

2021 Legislative Report on the 82nd Oregon Legislative Assembly



Building Owners & Managers Association

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2021 Legislative Session – The Most Truly Unprecedented Session (To Date)

Every session provides its challenges. New legislators, new policies, old policies that keep resurfacing, often with more steam each time, new opposition, and new strategies. A large part of the intrigue of lobbying is that there is always a new challenge. The work is never the same and never has been.

Often, as I sit down to write my legislative reports, I tend to begin with a line like, “well, this was an unprecedented session;” or something like, “this session was looming in the shadow of last session.” Well, sorry to disappoint, and believe me, I wish I could say otherwise, but the 2021 will truly go down in the record books. With all the unique challenges that each session present, the inability to physically be in the building during a global pandemic is unfortunately the winner. As if 2020 was not hard enough, 2021 proved to be even more challenging. Lobbying involves knowing how to grab a legislator off the floor, write a note during committee, or catch them between meetings in their office. Without direct access to legislators, they had the opportunity to avoid lobbyists, refuse virtual meetings, and challenge the democratic process as we have all known it.

Leadership hailed this session as a victory because it provided access for those who cannot travel to Salem to testify in person. While that is true in some circumstances, it had the opposite effect on experienced lobbyists. Lobbying is all about communication, reading people, and working together to find common ground. We build relationships and learn about legislators so we can most effectively communicate our message. It’s very difficult to “read the room” when the legislators choose to not even be on the screen during committee meetings. Further, the technical difficulties with Microsoft Teams were unreal and used arguably as a tactic for controlling the narrative. If a bill was up for a public hearing, initially, one would need to sign up 24 hours in advance to testify. Experienced lobbyists and constituents alike could not sign up the day of, which has always been the norm. If a chair cancelled a public hearing, all written testimony submitted was removed. Once the hearing was rescheduled, in a few instances, an hour later, the bill passed out of committee without opposition because opposition could not resubmit testimony.

In addition to the technological frustration, the session began with a sexual harassment case against Rep. Diego Hernandez (D-Portland) who refused to leave. Even after the special committee found him guilty, he refused to resign until the bitter end. Then, Rep. Brad Witt (D-Clatskanie) was accused of asking for sexual favors for a vote by another legislator. Last, but not least, a House Republican let armed protestors with bear spray into the locked down Capitol during the December Special Session. Rep. Mike Nearman (R-Dallas) became the first legislator in Oregon’s history to be expelled from office on a 59-1 vote. He now seeks to be appointed to his former seat, again, unprecedented. Not a high point in Oregon politics.

The 2021 Legislative Session was in a league of its own.

BUILDING OWNERS & MANAGERS ASSOCIATION PRIORITIES

The Association's Legislative Team tracked over 130 bills during the 2021 Legislative Session, on various issues affecting BOMA interests. You may access the BOMA's 2021 Bill Tracking program on its website at <http://www.bomaoregon.org/advocacy/>.

BOMA would like to thank the Legislative Committee members and the Board whose collective efforts helped enhance the Association's credibility and effectiveness in the Legislative arena. Below is a list and explanation of some of the tracked bills:

PRIORITY BILLS

Extension of the Commercial Eviction Moratorium

HB 2966A – Passed

The bill prohibits evictions until September 30, 2021 based on a commercial tenant's failure to pay rent during the Emergency Period (rent accruing April 1, 2020 through September 30, 2020).

The Legislative Emergency Board established the Business Oregon Commercial Rent Relief Program, which provides funds that landlords and tenants may apply for to help cover past due rent. Currently, it is not possible for landlords with tenants that permanently vacated their commercial space to seek recovery from the Business Oregon Commercial Rent Relief Program. HB 2966A additionally prevents landlords from seeking legal recourse for past due rent during the emergency period even though eviction is no longer an issue as the tenant has voluntarily vacated the premises due to Covid or other reasons. This was an unintended consequence of the drafting of HB 4302 (first special session 2020).

On the House side, BOMA had an amendment drafted that required tenants to make a good faith effort to secure Business Oregon Commercial Rent Relief Program for back rent as Business Oregon requires both landlords and tenants to apply for relief. While the good faith effort helped, it did not address the ability to seek legal recourse for past due rent.

On the Senate side, BOMA worked with Sen. Bill Kennemer (R-Canby) to ask Legislative Council to issue an opinion on whether the initial emergency rental moratorium intended to prevent legal relief. Legislative Counsel issued a nine-page opinion stating that the original intent of HB 4302 was to ensure tenants maintain possession of the property (so they may still operate their business) but was never meant to prevent landlords from seeking legal action for past due rent during the emergency period if such steps do not include attempting to terminate a tenant's possession or tenancy prior to September 30, 2021.

Therefore, BOMA worked with Legislative Counsel to draft an amendment to help clarify the original intent of HB 4302 that removed the "Grace Period" concept and would have allowed landlords, whose tenants have moved out (and are not coming back) to pursue recovery of that rent right away and not wait until October 1, 2021.

Unfortunately, the political climate as it is, even with a strong Legal Counsel opinion in BOMA's favor, the committee did not adopt the -3 and the bill passed as is.

Reach Codes

HB 2398 – Failed

HB 2398 would have allowed local government to adopt new and separate building codes above and beyond the state standards without rulemaking, including no required due process or public input.

The bill was written so broadly with limited public discussion of how this would have impacted building owners and operators. It is very challenging to have different rules area by area impacting operations, maintenance, and construction workers.

Further, the bill specifically allowed local government to mandate untested and uncertified products (plumbing, electrical, HVAC, and building materials).

Building Ventilation Code

HB 2812 – Failed

This bill would have required the Director of Department of Consumer and Business Services to amend state mechanical, heating and ventilating code to require the use of current best available technology for filtering outside air admitted into buildings and to require that all outside air admitted into buildings passes through filtration technology during periods in which air outside building poses significant risk of harm to health or safety of occupants of building.

This bill arose from the severe smoke events that have happened the past few years. BOMA reached out to the bill sponsor and committee members to point out that “current best available” is too broad and the bill was not limited to new construction and would apply to literally every building.

The bill did not receive a public hearing and died in committee.

Unlawful Assemblies

HB 3059A – Passed

The original bill would have repealed the statute authorizing law enforcement officers to command dispersal of unlawful assemblies and arrest participants who do not disperse. The amended version, which passed, modifies the statute authorizing law enforcement officers to command dispersal of unlawful assemblies and arrest participants who do not disperse. It removes the requirement to go among persons unlawfully assembled and arrest persons. The bill also authorizes arrest for unlawful activity constituting an offense.

Structural Masonry Licensing

HB 3121 – Failed

This bill would have permitted the Building Codes Structures Board to adopt rules to administer licensing for persons that perform structural masonry in connection with seismic rehabilitation.

This bill did not receive a public hearing and died in committee.

Removal of Homeless Individuals from Camping Site

HB 3124 – Passed

This bill increases the time that written notice must be posted before removal of homeless individuals from established camping site. It also increases the categories of persons to whom unclaimed personal

property from camping site may be given. The bill requires written notice to the state on how individuals may claim personal property removed from camping site. The bill also requires that unclaimed personal property be stored in orderly fashion. It also authorizes the donation of unclaimed property to tax exempt charitable corporations. Finally, the bill provides that local law that is more specific or provides greater protections to homeless individuals subject to removal from established camping site preempts contrary provisions of section.

Low-Barrier Emergency Shelters

HB 2004 – Passed

BOMA monitored a bill that appropriates moneys from General Fund to Housing and Community Services Department Revolving Account for low-barrier emergency shelters and to the Oregon Department of Administrative Services for navigation centers.

Low-Barrier Emergency Shelters

HB 2006A – Passed

This bill requires local governments to allow siting of qualifying emergency shelters by qualifying entities notwithstanding land use laws and regulations. The requirement sunsets July 1, 2022. The bill expands the description of transitional housing accommodations to include motor-vehicle camping and removes the three-vehicle limit on motor-vehicle camping on religious institution property. The bill also expands motor-vehicle camping that political subdivisions may allow.

Limitations on Lenders' Remedies

HB 2009B- Passed

HB 2009 establishes temporary limitations on lenders' remedies for borrowers' failures to make payments on obligations secured by mortgages, trust deeds or land sale contracts for certain real property.

Right to Rest – Double Check

HB 2367 - Failed

Establishes Oregon Right to Rest Act that makes a violation of the act an unlawful practice enforceable by Commissioner of Bureau of Labor and Industries or by civil action.

This bill died in committee.

No Cause Eviction

HB 2372 - Failed

This bill would have eliminated a landlord's ability to terminate residential tenancy without cause. It also clarified damages available to tenant for landlord's unlawful no-cause notice or fraudulent landlord-cause notice.

This bill died in committee.

Climate Justice

HB 2488- Failed

Requires Land Conservation and Development Commission to make changes to statewide land use planning goals by December 31, 2026, to address climate justice by addressing climate change

adaptation and mitigation and environmental justice for disadvantaged communities. It requires the Department of Land Conservation and Development to establish environmental justice advisory committee. The bill requires the commission to adopt interim climate justice standards for local government's use until meeting compliance with goal changes. It establishes deadlines for compliance with interim standards and changed goals. The bill also establishes the Climate Justice Planning Goals Fund and appropriates moneys to the fund. The bill sunsets interim standards on January 2, 2030.

Residential Rent Increases

HB 2580 – Failed

HB 2580 limited rent increases for a purchaser of a dwelling in a facility to an increase consistent with those applied to existing tenants.

This bill died in committee.

Definition of Historic Homes

HB 2778- Failed

This bill sought to fix a prior bill by amending the definition of an "historic home" to include dwellings built before 1974 for purpose of serving as accessory dwelling unit to homes newly constructed on rural residential lands.

This bill died in committee.

Smoking Near Buildings

HB 3058 - Failed

BOMA also monitored HB 3058, which would have increased the distance from certain parts of public places and places of employment in which person may not smoke, aerosolize or vaporize from 10 feet to 25 feet.

This bill also died in committee.

Local Law Regulating Sitting, Lying, Sleeping or Keeping Warm and Dry

HB 3115 - Passed

HB 3115 provides that a local law regulating sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness. It creates an affirmative defense to the charge of violating such local law that law is not objectively reasonable. The bill also creates a cause of action for person experiencing homelessness to challenge objective reasonableness of such local law. Finally, the bill authorizes the court to award attorney fees to prevailing plaintiff in such suit in certain circumstances.

OTHER BILLS OF INTEREST

Interfering with a Peace or Probation Officer

HB 3164A -Passed

This bill modifies the crime of interfering with a peace officer or parole and probation officer. It removes the refusal to obey officer order as manner of committing crime. HB 3164A provides that

person may not be arrested for or charged with interfering with a peace officer or parole and probation officer if person is arrested or charged for other criminal offense based on same conduct.

Emergency Shelters and Affordable Housing

HB 3261A - Passed

This bill limits local government's restrictions on conversions of certain properties into emergency shelters or affordable housing.

Lease Lock

HB 3306 - Failed

HB 3306 would have allowed a landlord and tenant to agree to recurring charge in lieu of security deposit.

Redistricting

HJR 7 - Failed

The Oregon Constitution requires the legislature to go through the redistricting process every 10 years. This year the census was late, so the legislature plans to come back September 14 to meet its constitutional obligations. HJR 7 proposed an amendment to Oregon Constitution establishing Citizens Redistricting Commission to adopt redistricting maps for Senate, House of Representatives and United States Congress. It refers the proposed amendment to people for their approval or rejection at next general election.

Tax Credit for Lost Rental Income

SB 87 - Failed

SB 87 would have created an income tax credit for lost rental income of landlord, forgone due to prohibition on evictions and rent nonpayment actions during COVID-19 emergency period. Applies to tax years beginning on or after January 1, 2020, and before January 1, 2021.

This bill did not receive a public hearing and died in committee.

Tax Credit for Lost Rental Income

SB 330 – Failed

SB 330 establishes income tax credit for unpaid rent forgiven by landlord and certified by Housing and Community Services Department. The bill subtracts the income from federal taxable tenant's discharge of indebtedness income attributable to landlord's forgiveness of unpaid rent.

Tax Credit for Lost Rental Income

SB 410A – Failed

SB 410 creates separate standards for storage of unclaimed personal property in Multnomah County when homeless individuals are removed from established camping site.

Sale Disclosure

SB 729 –Failed

SB 729 would have required a seller of a property to include whether property has been used for, or investigated or inspected for use of, manufacturing, distribution or disposal of illegal drugs in disclosure statement.

This bill died in committee.

This report has been prepared by BOMA's Government Affairs advocate Nellie deVries