

# 2017 LEGISLATIVE REPORT

## OREGON LANDSCAPE CONTRACTORS ASSOCIATION



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## GENERAL SUMMARY

### “There Is Such a Thing as Cockeyed Optimism”

Just a month ago, few thought it was possible. Long-time staff and the multitude of lobbyists in the Capitol thought there was only a slim chance. Once again, however, politics surprised and the 2017 Legislative Session adjourned prior to the constitutional deadline of the 10th of July... although just barely. The final gavel fell late on Friday afternoon, July 7, in the House of Representatives, as the leery and weary group of legislators mustered what excitement they could at the prospect of finally going home.

Regardless of what side of the aisle or the primary interests before the Legislature, many left the Capitol building disappointed, dismayed and even disaffected. Business interests felt that progressives had run rough-shod over their needs, while unions and social justice groups gasped at what little they believe they were handed. With nobody satisfied - and you can wager no legislative office left un-lobbied - some may say this was a dismal session. Some go so far as to say this was the most miserable session in recent memory. Some would call that true compromise<sup>1</sup>. We'll let you be the judge but regardless...it is deeply discouraging to see the diminishing sense of bipartisanship.

The Governor, facing her first organic election for her first full-term in the Executive Office in 2018, appeared to work hard at threading the needle. She seemed to pare down what she insisted on bringing home, particularly as the months wore on without movement on a tax-and-cuts package, transportation package, union priorities, clean air priorities and even her firearm reform proposal. Politically speaking, that may have been the only path she saw before her. Bringing elected officials back for a special session - or more likely a series of them - is not good for ratings. Cutting bait on some key issues, but managing the losses to message a win on others, however, is.

The Senate found their way out of the building hours earlier on the 7th, with a dignity that becomes the senior chamber. Spending six months fielding flaming arrows of progressive policy, the Senate found its main purpose this session in negotiating, stopping or trying to manage a loss on most legislation sent their way. Like so many other groups, anything they may

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<sup>1</sup>Political Negotiation: When nobody walks away with all they want or nobody leaves happy.

have passed proactively and sent over to the House for a vote was swiftly and decidedly redirected to one of two committees: House Rules or Ways & Means.

In a documented, dogmatic series of procedures, House Leadership parked hundreds of legislators' priority bills, bills that held promise and those that were threats (or both to a variety of stakeholders) in those two committees, in an effort to bring forth great change. This was the session to revamp our revenue system, institute comprehensive cost-cutting measures, pass a robust transportation package, save the environment, save jobs, end homelessness, feed the children, improve their schools, bolster the veterans, protect the elderly, create economic development, create more transparency and accountability, expand Medicaid services, end opioid addiction and keep guns out of the hands of those in crisis. And you know what? They did most of it, *kind of*. And balanced the budget, to boot, *at least for now*.

## OLCA PRIORITIES

This session found the OLCA Legislative Committee and advocacy team working overtime to preserve the current landscape contractors licensure and continuing education requirements. In addition, OLCA worked with other industry and business organizations to temper new workplace legislation. We tracked approximately 60 bills of interest and continued our vigilance regarding issues of concern to the landscape contracting industry.

### *Here are the highlights of the 2017 Legislative Session:*

- **HB 3337: Erodes the Licensure Requirements for Landscape Construction Professionals**

HB 3337-A would have created a new limited landscape construction professional license that would have allowed the licensee to perform up to \$8,000 of work per job during a 12-month period with few restrictions. Prior experience, education, completion of the examination testing (both knowledge of the business and landscape contracting laws), and the skills to satisfactorily perform the work **would be waived**.

Introduced by Rep. Dallas Heard (R-Roseburg), a landscape contractor, the bill drew significant support for political reasons as opposed to policy considerations. A number of ~~freshman~~newly-minted Democratic representatives perceive occupational licensure of various kinds as a barrier to competition...particularly for people of color. And, leadership in both the House Republican and Democratic caucuses wanted to placate Rep. Dallas Heard. ~~so while~~ While at one point OLCA and its allies had the bill tied up in the House Business and Labor Committee chaired by Rep. Paul Holvey (D-Eugene), who did not want to hear the bill, ~~so~~ HB 3337 was re-referred to the House Higher Education and Workforce Training Committee. At the shocking hearing on the measure, the LCB licensure requirements were called a “poll tax” and “institutional racism” by

some of the proponents. The bill passed out of the House by a vote of 56-4 with the debate focusing on the removal of licensure barriers and little discussion on the consumer protection, consumer costs and the environmental implications.

On the Senate side, OLCA and a coalition of organizations opposing the bill once again were able to keep the bill from moving in the Senate Business and Transportation Committee with the support of the committee chair Senator Lee Beyer (D-Springfield). However, when the policy committees, including Beyer's Business and Transportation were closed down, the Senate President moved this bill to Senate Rules to keep it alive. OLCA was joined by a number of other organizations in an effort to inform senators that professional licensure enhances consumer protection and protects the environment by ensuring that licensees have a minimum level of knowledge and competency in the landscape profession. Those organizations included: Special Districts of Oregon, Oregon Association of Nurseries, League of Oregon Cities, Southern Oregon Landscape Association, National Hispanic Landscape Alliance, American Water Works Association (Pacific Northwest Chapter), American Society of Landscape Architects (Oregon Chapter), Regional Water Providers Consortium and Water Watch.

Not only would have the elimination of the examination, education and experience requirements jeopardize the state's commitment to protect consumers, but it would have also endangered the current exemptions provided to licensed landscape professionals by the Electrical and Elevator Board for low voltage lighting and irrigation control and the Construction Contractors Board for work on trees. The landscape construction industry was able to secure approval from those boards for inclusion of this work in the scope of "landscape contracting" *because* of LCB's licensure examination and knowledge requirements. Withdrawal of these agreements would result in overall higher costs to the public asif lighting and irrigation functions would then require a licensed electrician or plumber.

Senate Rules Committee Chair Senator Ginny Burdick (D-Portland) did not support HB 3337-A but asked OLCA to craft some amendments to minimize the impact of the bill on the industry, consumers and the environment should she be forced by leadership to move the bill. In the end, HB 3337-A died in Senate Rules but it was a long three weeks waiting for the session to adjourn and knowing that the bill could get scheduled for a hearing and work session at any time. No doubt that this issue in some form or fashion will be back in the next session.

*OLCA opposed the bill.*

- **SB 474: Eliminates Continuing Education Requirements for Landscape Construction Professionals**

This bill would have removed the requirement for continuing education for landscape construction professions in order to maintain their licensure. OLCA opposed the bill as

the association has been a longtime advocate for measured professionalism within the landscape industry.

In the 2015 legislative session, the Senate Business and Transportation Committee adopted the recommendations of a work group convened by Senator Chuck Thomsen (R-Hood River) to address issues with the Oregon Landscape Contractors Board (LCB) and its regulations. The work group included representatives from OCLA, other landscape organizations, LCB and the CCB, water purveyors and the League of Cities. After meeting a half-dozen times over 16 months, the recommendations became SB 580 and were unanimously adopted by both chambers.

One of those changes reduced the number of continuing education hours (CEH) required for license renewal to 16 hours of CEH over a two-year period for licensees with less than 5 years of experience as an active licensee and 8 hours every two years of CEH for active licensees with over 5 years of experience. Prior to that, the requirement was 20 hours every 2 years. OLCA supported that change but opposes any further reduction in the number of continuing education hours. A hearing was held on the bill but there was little interest from committee members in revisiting this issue. The bill also died in committee.

*OLCA opposed the bill.*

## OTHER OLCA ISSUES

The Legislature passed several new laws effecting employers and employees. However, the measures were significantly modified by the time they were approved because of push back from business and industry in the wake of legislatively approved minimum wage increases, mandated sick and family leave benefits the past two sessions.

- **SB 828-B: Predictive Scheduling**

Oregon became the first state to pass a statewide scheduling law. Starting July 1, 2018, employers will be required to post schedules seven days in advance, though enforcement won't begin until July 1, 2019. Beginning in 2020, schedules must be posted 14 days in advance. The bill applies to retail, food service and hospitality employers with more than 500 employees worldwide. The bill allows employers to develop a "voluntary standby list" for employees who agree to work on short notice.

*OLCA opposed the original bill but was neutral on the final version.*

- **HB 2005-B: Pay Equity**

The measure extends equal pay provisions to people in the following protected classes: race, color, religion, sex, sexual orientation, national origin, marital status, disability, age and veteran status. HB 2005-B prohibits an employer from using salary history to screen applicants or to determine compensation or from acquiring the salary history of an applicant or employee from a current or former employer. It does not prohibit an applicant from disclosing salary history when negotiating compensation.

The measure expands administrative and judicial remedies for pay equity violations and retaliation for wage inquiry or wage claim to include compensatory and punitive damages and jury trial. Under HB 2005-B, employers may file a pre-trial motion to preclude compensatory and punitive damages if the employer can demonstrate that it has completed an equal pay analysis in the three years preceding the claim, eliminated pay differentials for the plaintiff and made reasonable substantial progress toward eliminating the wage differentials for the protected class asserted by the plaintiff. The provisions go into effect January 1, 2019.

*OLCA had no position on the bill.*

| • **HB 3458: Overtime**

The measure sets clear standards for manufacturing overtime and also established limits for how many hours employees can be required to work. The bill only applies to manufacturing employers so landscape contractors will not be impacted.

*OLCA had no position on the bill.*

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