The 2018 general election yielded great results for Oregon Democrats as they rode a blue wave to a supermajority in both the Oregon House and Senate. For the 2019 legislature, Democrats held a 38-22 majority in the House and an 18-12 majority in the Senate. Without the need for Republican votes on tax policies, moderate Democrats, particularly in the Senate, became the focal point of nearly all policy discussions. The lack of need for bipartisan deal-making drew a stark contrast from previous sessions.

The 2019 legislative session began with significant revenue-raising policy ambitions. Following the failure to pass a Cap-and-Trade measure in the 2018 short session, legislative Democrats worked throughout the interim on a new version of the policy, while Governor Kate Brown ran a well-staffed parallel effort, all aimed at passing a Cap-and-Trade bill and having it on the Governor’s desk for a signing ceremony on Earth Day. But in reality, negotiations on this carbon and tax policy would overshadow much of the legislative session right up to the end.

Another major revenue issue loomed alongside Cap-and-Trade. Despite Oregon voters’ overwhelming rejection of Measure 97’s gross receipts tax in 2016, legislators eager for new revenue for K-12 schools worked the issue again in 2019. In addition to the need for new school revenue, the legislature faced a $950 million funding gap for the Oregon Health Plan. Proposals for new or increased taxes were plentiful in 2019, but their passage was contingent on some sort of PERS debt-reducing legislation.

The new composition of the Oregon legislature changed the flow of bills through the system. Unlike previous years, very few bills died with the first posting deadlines as they breezed through policy committees with ease. Bills flooded the Ways and Means and the Rules committees, which are exempt from committee deadlines.

As sine die drew closer, Cap-and-Trade (HB 2020) stayed true to its controversial nature and overshadowed everything else. Both sides organized rallies and public displays of grassroots strength. Tension grew as the bill passed out of committee, and then passed the House floor on a party line vote. With only 11 days until sine die, HB 2020 hit the Senate floor, but Senate Republicans did not. Instead, they organized a walkout in a final effort to stop the legislation. By denying the Senate a quorum for nine days, HB 2020 died. Having achieved their objective, Senate Republicans did return in the final two days to pass the remaining budget and policy bills that piled up and avoided the prospect of a special session.

The legislature adjourned on Sunday, June 30th, using all 160 days allotted by the Oregon Constitution. Here’s what happened:

Oregon moves from the red to the black with unexpected surge of revenues

At the outset of the 2019 session, the State of Oregon was in the red. Revenues were expected to generate $23.6 billion, while current service level (CSL) expenditures were projected at $24.2 billion.

But almost immediately, the legislature began raising resources. House Bill 2010 raised insurance premium taxes to pay for the Oregon Health Plan, netting about $330 million. Then the legislature
passed HB 3427, a commercial activities tax on all businesses with gross sales above $1 million that would net the state an additional $2 billion per biennium.

Then, just days after the passage of the major business tax increase, legislators were greeted with the shock of the session – the May quarterly revenue forecast projected yet another $770 million of additional, unanticipated general fund revenue.

In addition to the new revenue, Oregon’s unique 2% ‘kicker’ law would send back an additional $1.4 billion back to Oregon taxpayers in tax credits in 2020.

Very quickly, the state became flush with money. The historic May revenue forecast fueled legislative debates over revenue and taxes, but largely served to tamp down on calls for additional tax proposals. Republicans touted the influx of revenue as evidence that new taxes were unnecessary while the Governor and Democrats pivoted toward using some of the $1.4 billion ‘kicker’ to fund additional needs. Although there was much discussion about the state keeping some of the ‘kicker’, the votes did not materialize. All $1.4 billion will be sent back to taxpayers.

Democrats flex their supermajority muscle

Following a successful November election for Democrats, the party was well-primed to pass policy priorities in the legislature. With a supermajority in both chambers, both policy and tax bills could be passed and signed into law without Republican votes. Democrats leveraged their new majorities for some significant policy wins.

Perhaps most notable was the nation’s first statewide rent control policy (SB 608), which was fast-tracked to the Governor’s office for signing by late February. National Popular Vote (SB 870), another Democrat priority, finally passed after having failed the previous several sessions. In another key Democratic objective, legislators moved to ease Measure 11 mandatory prison sentencing provisions for juveniles with SB 1008.

Oregon Democrats also won passage of several environmental policy wins with the passage of HB 2509 (a statewide ban on single-use plastic bags) and SB 90 (plastic straw ban). They pushed HB 2250, requiring DEQ and OHA to assess changes to the Clean Air Act, the Water Pollution Control Act and the Safe Drinking Water Act in an effort to undo any rollbacks enacted by the Trump administration. Finally, they pushed through a ban on old diesel engines (HB 2007), both on road and off road, in the Portland metropolitan area.

Commercial Activities Tax (CAT) passes with the Student Success Act

HB 3427 proposed a $2.8 billion commercial activity tax on all Oregon businesses with sales above $1 million. It was the top priority for legislative Democrats. The bill went through several rounds of hearings and amendments, bringing educators, advocates, parents, students and businesses to the capitol. Business groups remained opposed to the taxes in the bill, while Republicans and moderates demanded that additional revenue be accompanied by debt-reducing legislation on PERS, the state’s pension program.
In an 11th hour deal, the Oregon Business & Industry trade organization marshalled an agreement with legislative leadership to be neutral on the tax bill in exchange for PERS reforms and a less-costly version of a Paid Family Leave program (HB 2005). This agreement broke the logjam and facilitated passage of the tax bill.

HB 3427 passed the House on a party line vote before being sent over to the Senate. Senate Republicans brought the legislature and the Student Success Act to a halt for nearly a week by organizing a walkout. Within hours of their return to the capitol, HB 3427 passed the Senate on another party line vote. Prior to registering her ‘aye’ vote, the swing vote, Senator Betsy Johnson, made it known that her vote was contingent on the passage of substantive changes to the Oregon PERS system.

Oregon legislature passes PERS reforms

PERS reforms became the focus of the legislative leadership immediately on the heels of the passage of the major business tax hike.

Governor Brown was the first to release a plan. The Governor set her sights on one-time-funds that could be used to buy down PERS liabilities. She was met with strong business opposition as she proposed redirecting the $1.4 billion ‘kicker’ tax rebate and using reserve funds from the State Accident Insurance Fund (SAIF). Labor unions opposed the steep 3% employee contribution diversions in her proposal.

While the Governor’s proposal collapsed under the opposition, it allowed the legislature to design a less sweeping PERS bill, Senate Bill 1049, which authorized a 2.5 percent diversion of Tier 1 and Tier 2 member contributions to reduce pension liabilities. It also authorized all new sports gaming revenue to be directed to buying down the PERS liability.

SB 1049 was a tough sell for Democrats who were effectively harming their primary support base – public employee unions – but it passed the House and Senate with the bare majorities needed.

Medicaid funding shortfall plugged with new premium tax and general fund support

Prior to the 2019 session, Oregon faced a $950 million Oregon Health Plan funding shortfall. This immediate need was met with immediate action. HB 2010, which proposed a 6 percent Medicaid tax on hospitals and a 2 percent tax on health insurance premiums, was the first major bill to pass. HB 2010 raised over $330 million and was signed by the Governor in less than two months.

A second leg of the Governor’s proposal to plug the Medicaid budget was HB 2269, the ‘Employer Assessment’ legislation that would assess all employers of 50 or more employees with a tax to cover the health care costs of all their employees. The bill met with stiff opposition from the business community and was killed when the deal was struck by OBI to stand down on the corporate activities tax hike.

Ultimately, the Medicaid shortfall was solved in 2019 due to the huge influx of general fund revenues that came from the state’s booming economy. The additional $770 million that materialized with the May revenue forecast provided enough to keep Medicaid fully funded.
Lack of agreement causes Cap-and-Trade to crash spectacularly at the finish line

On the heels of a failed 2018 effort, Cap-and-Trade Proponents spent the interim working on a revamped policy for 2019 with well-funded committees, research staff, and economic reports.

HB 2020 was destined to become an all-out fight over this carbon pricing policy, with momentum growing for proponents. The newly-created Joint Committee on Carbon Reduction held multiple informational and public hearings each week through February, March and April, before passing the bill to the Ways and Means Committee in May. By that time, the bill had seen 94 different amendments, significant representation from impacted businesses concerned with the economic impacts of the legislation, and a slew of proponents demanding action on climate change.

When the time came to pass HB 2020 out of Joint Ways and Means, several Democrat Senators had voiced apprehension toward the policy. Cracks were staring to show. The vote for passage in the Ways and Means Committee was tenuous. One vocal democratic opponent was replaced. Another gave just a ‘courtesy’ yes vote.

HB 2020 was on the House floor on June 17th and passed on a 36-24 party line vote after nearly 7 hours of grueling debate. With sine die only 11 days away, Senate Republicans used the only tool they had left to stop Cap-and-Trade: a walkout. By denying the Senate the necessary 20-member quorum, Republicans essentially closed the Senate and were willing to leave hundreds of budgets and bills on the table to die in order to kill HB 2020. Ultimately, they succeeded. It was an unprecedented ending to the 2019 session.

Going forward … what we are watching for:

- Resignations, special elections, and new legislators. A number of legislators are rumored to be considering quitting, which would necessitate some special elections. There could be a slew of new legislators appointed in the coming months.

- Will Oregon’s economy continue to generate huge revenue gains? Oregon’s balanced budget is built on unprecedented revenue growth over the past two years. Any hiccup in revenues will cause major budget disruptions. The budget is dancing on the head of a pin and probably not sustainable.

- What will be the fate of Cap-and-Trade? Will it gain momentum for a special session? Will it regain momentum for the 2020 session? Both sides accumulated very impressive grassroots organizations that in many ways was the culmination of a growing statewide culture war in which Cap-and-Trade is the clear flash point.

- Will opponents of PERS reform legislation be able to make their case to the Oregon Supreme Court? Opponents of SB 1049 will likely challenge the legislation in court. If successful, PERS reforms may never be considered again. And budget holes will need to be filled.
The 2020 legislative session will convene again February 3rd

The 2020 session is Constitutionally limited to 35 days. Session will convene Monday, February 3rd with a legal end date of 11:59 pm on Sunday, March 8th.

In the meantime, the legislature will convene for “legislative days” and committee meetings on September 16 – 19, November 18-21, and January 13-16.
Corporate Gross Receipts Tax (*House Bill 3427*): In what was perhaps the biggest setback for business in the 2019 session, the legislature passed a major tax increase on all businesses with Oregon sales. The commercial activities tax (CAT) in HB 3427 is a modified gross receipts tax that that imposes a 0.57% tax on topline Oregon sales but allows for a $1 million exemption and an additional subtraction of either 35% of Oregon labor costs or cost of goods sold (COGS). The new tax also exempts the sale of groceries from taxable income. State officials estimate an additional $2.8 billion in tax revenue from businesses per biennium under the new tax.

- **Final Outcome:** HB 3427 passed and imposes new 0.57% gross receipts tax on business with Oregon sales. It should also be noted that the new CAT tax is in addition to Oregon’s corporate income tax, not in lieu of.

PERS Reform (*Senate Bill 1049*): As part of the agreement to raise $2.8 billion in new revenue, legislative leaders agreed to PERS reforms in SB 1049. These reforms achieve modest cost savings and include the following provisions:

- Tier 1 and Tier 2 members, who are public employees who entered the PERS system before 2004, would have 2.5% of their salaries diverted from their individual retirement accounts into paying off the system’s pension debt.
- Workers hired 2004 or later (PERS Tier 3 and Tier 4), would face a lower diversion to pay off pension debt - 0.75% of their salaries.
- Public employees earning less than $30,000 a year would be exempted.
- A reduction in assumed interest rate for retirees who use the “money match” method of calculating their pension benefits.

The legal future of this law is uncertain as it will certainly face legal challenges from public employee unions.

- **Final Outcome:** SB 1049 passed with slim margins and will likely face legal challenges as to the constitutionality of the reforms.

Paid Family Leave (*House Bill 2005*): Momentum has been building over the last three years toward passage of a statewide Paid Family & Medical Leave program. This session a negotiated deal was reached between leadership and the business community, specifically Oregon Business & Industry, modelled after the Washington paid family leave insurance program.

HB 2005 would create a Paid Family & Medical Leave insurance program administered by the Oregon Employment Department and funded by a 1% payroll tax:

- Applicability: all employees and all employers
- Duration: 12 weeks of paid family and medical leave, 2 weeks of paid complicated pregnancy leave, and up to 4 weeks of unpaid OFLA leave annually
- Eligibility: $1000 in the base year
- Job protection: after 90-days of employment
- Funding: employees are responsible for 60% of the premium; employers are responsible for 40% unless they have 25 or fewer employees, and then paying in is optional
- Operative: payroll tax collected in 2022, and paid family leave insurance can be taken in 2023

➢ Final Outcome: HB 2005 passed out of both chambers in the last days of session and is anticipated to be signed into law by the Governor. Rulemaking is likely to begin later this year or in early 2020.

**Diesel Engine Regulations (House Bill 2007):** HB 2007 requires a phase-out of on-road diesel engines model year 2006 and older by 2029. The bill does not impact off-road equipment, except for large public works projects in the Portland-area. HB 2007 narrowly applies engine retrofit and replacement phase-out requirements to the tri-county (Metro) area: Clackamas, Washington, and Multnomah counties. The bill includes two main provisions. First, it phases out the registration of on-road diesel engines in the tri-county area on the following schedule:

- Heavy duty by 2029, registration of 2007 engines or newer
- Medium duty by 2029, registration of 2010 engines or newer

Second, HB 2007 phases out the titling of older trucks in the tri-county area on the following schedule:

- Medium- and heavy-duty 1996 and older cannot be titled after 2023;
- Medium-duty 2009 and older cannot be titled after 2025; and
- Heavy-duty 2006 and older cannot be titled after 2025.

Farm trucks, tractors, implements of husbandry, log trucks, low mileage fleets, small fleets of 5 or fewer, and emergency use trucks are all exempted from the requirements of HB 2007, even in the tri-county area.

➢ Final Outcome: HB 2007 passed in the final days of session and awaits signature by the Governor.

**Medicaid Taxes (House Bill 2010):** HB 2010 was the first major Medicaid funding bill to pass this session. It was also the first major tax increase. The bill raised nearly $500 million—over $291 million per biennium from local businesses—to fund the Medicaid budget gap. While the bill cut taxes on hospitals, it implemented a 2% premium tax on commercial health insurance policies paid for by local employers.

➢ Final Outcome: HB 2010 was a top priority for leadership and passed early in the 2019 session.
Lawsuit Damages (House Bill 2014): Although several bills were introduced this session that would eliminate Oregon’s $500,000 cap on non-economic damages for all civil claims (including wrongful death claims), the bill that gained traction this session was HB 2014. This is a significant factor in driving up health care costs and general liability costs for employers.

OSCC knew the battle for HB 2014 would happen in the Senate. After several weeks of intense lobbying, we were successful in defeating this bill on the Senate floor. Democrat senators Betsy Johnson, Elizabeth Steiner Hayward, Laurie Monnes Anderson, and Lee Beyer joined with all 11 Senate Republicans to deal HB 2014 a very rare floor defeat. The bill failed 14-15, well short of the 16 votes needed for passage. HB 2014 was not reconsidered.

➢ Final Outcome: Oregon’s $500,000 limit on non-economic damages is preserved.

Cap and Trade (House Bill 2020): Perhaps the hardest fought battle this session, HB 2020 (aka. cap-and-trade) ultimately failed to pass out of the Senate in the final days of session. The legislation set aggressive carbon reduction goals to reduce greenhouse gas emission 80% below 1990 emission levels by 2050. In order to achieve this goal, the bill capped emissions from the following regulated sectors:

- **Fossil fuels**: Under HB 2020, emissions from gasoline, diesel, and propane would be regulated when those fuels are imported for distribution within Oregon. The Legislative Fiscal Office estimated an increase of 22 cents per gallon for fuel in 2021, increasing every year through 2050.

- **Electricity**: All electricity generated in Oregon and electricity imported for use in Oregon was regulated by HB 2020, although sources of electricity were treated differently. Investor owned utilities, such as PGE and Pacific Power, were given 100% free allowances through 2030 to meet their renewable energy requirements. After 2030, allowances were set to decline to reach carbon reduction goals. Energy Service Suppliers were not given any free allowances, so direct access customers (mostly major manufacturers) were subject to significant rate impacts in the first year of the program. Consumer owned utilities were given considerations to protect them from anticipated growth in customers or load.

- **Natural gas**: Industries that rely on natural gas were subject to rate increases in the first year of the program. Customers of Northwest Natural, Cascade Natural Gas or Avista were given some rate relief. However, commercial and industrial customers who purchase gas directly from a gas marketer or distributor (again, major manufacturers) could have seen rates increase 21% to 29% in the first year of the program.

- **Emissions Intensive Trade Exposed (EITE)**: HB 2020 provided assistance to some businesses that emit more than 25,000 metric tons of carbon (through process and natural gas combustion) and if they were trade exposed. This included manufacturing, wood products, food processing and steel. If eligible, these businesses would be able to receive up to 95% free allowances if they are using the best available technology, including fuels, processes, equipment and technology.

- **Opt-in entities**: There are many facilities that emit fewer than 25,000 metric tons of greenhouse gases. As long as the bill identifies these sectors as trade exposed, lower-emissions facilities could opt in to the program to receive up to 95% free allowances to cover their natural gas and process emissions.
Cap-and-trade was heavily discussed in 2019 through the creation of a Special Joint Carbon Reduction Committee, the carbon roadshow, 117 different amendments, and numerous backroom negotiations. The resulting legislation imposed significant cost impacts to Oregon businesses and consumers. The legality of the measure was also uncertain, and HB 2020 expedited three pending legal questions to the Oregon Supreme Court (Highway Trust Fund, Common School Fund, and 3/5 requirement for a tax). Ultimately, the bill wasn’t ready for prime time.

- **Final Outcome:** HB 2020 proved to be too large and too complex to move during a long legislative session, even after years of planning. Strong industry and grassroots opposition eventually led to the bill being defeated in the last days of session. Several key moderate Democrats worried about the cost of the new program and impact on manufacturers, loggers, and other employers in their districts. In the final days of session, 11 Senate Republicans left the state to avoid a vote on cap-and-trade, and the bill ultimately failed. However, in a press conference the day after Sine Die, Governor Brown declared her intent to move forward with cap-and-trade, either through executive order, special session, or in the 2020 Short Session.

**Statewide Rent Control (Senate Bill 608):** SB 608 prohibited evictions without cause after the first year of a tenant’s occupancy. The bill allows landlords to evict tenants if the landlord is selling the home, if the rental unit is to be occupied by the landlord or an immediate family member. The landlord could also evict a tenant if they are going to renovate, demolish, or remove the property from use. Oregon became the first state in the nation to set limits on rent increases, limiting increases to no more than seven percent plus the average change in the CPI during a 12-month period. Legislation exempted new construction and allows landlords to reset rent rates once a tenant departs and a new tenant moves in.

- **Final Outcome:** SB 608 was signed into law and Oregon became the first state to enact strong tenant protections that include caps on rent to stabilize costs for renters.

**Business Tax Implementation (House Bill 2164):** HB 2164 made several significant adjustments to the just-passed Commercial Activity Tax (HB 3427), primarily for insurance companies, banks, auto dealers and co-ops. It also authorized over $70 million in tax credits including an expansion of the earned income tax credit.

- **Final Outcome:** This bill was one of the last bills to pass before the legislature adjourned on June 30. HB 2164 demonstrated how easy it would be to change the Commercial Activity Tax to increase the tax burden with a simple majority vote.

**Employer Health Care Assessment (House Bill 2269, House Bill 3262):** HB 2269 was the Governor’s priority and would require employers with 50 or more employees (who work at least 8 hours a week) to provide a minimum payment towards the employees’ health care or pay the state the difference. Although it wasn’t technically regarded as a “tax”, the Oregon Health Authority projected a tax rate of $0.50 per hour worked per employee and total revenue generation of $500 million per biennium to help fund Medicaid and subsidize the private insurance market.
HB 3262 would apply a health care tax only to certain service businesses—retail distribution, food services, hospitality or call centers— with 100 or more employees and those employees or their children receive public assistance. This proposal ran into ERISA liability issues early in session.

➢ Final Outcome: Both bills failed to advance, due in part to an agreement with OBI and other trade associations to go neutral on the corporate gross receipts tax. However, the United Food and Commercial Workers (UFCW) filed three initiative petitions in May to advance the policy found in HB 3262 on the November 2020 ballot.

Pregnancy Accommodations (House Bill 2341): HB 2341 directs employers with 6 or more employees to provide reasonable accommodations for pregnant employees. However, any of those businesses may file an undue hardship exemption with BOLI, such as a manufacturing facility or agricultural operation that cannot provide reasonable accommodations within the scope of employment.

➢ Final Outcome: HB 2341 passed and was signed into law by the Governor.

Expressing Milk in the Workplace (House Bill 2593): Reproductive justice was a hot topic in 2019, and HB 2593 was part of a package of bills to promote protections for pregnant and nursing mothers in the workplace. Under HB 2593, all employers must provide reasonable rest periods for an employee to express milk during a child’s first 18 months. However, an employer with 10 or fewer employees may file an undue hardship exemption with BOLI.

➢ Final Outcome: HB 2593 passed out of both chambers and was signed into law by the Governor.

Internet of Things (House Bill 2395): HB 2395 was a priority for the Attorney General’s Office in 2019 and heavily negotiated by technology associations. The bill requires manufacturers of connected devices (i.e. smart refrigerators, smart TVs, security systems etc.) to equip them with reasonable security features that protect consumer information from unauthorized access, use, or disclosure. The bill exempts medical devices regulated by the FDA and entities that are subject to HIPAA. It also exempts retailers from liability, instead placing it on the manufacturers.

➢ Final Outcome: HB 2395 was signed into law by the Governor and goes into effect January 1, 2020.

Prevailing Wages in Enterprise Zones (House Bill 2408): HB 2408 required prevailing wages on all private projects in Enterprise Zones in excess of $20 million. This policy erodes one of Oregon’s last remaining economic development tools and was strongly opposed by the business community and local governments. Although the bill easily passed the House, House Republicans negotiated for its demise in the Senate in negotiations over an unrelated bill.
Final Outcome: HB 2408 passed in the House but failed to advance in the Senate. A workgroup will be held on this issue over the 2019 interim.

Employment Contracts (House Bill 2489): HB 2489 would substantially shift the relationship between employers and employees in Oregon. The bill eliminates an employer’s ability to enforce agreements if they aren’t written and disallows employment contracts of longer than two years.

Final Outcome: HB 2489 failed to advance.

Independent Contracting (House Bill 2498): HB 2498 changed Oregon’s multi-part test to determine who is considered an employee versus an independent contractor. The bill adopts parts of the Dynamex decision issued in April 2018 by the California Supreme Court—this decision created a restrictive “ABC” test that continues to jeopardize work opportunities for millions of independent contractors in California. HB 2498 alters the current test to determine who is considered an employee versus an independent contractor in Oregon. It does this by adding a new question to the test: Is the worker’s service outside the usual course of business?

If the answer is ‘NO’ then the individual would no longer be considered an independent contractor and would be reclassified as an “employee.”

Final Outcome: OSCC grassroots weighed in significantly, and HB 2498 failed to advance. Representative Paul Holvey (D-Eugene) plans to convene a work group in the interim to amend Oregon’s contracting law.

Age Discrimination (House Bill 2818): HB 2818 would have made it unlawful an employer to seek the age of an applicant or to include certain words or phrases in recruitment that suggest age preference. This bill was not only in direct conflict with Oregon’s Equal Pay Law, but included a problematic penalty structure. Under the bill, courts could award liquidated damages equal to twice the compensatory damages awarded or $25,000, whichever is greater.

Final Outcome: HB 2818 failed to advance.

Data Privacy (House Bill 2866): Modeled after the EU’s General Protection Data Regulation (GPDR), HB 2866 was the ACLU’s primary privacy legislation this session. The bill would have required “opt-in” consent from a consumer before collecting personal information—geolocation and audio-visual data. This includes security camera feed outside of a storefront. HB 2866 also required a person who collects personal information to explain how they use that personal information.

Final Outcome: ACLU’s data privacy bill died, but legislators have convened a work group to bring the bill back in 2021.
$100 Million Kicker Diversion (House Bill 2975): HB 2975 snuck through the Oregon House early in session and included an accounting change that reduced the upcoming kicker by over $100 million by transferring this money into the next biennium. HB 2975 had the effect of adding an additional $100 million of revenue into the 2019-21 budget by taking it out of the $1.4 billion personal income kicker due back to taxpayers next year.

➢ Final Outcome: HB 2975 passed both chambers and was signed into law by the Governor.

Workers’ Compensation Rewrite (House Bill 3022): The Oregon Trial Lawyers Association (OTLA) made several runs at overhauling Oregon’s Workers’ Compensation system this session. In May (after several months of negotiations), the business community came to an agreement with OTLA on HB 3022. From a 60-page bill initially that would have upended the current workers’ compensation system, the bill was negotiated to two specific issues: access to diagnostic services and ceases denials. With diagnostics, the primary change was to allow for surgeries to be allowed as diagnostic services, as long as a higher standard was met. For the ceases denials, the change rebalances when a new injury to a worker with a pre-existing condition stops being the reason for treatment.

Following a court decision on diagnostic services in Garcia-Solis, business representatives and OTLA agreed that HB 3022 should not move forward until we could understand the full implications of the court decision.

➢ Final Outcome: Although HB 3022 did not advance in the 2019 session, this conversation will continue in the interim with a potential for another bill in 2020.

SAIF Raid: In order to buy down Oregon’s PERS liability, Governor Brown proposed a raid on the SAIF reserves, anywhere from $500 million to $1.4 billion. The business community and SAIF questioned the legality of a raid on SAIF’s reserves, and after a robust grassroots opposition campaign, legislators and Governor Brown and the legislature abandoned plans to shift funds from SAIF to pay down pension liabilities.

➢ Final Outcome: SAIF reserves were protected in 2019.

Community College Funding (House Bill 5024): The Higher Education Coordinating Commission budget had approximately $641 million allocated to Oregon’s 17 community colleges. While this is a $50 million increase over current service levels, it was short of the $647 million base budget plus $140 million to expand CTE and Student Success programs that OSCC supported.

➢ Final Outcome: Community colleges saw a funding bump in the Higher Education budget, though it was short of the total amount that was requested.

Equal Pay Fixes (Senate Bill 123): In 2017, the Oregon legislature passed the most comprehensive equal pay law in the country. After BOLI rulemaking in 2018, it became clear that implementation was
not possible without technical fixes. SB 123 includes several of those technical fixes and legislative intent to clarify interpretation of Oregon’s Equal Pay Act and make it workable to public and private employers. The major policy provisions did not change in SB 123.

- Final Outcome: SB 123 passed out of the House with amendments and passed out of the Senate in the last days of session. OSCC anticipates a robust rulemaking during the interim to address numerous issues with implementation.

OregonSaves Penalties (Senate Bill 164): When the Oregon Retirement Savings Program initially passed in 2015, the program did not include any penalties for employer failure to comply. Four years later, SB 164 adds monetary penalties to the program. The bill was heavily negotiated with the Treasury, and gives all business, regardless of size, two years to get into compliance. SB 164 also caps civil penalties for all businesses at $5,000/year and provides several opportunities for agency/employer engagement before fines are triggered.

- Final Outcome: SB 164 passed out of both chambers and was signed by the Governor.

Small Business Tax Cut Repeal (Senate Bill 211): SB 211 was one of the many bills under consideration this session to help raise over $2 billion in new revenue. Oregon’s ‘small business tax cut’ law currently imposes lower tax rates on the first $5 million of business income. SB 211 effectively gutted Oregon’s ‘small business tax cut’ by applying lower tax rates to only the first $415,000 of business income and then would completely repeal the ‘small business tax cut’ altogether starting in 2026.

- Final Outcome: Oregon’s ‘small business tax cut’ preserved in its entirety.

I-9 Audits (Senate Bill 370): SB 370 requires an employer who knows of an I-9 audit request, to notify workers of an impending investigation. The bill was negotiated with agricultural employers for several months, and “the teeth” were removed from SB 370. It now requires an employer to print out a BOLI-drafted notice and distribute it to employees via poster or email. However, there is no enforcement mechanism in SB 370, so employers are largely held harmless.

- Final Outcome: SB 370 passed out of both chambers and was signed by the Governor. Rulemaking will begin immediately to develop template notice forms for employers.

Marijuana Accommodation (Senate Bill 379): SB 379 would undermine and nullify all employer workplace drug-free policies and would require employers to accommodate off-duty marijuana use. This would severely limit the ability of employers to implement and enforce workplace drug-free policies.

- Final Outcome: After numerous attempts to push this legislation forward, SB 379 ultimately failed to advance.
Transient Lodging Taxes for Workforce Housing (*Senate Bill 595*): SB 595 would allow local governments to use previously dedicated TLT funds and apply them to local workforce housing development. Currently, 70% of these revenues are statutorily dedicated to tourism and tourism promotion.

➢ **Final Outcome:** SB 595 failed to advance.

Data Breach (*Senate Bill 684*): SB 684 requires notification when consumer data that is held by a third-party vendor is subject to a data breach. The bill requires a vendor to notify the covered entity as soon as practicable, but no more than ten days after discovering a breach. The Attorney General must be notified if the breach involved more than 250 customers or an unknown number of customers. Any entity that is in compliance with Gramm-Leach-Bliley Act (GLBA) or HIPAA is exempt.

➢ **Final Outcome:** This bill was heavily negotiated and was signed into law by the Governor.

Workplace Harassment and Discrimination (*Senate Bill 726*): Workplace harassment was one of the top workforce issues in 2019. Early proposals would have made employers and HR directors personally liable for harassment and discrimination that they should have known about. Fortunately, the more offensive provisions were stripped from SB 726. As negotiated, SB 726 now makes it unlawful for an employer to enter into an agreement that would prevent an employee from disclosing or discussing sexual harassment, discrimination, or sexual assault that occurred at work. Additionally, it extends the statute of limitations for these claims to 5 years. Further, all employers must adopt a written policy to reduce and prevent discrimination and assault.

➢ **Final Outcome:** After substantial compromise, SB 726 passed out of both chambers and was signed into law by the Governor.

Private Attorney General Act “PAGA” (*Senate Bill 750*): SB 750 allowed for class action lawsuits to be brought in the name of the State of Oregon to recover civil penalties for violations of state laws. The bill was the initiative of the AFL-CIO and UFCW unions, but it failed to get traction. Even though the bill was a political football that got moved from committee to committee, it actually received no public hearings. We anticipate there will be momentum behind this concept in future sessions.

➢ **Final Outcome:** “PAGA” legislation did not receive consideration.

BOLI Budget (*Senate Bill 5516*): OSCC joined others groups from business and labor in supporting a renewed focus on technical assistance as part of BOLI’s 2019-2021 budget package. Commissioner Hoyle’s budget request would make small business technical assistance a core focus, add an eastside technical assistance and apprenticeship specialist, and update BOLI’s hard-to-navigate website.

➢ **Final Outcome:** BOLI’s budget passed with new positions dedicated to technical assistance for employers.