction will have a hand in shaping this analysis in her role as co-chair of MLAC.

Omnibus COVID-19 Response Bill (HB 4212)

This legislation included a wide variety of temporary changes for COVID-19 related issues. There were two amendments in particular that we actively engaged in.

OR-OSHA Infectious Disease Standard (-26 amendment)

- **Issue:** A proposal to require Oregon OSHA to create a permanent infectious disease standard failed to move forward as part of the omnibus COVID-19 bill.
- **Background:** The provisions would supersede the current Oregon OSHA and OHA's COVID-19 current guidance. The -26 amendment was adopted by the committee removing the proposed standard. On the same day the first special session adjourned and failed to approve this legislation, Oregon OSHA announced they're immediately initiating rulemaking for the very same purpose.
- **Next Steps:** The rulemakings targeted effective date is September 1, with the temporary rule to remain in effect through February 2021, and a permanent rule going into effect thereafter. It appears there will be two rulemakings: 1. general workplaces and 2. healthcare workplaces. A broad array of business groups and interests, including AGC, are monitoring and will engage in the rulemaking process already underway.

COVID-19 Liability Protections (-38 amendment)

- **Issue:** As the state begins to re-open, businesses continue to face challenges complying with the rules and regulations promulgated at the state and federal levels. Employers should not be liable for circumstances beyond their control, including limited PPE, limited testing, and workforce shortages due to the crisis. Employers who follow the OSHA and governor's safety protocols and guidance deserve protections from unwarranted lawsuits.
- **Background:** A large employer coalition, including AGC, and many private and public employers advocated for COVID-related liability protections. As employers are working to comply with Governor Brown's executive orders, agency mandates, and federal guidelines to

protect the health of employees and the public, they should not face unfair lawsuits. This leaves thousands of employers, nonprofits, and local governments exposed to new crisis-driven liability even if they are in compliance with government issued COVID-19 regulations. Even as other states have acted to protect these entities, Oregon employers remain vulnerable. In committee, House Speaker Tina Kotek rejected a request from Republican lawmakers and 10 of her Democratic colleagues to provide employers with a temporary and limited liability protection for coronavirus-related lawsuits.

- **Next Steps:** Oregon's legislative leadership will convene a task force to review the issue and potential legislation for a second special session this summer.

Other Bills of Interest From the First Special Session of 2020:

- [SB 1601](#) allows Statewide Transportation Improvement Fund moneys to be used to maintain existing public transportation services.
- [SB 1603](#) expands the applicability of the universal services surcharge to include mobile.
- [HB 4202](#) is the Corporate Activity Tax technical fix bill leftover from the 2020 Legislative Session.
- [HB 4213](#) is a continuation of the residential and commercial eviction moratorium.
- [HB 4204](#) establishes a temporary moratorium on commercial and residential foreclosures despite concerns from the business community of its negative impacts on commercial lending.

For an overview of every bill passed in the first special session, click [here](#).

What's Next?

AGC expects a second special session later this summer that will include rebalancing the current biennium's budget in light of the revenue shortfall, workplace mandates (including a potential workers' compensation COVID-19 presumption), and an effort by the business community to win limited liability COVID-19 protections.

Questions?

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