

Five Things That Happened During Oklahoma's 2017 Legislative Session

Jacob McClelland & Nomin Ujyediin

[KGOU](#)

Oklahoma's legislative session came to a close on Friday, as lawmakers passed a nearly \$7 billion budget.

[Republicans](#), who hold a large majority in both the House and Senate, needed [Democratic](#) support to pass revenue-raising measures, but negotiations crumbled over the weekend. To fill a \$878 million budget gap, lawmakers needed to pass several measures that could still be challenged in court.

Below are five big takeaways that happened during the session.

The budget passed and filled a \$878 million shortfall

Oklahoma faced a budget shortfall for the third consecutive year, a result of the energy downturn and income tax cuts, among other causes.

Lawmakers passed a budget on the final day of the session and found ways to raise new revenue and avoid large cuts to most state agencies.

Speaking on the House floor, budget chairwoman Rep. [Leslie Osborn](#), R-Mustang, closed debate by celebrating the accomplishment.

"One billion—with a 'B'—dollar hole, we fixed it. There's no perfect anything, but it's as good as it's going to get and it kept our core services harmless," Osborn said.

In order to fill the budget hole, legislators need to pass

several pieces of legislation to bring in more money. During the final days and hours of the session, they approved a measures to impose a \$1.50 fee per pack of cigarettes, increase the [gross production tax](#) on oil and gas production and increase the motor vehicle sales tax.

However, the measures may wind up in court. Oklahoma voters approved a constitutional amendment in the 1990s that requires a three-quarters vote threshold for revenue-raising bills. Additionally, they were approved during the final five days of the session, when bills that raise revenue are prohibited.

Even though Republicans hold large majorities in both chambers of the legislature, a large group of them vowed to not approve any tax increases. Therefore, House leader Rep. Charles McCall, R-Atoka, and Senate president pro tem Sen. [Mike Schulz](#), R-Altus, needed votes from Democrats to pass bills that would generate additional revenue. When negotiations with Democrats broke down over a rare weekend session, Republicans produced a plan to raise revenue through simple majority votes (see below).

Most state agencies will receive flat budgets or cuts between 4 and 5 percent of appropriations. [Kathryn McNutt writes in The Oklahoman](#) that even though a summary sheet of appropriations listed the State Regents for Higher Education to receive a cut of 4.5 percent, it will actually be closer to 6.1 percent, according to vice chancellor for budget and finance Amanda Palliotta.

“Our debt service obligations for the upcoming year total about \$62.6 million,” Paliotta said in a report to the [Oklahoma State Regents for Higher Education](#).

“We had been told the [GA](#) (general appropriations) bill in this amount had shielded the \$62 million from cuts and that we would not have to absorb any additional cuts internally to make the payments. That is not the case.”

That means each of the 25 public colleges and universities and all the agency's operations and programs will be cut 6.1 percent, she said.

As in previous years, the budget was released in the final days of the legislative session and prompted complaints about transparency. This year's budget drew similar complaints. He was released to the Joint Committee on Appropriations and Budget on a Tuesday night, just before midnight, without a summary sheet.

Budget bill not online, so I uploaded it. This version w/ no summary, but here 'tis, Oklahoma » <https://t.co/Mm9V1XNcyQ> h/t [@EmilyVirginOK](#)

– Joe Wertz (@joewertz) [May 24, 2017](#)

Now we've been given a "revised" Fiscal Year 2018 state budget summary. So here's that. <pic.twitter.com/iWIKDtFkR9>

– Senator David Holt (@davidfholt) [May 24, 2017](#)

Cigarettes will cost more

In the last week of the session, lawmakers approved a \$1.50 cessation fee per pack of cigarettes.

Republican leaders chose to refer to the increase as a “fee” instead of a “tax” because they need three-quarters approval for revenue-raising measures. Democratic [House minority leader](#) Rep. [Scott Inman](#), D-Del City, offered to deliver his caucus's 26 votes in the House for a cigarette tax increase if Republicans would increase the gross production tax on oil and gas to 5 percent. When Republicans wouldn't meet Inman's requests, Democrats vowed not to support the cigarette tax.

But Republicans did have enough votes to secure a simple majority. They changed it from a "tax" to a cessation "fee," and it is estimated to bring in about \$258 million.

Questions remain about its constitutionality as a revenue-raising measure that did not pass with three-quarters of the vote. Furthermore, it passed during the final five days of the session, when revenue-raising measures are prohibited.

Republicans say the bill is designed to improve health outcomes. Sen. Greg Treat, R-Oklahoma City, argued the bill will reduce the state's smoking rate by deterring smoking and encouraging tobacco users to quit.

"Is the court going to uphold it? I think there's a solid argument to make there's enough policy in here that the intent of this bill is to stop people from smoking, to save lives," Treat said on the Senate floor.

Senate minority leader Sen. John Sparks, D-Norman, argued the bill could produce a "financial trainwreck" if courts rule against it because agencies will depend on the funding.

"When this fails in the courts, we will be in trouble. And some might say it might not fail. Well, I'm not sure that this is what we want to roll the dice on," Sparks said.

Gross production tax increase

Republicans passed a measure that will increase the gross production tax on oil and gas for certain wells. About 5,700 wells are currently taxed at a discounted rate of 1 percent instead of the standard rate of 7 percent for the first 48 months the wells are in production. The measure will increase the rate to 4 percent. It will generate nearly \$95 million. \$74 million will go into general revenue.

Republicans were able to pass the bill with a simple majority instead of the three-quarters vote necessary for most revenue-

raising measures. [StateImpact's Joe Wertz writes:](#)

By using this tactic, Republican lawmakers say gross production legislation isn't "revenue-raising," which means it can be approved with a simple majority rather than the three-quarters supermajority [constitutionally required](#) of measures that raise taxes. Hardline Republicans have opposed many revenue-raising efforts, which means supermajority approval is impossible without Democratic votes, but [negotiations between the parties stalled](#) on this and other measures.

Democrats were holding out for a larger increase. [They hoped for a 5 percent tax on all new wells during the first 36 months of production.](#) House minority leader Rep. Scott Inman refused to release his party's 26 votes in support of the cigarette tax increase without the 5 percent rate. Negotiations broke down, and Republican leaders had to pass the cigarette fee and the gross production tax increase with a simple majority.

The cigarette fee, gross production tax increase, and an increase in the state motor vehicle sales tax are open to questions about their constitutionality because they did not receive a three-quarters vote. They could also come under constitutional scrutiny for being considered during the final five days of the session, when revenue-raising measures are prohibited.

Long laterals

Another contentious issue in the state legislature was the drilling of horizontal oil and gas wells longer than a mile in non-shale rock formations—known as long lateral wells.

Horizontal wells can drill through shallow formations usually tapped by vertical wells. Horizontal drilling can possibly damage vertical wells or divert nearby oil, gas and minerals.

StateImpact Oklahoma's [Joe Wertz reported on the issue earlier this year](#):

Under a legal doctrine known as “rule of capture,” horizontal drillers are allowed to produce oil and gas even if their well or completion technology – such as fracking – pulls in crude or natural gas that might otherwise migrate to a vertical well.

States have adopted laws and rules to balance such capture – which incentivizes mineral owners to drill lots of wells and pump quickly – with other concerns, including the impact of drilling on land, water and wildlife. Such conservation laws leave less waste and reduce the likelihood that too much drilling in an oil field can reduce flow and change pressures, which can harm the entire pool of oil and gas and impede all owners’ ability to pump it out.

Smaller companies using vertical wells have complained that long lateral drilling could reduce the amount of oil and gas they produce by giving larger companies an advantage.

The legislature passed [Senate Bill 867](#) in the last week of the session, allowing long lateral drilling in non-shale rock formations—horizontal wells in shale or similar rock has been legal since 2012. [The Oklahoman reported](#) that the bill would bring \$19 million in tax revenue to the state.

Fallin signs REAL ID bill

The first piece of legislation to receive Gov. Mary Fallin’s signature was a bill that brought Oklahoma into compliance with the federal REAL ID Act of 2005. The new bill establishes two forms of identification in Oklahoma—one which is compliant with the REAL ID Act, and one which is not. Oklahomans can choose which type of identification they prefer when they get their driver’s license.

Without a REAL ID-compliant license, Oklahomans would need a passport or some other form of federal identification to board commercial aircraft, or to enter federal facilities like military bases.

Opponents were concerned about the collection of biometric data that could be shared with the federal government or other states.

Sen. David Holt, R-Oklahoma City, carried the bill on the Senate floor. He argued Oklahomans have been asking for a fix to the REAL ID issue. The state has been granted an extension to meet REAL ID compliance, but that extension expires in June.

“For several years now, I think most of our constituents have told us that they want an option that allows them to fly, to enter military bases and federal buildings,” Holt said.

Opponents, including Sen. Nathan Dahm, R-Broken Arrow, and Sen. Ralph Shortey, R-Oklahoma City, raised concerns about privacy and the additional \$5 cost per license.

“Under the provisions of this existing bill, everyone will have their biometric data collected, whether they are requesting the REAL ID compliant, or noncompliant,” Dahm said. “They will still have their biometric data not only collected, but then shared with other states and potentially, then, with other foreign governments.”

The Federal REAL ID Act was passed in 2005 as a counterterrorism measure, and sets standards for issuing identification.

Pleased to sign a measure that will allow Oklahomans to obtain a compliant REAL ID driver's license or ID card.
<https://t.co/Mxx0s4MvpD>

– Governor Mary Fallin (@GovMaryFallin) [March 2, 2017](#)

Fallin signed the bill on March 2, 2017. In a statement, Fallin said she appreciated the work of legislative leaders who crafted the bill and guided it to passage.

“Our citizens let us know they wanted action on this legislation so they wouldn’t be burdened with the cost and hassle of providing additional identification to gain entrance to federal buildings, military bases or federal courthouse. And they most certainly didn’t want to have to pay for additional identification, such as a passport, in order to board a commercial airliner beginning in January,” Fallin said.