



**2019 LEGISLATIVE SESSION IN REVIEW**

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## LEGISLATIVE SESSION IN REVIEW

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The 80<sup>th</sup> Oregon Legislative Assembly convened a three-day “organizational session” on January 14, 2019 and adjourned for eight days and reconvened in full session on January 22<sup>nd</sup>. During the organizational days nearly 1,500 bills were printed. Those measures were referred to various policy committees during the following week, which enabled committees to conduct hearings on bills on the first day of the legislative session. This was the fifth full Legislative Session that was constitutionally limited to 160 days under Ballot Measure 71 (2010). Leadership outlined an ambitious legislative calendar under HCR 19, which established session deadlines, and set a target date of June 21st for *Sine Die* (151 days). However, due to two “walkouts” by Senate Republicans that resulted in denial of a quorum (no business could be conducted), one of which lasted nearly 9 days, the legislative session ended on June 30<sup>th</sup> at 5:24 pm, only 6 and a half hours before the constitutional requirement to adjourn *Sine Die*. As a result, the session lasted the maximum 160 days permitted under Oregon’s Constitution.

During the November election House Democrats increased their previous majority to 38-22 providing them two more seats than necessary to achieve a super-majority (3/5ths or 36 votes) required to increase taxes without Republican support. The majority party re-elected Tina Kotek (D-Portland) as the House Speaker (the first Speaker to serve four consecutive sessions in several decades) and Jennifer Williamson (D-Portland) as the Majority Leader. This marked the second session in a row, and the second time in Oregon history, the majority party was composed primarily of women (22 of the 38).

Carl Wilson (R-Grants Pass) was elected as the House Minority Leader, replacing Rep. Mike McLane (R-Powell Butte) who served as the Minority Leader since 2012. Six of the 22 members in the Republican caucus were women. In addition, there were 10 freshman legislators in the House this session (5 Democrats and 5 Republicans).

The Senate Democrats, gained one seat after the General Election resulting in 18 Democrats and 12 Republicans, thereby giving the democrats a super-majority as well. The Senate elected Peter Courtney (D-Salem) to an unprecedented 9<sup>th</sup> term as President of the Senate and Ginny Burdick (D-Portland) as the Majority Leader for her second full term in that position. Herman Baertschiger Jr. (R-Grants Pass) was elected as the Senate Minority Leader for his first session in that position. There were three freshman Senators entering this session, all three are Democrats.

Governor Brown was elected to serve a four-year term after beating Knute Buehler in Oregon’s most expensive gubernatorial campaign in the state’s history. In all, a combined \$36 million was spent – nearly double what was spent in 2010 between Governor Kitzhaber and Chris Dudley. Brown captured 50 percent of vote compared to Buehler’s 44 percent. Additionally, Val Hoyle beat Lou Ogden in the May primary by securing more than 50% of the votes cast to become the new Bureau of Labor and Industries (BOLI) Commissioner.

There were several ballot measures that impacted the session. In a special election held in

January of 2018, voters overwhelmingly upheld a key health provider tax enacted in the 2017 session that had been referred by petition to the ballot. Its failure would have put the entire 2017-2019 budget out of balance. Although Oregonians decided on the fewest number of ballot measures since the 1980s, the results of each of them were symbolic of an increase in democratic control. Oregonians also rejected four measures sponsored by conservatives. One of those measures would have blocked the ability of the state to tax groceries. Another measure would have required a 3/5ths majority vote to raise revenue (“revenue” was very broadly defined). The other two measures would have prohibited the use of public funds for abortions and eliminated the state’s sanctuary status.

In late November, the Legislative Fiscal Office announced that entering the upcoming biennium the state faced a \$623 million shortfall in meeting current service levels for the upcoming budget cycle, despite having more than \$1 billion extra to spend than the previous biennium. Governor Brown’s proposed budget, which was released in early December, outlined her policy and budget priorities for the upcoming session. Those priorities included campaign finance reform, investments in affordable housing, shoring up the state’s Medicaid system, boosting Oregon’s low high school graduation rate, and a \$2 billion increase in new revenue to eliminate “structural deficits in public education system.” The Governor’s budget made no mention of any cost cutting or savings to the Public Employees Retirement System (PERS) despite an expected \$4 billion increase in the unfunded actuarial liability (UAL) of the fund, nor did it identify how the additional \$2 billion ought to be raised.

During the interim, two joint committees were convened and met over the course of several months to formulate proposals to improve Oregon’s K-12 education system and address global climate change by limiting carbon emissions in the state.

The Joint Committee on Student Success conducted an extensive statewide tour examining various challenges facing school districts, teachers, and students. By the end of their work the committee had identified more than \$3.5 billion in recommended school improvements. Some of those improvements included but were not limited to lengthening the school year by 10 days, decreasing class sizes in grades 1 through 4, providing art, music, physical education, library, counselors and improving training and recruitment of teachers.

Meanwhile, the Joint Committee on Carbon Reduction met almost monthly during the interim in order to refine a proposed cap and trade bill. The legislation had failed to pass in the two prior sessions and was a priority of the majority party as well as the environmental community even though a similar measure was defeated in the State of Washington at the ballot the previous November. These two issues, education funding and carbon reduction, became incredibly divisive by mid-June.

With the recent sexual harassment scandal of former Senator Jeff Kruse (R-Roseburg) fresh in the rearview mirror, BOLI Commissioner Brad Avakian issued a scathing report finding the legislature to be “a hostile work environment” and that there was “substantial evidence” sexual harassment had been a problem at the Capitol for years while legislative leaders did little to crack down on it. Most of the criticism was directed at President Courtney, but Speaker Kotek was also implicated in the report. Several former legislative staffers filed a multi-million-dollar lawsuit that was ultimately settled. Before the session began, legislators, staff, and lobbyists were all required to undergo training on workplace and sexual harassment. The scandal had come to a full boil by the time the session began. An example of this came

in late February, when long-time Chair of the House Health Care Committee, Rep. Mitch Greenlick (D-Portland), berated a pharmaceutical lobbyist during a public hearing by calling him “stupid.” In response, Republicans demanded that he be stripped of his chairmanship because he created “an inflammatory and disrespectful atmosphere.” Shortly afterwards, Speaker Kotek removed him as chair of the committee.

As the session began both parties outlined broad agendas. The majority party made clear that quality education, carbon reduction and the environment, health care funding, and affordable housing were their top priorities. The Republicans, on the other hand, faced super-majorities in both chambers and looked to some moderate democrats in the Senate as the best chance to slow what was deemed an overly ambitious and very liberal agenda. As a result of increased criticism of President’s Courtney’s willingness to only allow bi-partisan bills to reach the Senate floor, he committed that he would allow bills to reach the floor that were “critical to helping Oregonians.” The Senate President acknowledged that they needed Republicans simply to reach a quorum.

Democrats moved aggressively out of the gate. On the House side, negotiations led to a quick deal eliminating half of the nearly \$900 million shortfall needed to fund the state’s Medicaid budget. The deal extended a six percent hospital tax and a two percent tax on insurance for a total of six years. On the Senate side, the majority party rapidly moved a very controversial bill prohibiting landlords from terminating month-to-month leases without cause and imposing state-wide rent control, the first of its kind in the nation.

In early March, the seventh of the quarterly revenue forecasts was issued showing that revenues far exceeded the 2017 close of session forecast by nearly \$1.5 billion, thereby triggering a personal “kicker” of approximately \$750 million. Several legislative members, including the Speaker, proposed diverting the kicker for other priorities. This forecast was used by the Co-Chairs of the Ways and Means Committee to issue their preliminary balanced budget plan and paved the way for the various budget sub-committees to act on several of the state agency budgets.

In May, after they visited 77 schools to hear from teachers, administrators, students and parents from across the state, the Joint Committee on Student Success proposed a 0.57% tax on corporate revenue over \$1 million which was projected to generate more than \$1 billion annually for public schools. Republicans complained that there were no plans to constrain the escalating costs of the PERS system and argued that the revenue generated under the Student Success Act should be constitutionally dedicated to education. After intense last-minute negotiations with the state’s largest private sector employer trade association, Oregon Business and Industries, the House passed the bill. When the bill made it to the other chamber, Senator Betsy Johnson, the critical 18<sup>th</sup> vote needed to pass the new tax, sided with some of her more conservative colleagues and insisted on PERS reforms. Leadership provided a commitment that a PERS reform bill would be imminent in order to secure passage of the corporate activities tax package.

Before the new tax was approved, the Senate Republicans walked out of the Capitol and denied a quorum in the chamber for four days. This was the first of two walk outs by Senate

Republicans during the session. In order to convince the Republicans to return to the chamber, leadership killed two controversial bills, one related to guns and another bill that would have eliminated non-medical exemptions to vaccinations in order to attend school. After more than a decade of democratic attempts to secure new revenue for education, HB 3427, the new *corporate activity tax* anticipated to bring in over \$1 billion per year, was finally passed by the Senate. Interestingly, its passage occurred 2 days before the final revenue forecast was released to the public.

The May revenue forecast, used to balance the upcoming biennial budget, brought some unexpected news and shattered all expectations. Not only did personal and corporate tax revenues far exceed anticipated levels, the personal income tax kicker had nearly doubled from the previous forecast to \$1.4 billion, the largest ever. This was due to more than \$900 million in additional resources than officials had predicted just three months earlier. Despite talks by the majority party about using some of the kicker for other purposes, Republicans made it clear that they would not provide the necessary votes, a 2/3rds majority in this case, to redirect the kicker. This final forecast, and the passage of the new corporate activity tax, set the stage for the legislature to complete the remaining budgets and enact the measures projected to have budgetary impacts. It also set the stage for other big policy proposals including the Clean Energy Jobs or “cap and trade” bill (HB 2020).

After years of discussion, and at times heated debate, legislative leadership made it clear that they intended to pass a carbon measure during the session. The Joint Committee on Carbon Reduction was formed with the primary duty of negotiating a bill that could pass both chambers. Armed with a Legislative Counsel opinion that stated that placing a price on carbon did not require a 3/5<sup>th</sup> majority to do so, and the long-anticipated bill was introduced in early February. The committee held 9 public hearings, some of which took place in communities outside of Salem, 12 work sessions, and introduced 116 amendments. The bill was finally debated on the House Floor on June 17<sup>th</sup> and passed without any republican votes.

The bill was scheduled for second reading on the Senate floor June 19<sup>th</sup>. The Republican caucus cited rural community devastation if the bill passed due to high energy costs, increasing gas prices, and job killing expenditures for industry. Bolstered by some of the largest protest rallies in the history of the capitol, Senate Republicans made the decision to walk out for the second time. This time President Courtney asked the Governor to enlist the help of the Oregon State Police to compel them to return to the Senate Chamber for business. However, Senate Republicans left the state and were able to deny the Senate a quorum which prevented the legislature’s ability to advance or pass any bills, for 9 consecutive days. This tactic was also used by House Democrats in 2001 during a redistricting fight. Governor Brown threatened to call a special session on July 2<sup>nd</sup> to address any business left unfinished due to the absence of the 12 Republicans. In a surprising turn of events, President Peter Courtney announced that HB 2020 did not have the needed support in his own caucus to pass during the session. When the Republicans returned on June 29<sup>th</sup>, HB 2020 was moved to the Rules Committee to die and the Senate passed over 100 bills along with the House to complete the remaining business before the assembly.

In the end, the Legislative Assembly was able to close the pre-session continuing service level funding gap of \$623 million without acting at all. Greater than predicted revenue was realized with each forecast. With the passage of several new taxes and increased fees, the legislature was able to balance the budget with relative ease compared to some of the previous recent sessions. The final Legislatively adopted budget amounted to nearly \$23.7 billion (compared to \$20.9 in the 2017-19 biennium) in General Fund and Lottery resources, an increase of 12.1% over the previous biennium. Democrats declared that the legislative session was a resounding success with the one notable exception; the cap and trade proposal failed rather spectacularly during the final weeks of the session. Meanwhile, Republicans complained bitterly that the legislature's urban centric agenda only created a bigger urban/rural divide in the state. There is little doubt that relationships, particularly in the Senate, were strained during the session. However, unlike the previous long session, the House and Senate adjourned concurrently this session, as per custom, rather than separately.

In the later part of February, Secretary of State Dennis Richardson, the only Republican to be elected state-wide in two decades, succumbed to his fight against brain cancer, thereby placing the Governor in a position of having to appoint his Republican successor. The Governor chose Bev Clarno, a highly respected former state legislator and Speaker of the House from Central Oregon. Only days later after Secretary Richardson's death, former Secretary of State Norma Paulus, the first woman in Oregon to be elected to state-wide office, also died. In May, Senator Jackie Winters, a moderate Republican from the Salem area, also lost her battle with cancer, thereby leaving the Senate Republican caucus with only 11 members. Rep. Denyc Boles (R-Salem) was appointed to fill the vacant seat with only a few days remaining in the session.

### **NOTABLE ACTIONS TAKEN THIS SESSION**

- Passage of a corporate activity tax (CAT) dedicated to education:
  - Requires companies to pay 0.57% on sales over \$1 million while permitting the deduction of up to 35% of labor costs or capital costs from total sales
  - Groceries, gas, hospitals and long-term care are exempt
  - Cuts personal income tax rates by 0.25% for the lowest three of the state's four tax brackets
  - Revenue generated by the new tax this biennium is estimated to be \$952 million, but will amount to over \$2 billion in the next biennium and is legislatively dedicated to K-12 education programs
  
- \$9 billion budget for K-12 schools, the largest school budget in state history, which is 9.7 percent higher than the previous biennium. Combined with the newly passed Student Success Act it is hoped that Oregon's K-12 education system will be transformed and produce better student outcomes.

- A record \$2.2 billion to support community colleges and public universities including assisting an additional 2,500 more students through the Oregon Promise Grant.
- A new paid family and medical leave insurance program that allows every working Oregonian to be eligible for 12 weeks of paid leave for family purposes.
- Dedicated portion of certain sports betting to fund PERS unfunded liability
- A state-wide ban on single-use plastic bags at groceries, restaurants, retail establishments.
- A state-wide policy requiring an ask-first approach to dispensing plastic straws.
- New prohibitions on the use of diesel engines in mid and heavy-duty trucks in Multnomah, Washington and Clackamas Counties.
- New requirements banning no-cause evictions after 12 months and a state-wide limit on how much a landlord may increase rent from one year to the next – the first statewide limitation in the country.
- SJR 18 – Campaign Finance Reform – voters will be asked to amend the state’s Constitution paving the way to place campaign limitations in local and state-wide races.
- New requirements that expand protections against workers who have been harassed or discriminated against; this new law extends the statute of limitation for discrimination, harassment and sexual assault, and greatly limits the use of non-disclosure and no-rehire agreements.
- New juvenile justice reforms to ease sentencing guidelines and eliminated life without parole for offenders under the age of 18.
- New requirements for public employees to adopt policies with specific standards to prevent and promptly investigate cases of unlawful discrimination as well as greatly limit the use of non-disclosure agreements.
- Permanent ban to offshore oil or natural gas drilling.
- New requirements regarding oil train safety plans.
- Permission for community colleges to offer bachelor’s degrees in fund for schools.
- New public worker protections for performing union activities while on the job.
- Paid postage for voter return envelopes.

The Governor received the \$2 billion in education funding that she challenged the assembly to approve at the beginning of session. There were substantial investments made in affordable

housing, Medicaid, child welfare services and some modest cost containment for PERS. However, the dramatic failure of the Cap and Trade bill and the two Senate Republican walkouts are likely what the session will be remembered for.

## **LOOKING AHEAD**

After the session ended it did not take long for Democrats to announce that they fully intend to pursue the recently defeated Cap and Trade proposal during the 2020 session. As mentioned previously, the bill did not have the necessary democratic support during the long session. As it turns out it was only one vote short. That vote was Senator Laurie Monnes Anderson from Gresham who had concerns with the bill due to the impact on a large manufacturer in her district. It is very likely that those concerns will be addressed, and the measure will get a second chance. The real question is whether the majority party will allow further consideration of Republican concerns and modify the bill accordingly and if not, will the Republicans deny the assembly a quorum again during the 35-day session.

Voters will also decide the fate of a couple of referrals that could prove contentious and expensive. The first legislatively referred measure would amend the Oregon Constitution authorizing adoption of state and local laws requiring campaign finance-related disclosures. The amendment would also authorize limiting – to the extent permitted under the United States Constitution – political donations and expenses. The second referral would increase tobacco taxes in the state by the equivalent of nearly \$2 a pack and will tax other tobacco products including e-cigarettes and vaping products. It is estimated that that if the measure is passed it would generate approximately \$340 million in the 2021-2023 biennium, 90% of which would go to Oregon's Medicaid program and the other 10% dedicated to tobacco cessation programs. Each of these measures will be on the November 2020 ballot.

In order to qualify a statutory measure for the ballot 112,020 signatures must be collected; constitutional measures will require 149,360 signatures. The deadline to turn in signatures is July 2, 2020. With the state's mounting PERS unfunded actuarial liability that is approximately \$26 billion it is also possible that voters could be asked to make further modifications to the retirement system. Former Democratic Governor Ted Kulongoski and former Republican Senator Chris Telfer (Bend) have submitted several initiative petitions to the Secretary of State's office to make additional reforms to the program. So far there have been more than 44 petitions submitted, and there is nearly a year to go before signatures need to be submitted for verification.

There is a big question as to whether President Peter Courtney will be able to maintain his current leadership position. Several county democratic central committees have passed resolutions urging the President to step down, but what counts is whether he has the necessary support within his own caucus. There have been signs of cracks, including his nearly two-week absence during the session due to health concerns and a less than unanimous vote by his own caucus for him to become President. Another thing to keep an eye out for is whether the public unions will punish any members of the democratic party after the passage of PERS reforms by withholding campaign support in the upcoming election.

Governor Brown, for the first time in four years, will not face an election. Her previous victory last November guarantee her four years in office. Treasurer Tobias Read will seek a 2<sup>nd</sup> term as State Treasurer. When Governor Brown sought a Republican to replace Secretary Richardson, she made it clear that she wanted someone who did not intend to run for the office in 2020. Assuming that commitment is honored, current Secretary of State Bev Clarno will not run, and that seat will be hotly contested – particularly because the Secretary of State will likely play an integral role in redistricting in 2021. Finally, current Attorney General Ellen Rosenblum will have completed her 2<sup>nd</sup> term resulting in another state-wide open seat that will be up for grabs, although she intends to run for a 3<sup>rd</sup> term. Not surprisingly, Rep. Jennifer Williamson, who is widely believed to be eyeing the position, has already been replaced as Majority Leader in order to free her time up for this pursuit. She was replaced by Rep. Barbara Smith Warner (Portland).

The vacancy created by Rep. Mike McLane (R-Prineville) when he was appointed as a Circuit Court Judge by the Governor has been filled by Vikki Breese-Iverson. Furthermore, Rep. Jeff Barker (D-Beaverton) who is the longest serving democratic House member recently announced his intention to not seek re-election to the House.

Finally, HCR 38, which was passed by the Assembly establishes limits on the number of measures that may be drafted for the 2020 legislative session by each Senator, Representative and interim committee, the Governor and the Chief Justice of the Supreme Court. Each Senator will be allowed to introduce one bill, each Representative will be allowed to introduce two bills, each committee will be permitted to introduce 3 bills and the Governor and Chief Justice will be permitted to introduce five bills each.

**DYNAMICS OF THE 80<sup>th</sup> LEGISLATIVE ASSEMBLY**

Session Length:	160	Bills Introduced:	2,768
Date Convened:	January 22, 2019	Bills Signed by Governor: (26 <sup>th</sup> of Aug)	700
Date Adjourned:	June 30, 2019	Bills Vetoed:	2

**OREGON SENATE**

Democrats: 18  
 Republicans: 12

**Senate Caucus Leadership:**

Senate President Peter Courtney (D-Salem)  
Senate Majority Leader Ginny Burdick (D-Portland)  
President Pro Tempore Laurie Monnes Anderson (D-Gresham)  
Deputy Majority Leader Elizabeth Steiner Hayward (D-Portland)  
Majority Whip Mark Hass (D-Beaverton)  
Majority Whip Rob Wagner (D-Lake Oswego)  
Assistant Majority Leader Michael Dembrow (D-Portland)  
Assistant Majority Leader Chuck Riley (D-Hillsboro)

Senate Republican Leader Herman Baertschiger Jr. (R-Grants Pass)  
Republican Leader Chuck Thomsen (R-Hood River)  
Deputy Republican Leader Alan Olsen (R-Canby)  
Deputy Republican Leader Cliff Bentz (R-Ontario)  
Republican Whip Dennis Linthicum (R-Klamath Falls)

**OREGON HOUSE OF REPRESENTATIVES**

Democrats: 38  
Republicans: 22

**House Caucus Leadership:**

Speaker of the House Tina Kotek (D-Portland)  
Majority Leader Jennifer Williamson (D-Portland)  
Speaker Pro Tempore Paul Holvey (D-Eugene)  
Majority Whip Barbara Smith Warner (D-Portland)  
Deputy Majority Whip Rob Nosse (D-Portland)  
Assistant Majority Leader John Lively (D-Springfield)  
Assistant Majority Leader Julie Fahey (D-Eugene)  
Assistant Majority Leader Janelle Bynum (D-Clackamas)

Republican Leader Carl Wilson (R-Grants Pass)  
Deputy Republican Leader Greg Barreto (R-Cove)  
Republican Whip Sherrie Sprenger (R-Scio)  
Deputy Republican Whip Denyc Boles (R-Salem)  
Assistant Republican Leader Duane Stark (R-Grants Pass)  
Assistant Republican Leader Ron Noble (R-McMinnville)

It is an honor and privilege to represent the Oregon Association of Water Utilities. The support from Jason Green and his staff are tremendous. I am looking forward to working with the association as we continue to address the challenges ahead and seize the opportunities that are before us. Mark Landauer – MJL Consulting LLC.

## **BUDGETS**

### **HB 5030 - Lottery Bond Bill**

Chapter 671, Effective August 9, 2019

The bill provides: \$30 million to recapitalize the Special Public Works Fund (SPWF); \$25 million for affordable housing preservation; \$15 million for the Water Supply Development Account; \$15 million for an affordable market rate housing acquisition loan program; \$15 million for levees; \$5 million to recapitalize the Brownfields Redevelopment Fund; and \$5 million to recapitalize the Oregon Main Street Revitalization Grant Program. The rest of the more than \$270 million in lottery bond appropriations in the bill were allocated to specific community projects around the state including several projects related to water, wastewater and dams. Note that no new allocations were made to the Connect Oregon program, and no funding was allocated to the Regional Infrastructure Fund (RIF) in this year's lottery bond bill. The lottery bond revenues are not available right away as the bonds are not scheduled to be issued until the spring of 2021.

\$1.8 million for Mill City for storm drainage improvements

\$20 million for Salem for water treatment facility

\$7 million for Sweet Home for wastewater plant

\$1.7 million for Hood River stormwater line replacement

\$10 million for canal piping Central Oregon

\$14 million for Wallowa Lake Dam rehab

\$4 million for City of Newport Dam work

## **ENVIRONMENT - PASSED**

### **HB 2007 – Diesel Engine Regulation**

Chapter 645, Effective August 9, 2019

This bill creates new “clean diesel” standards for medium and heavy-duty trucks (weighing more than 26,000 pounds) registered in Washington, Clackamas and Multnomah counties. The requirements are as follows:

Beginning on January 1, 2025 - the Oregon Department of Transportation (ODOT) may not issue a certificate of title for model year 2009 or older diesel engines for medium duty trucks (weighing between 14,000 – 26,000 pounds) and model year 2006 or older engines for heavy-duty trucks (defined as weighing greater than 26,000 pounds).

Beginning on January 1, 2023 - ODOT may not issue a registration or renewal of registration in Washington, Multnomah and Clackamas counties for medium-duty trucks or heavy-duty trucks with diesel engines that are model year 1996 or older.

Beginning on January 1, 2029 - ODOT may not issue a registration or renewal of registration in Washington, Multnomah and Clackamas counties for: Medium-duty trucks with 2009 or older

diesel engines: Heavy-duty trucks with 2006 or older diesel engines (unless the heavy-duty truck is owned by a public body); Heavy-duty trucks that are owned by a public body that are powered by a model year 2009 or older diesel engine. The bill includes several exemptions from the requirements, including an exemption for emergency vehicles. Finally, the bill also permits the expenditure of the remaining money the state received in the Volkswagen emissions settlement.

### **HB 2076 – Aquatic Invasive Species**

Chapter 154, Effective January 1, 2020

This bill requires a person to drain water from a boat removed from state waters before transporting the boat within the state. Punishes failure to remove or open device with a maximum fine of \$250. It also authorizes the Department of Fish and Wildlife, State Marine Board (Board), or Department of Agriculture to order the decontamination of any recreational or commercial watercraft that is inspected at a check station and requires a boat operator to cooperate with an ordered decontamination process. The bill also authorizes peace officers to stop persons transporting commercial or recreational watercraft and order them to return to an aquatic invasive species check station if the peace officer has probable cause and there is an open check station within five miles of the stop. The bill also clarifies that the Aquatic Invasive Species Prevention Fund may be used for costs associated with the aquatic invasive species prevention permit program, to award grants, and for related purposes of Board.

### **HB 2250 – Oregon Environmental Protection Act**

Chapter 138, Effective January 1, 2020

This bill requires the Oregon Department of Environmental Quality (DEQ) and the Oregon Health Authority (OHA) to regularly assess final changes to federal environmental law to determine whether the changes are significantly less protective of public health, the environment, or natural resources than baseline federal standards. The bill directs the DEQ to recommend actions to the Environmental Quality Commission (EQC) to maintain baseline federal standards, and would direct OHA to take actions necessary to maintain standards that meet or exceed environmental protections in effect on January 19, 2017 if the federal government proposes regulations that are less protective of environmental or health standards.

### **HB 2436 – Removal Fill**

Chapter 652, Effective August 9, 2019

Currently, wetlands and waterways are protected through permits issued by the Department of State Lands (DSL) and the US Army Corps of Engineers. Oregon has pursued assuming more of the permitting responsibilities for 25 years to streamline the process for applicants. This bill directs the Department of State Lands to develop a legislative proposal for partial assumption of the authority to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act. The bill limits assumption to permits within an acknowledged urban growth boundary, mining and related activities, and the creation and

operation of mitigation banks. The bill also removes certain restrictions on the purchase of credits from the Oregon Removal-Fill Mitigation Fund; most relate to the availability of approved credits.

### **HB 2437 - Ditch Cleaning Bill**

Chapter 699, Effective August 9, 2019

This bill authorizes maintenance activities in dry channels to be conducted without a removal or fill permit from the Department of State Lands; if several conditions are met including if a notice is filed with the Department of Agriculture (ODA) prior to initiating the maintenance activities. The bill requires the Department of Fish and Wildlife (ODFW) to provide input on the notices. Additionally, the college of Agricultural Sciences of Oregon State University will conduct a study on the impact of maintenance activities in traditionally maintained channels.

### **HB 2623 – Fracking Prohibition**

Chapter 406, Effective June 17, 2019

This bill imposes a statewide moratorium on hydraulic fracturing used in the exploration for, or production of, oil or gas until 2025. It exempts natural gas storage wells, geothermal activities, and existing coal bed methane extraction wells from the definition of "hydraulic fracturing" subject to the moratorium.

### **SB 41 – Oil Spill Prevention Fees**

Chapter 540, Effective September 29, 2019

ORS 468B.405 establishes fees to be submitted to DEQ for covered vessels and facilities located offshore and onshore for oil spill contingency planning and response preparedness. This bill modifies oil spill prevention fees, to include Cargo and passenger vessels fee from \$105 to \$220; non self-propelled tank vessels having a capacity of fewer than 25,000 barrels from \$85 to \$160 per trip; non self-propelled tank vessels having a capacity of 25,000 to 99,999 barrels from \$110 to \$220 per trip; non self-propelled tank vessels having a capacity of 100,000 or more barrels from \$250 to \$1,850 per trip; self-propelled tank vessels of 300 gross tons or less from \$85 to \$160 per trip; self-propelled tank vessels over 300 gross tons from \$2,100 to \$5,500 per trip; offshore and onshore facilities that are not pipelines from \$9,250 to \$20,000 per year; dredge vessels from \$50 to \$100 per day when operating in the navigable waters of the state; and establishes separate fees for pipelines with a diameter of six inches or less to \$15,000 per year and pipelines with a diameter greater than six inches to \$25,000 per year. Applies to fees assessed on or after the effective date of the Act.

### **SB 445 – Invasive Species Council**

Chapter 622, Effective September 29, 2019

The 2001 Oregon Legislative Assembly established the Oregon Invasive Species Council (Council) to conduct a comprehensive and coordinated effort to prevent, detect, control, and

eliminate invasive species harming the region's economy, health, and natural resources. This bill requires the Invasive Species Council (Council) to report biennially to interim legislative committees concerning Council activities during the previous two years. The bill also revises the Council membership to include eight ex-officio voting members, four ex-officio non-voting members, and 10 voting members who must represent a different specified category of interest.

## **ENVIRONMENT – DID NOT PASS**

### **HB 2020 – Carbon Cap and Trade**

Did not Pass

HB 2020 would have established the "Oregon Action Climate Program to meet updated greenhouse gas reduction goals for the state, with a goal of reducing emissions to 80 percent below 1990 levels by the year 2050. The bill would have impacted entities with annual emissions of 25,000 metric tons of carbon annually (primarily natural gas, electricity suppliers, manufacturing industries and the transportation fuels sector). The bill specified how revenues from the auction of allowances would have been spent. This bill was the target of a second Senate Republican walkout that lasted nine days.

### **HB 2619 – Pesticides**

Did Not Pass

This bill would have prohibited the sale, offer of sale, purchase, or use in the state of any pesticide product containing chlorpyrifos. The use of chlorpyrifos are currently being studied by the US Environmental Protection Agency and may be banned due to health concerns. A similar bill, SB 853 was introduced in the Senate.

### **HB 2772 – Household Hazardous Waste**

Did Not Pass

This bill would have prohibited a manufacturer or retailer from selling certain household hazardous products in Oregon unless the product was labeled with a brand and included in a plan for a household hazardous waste stewardship program approved by the Department of Environmental Quality (DEQ).

### **HB 3044 – Aerial Application of Soil Amendments and Pesticides**

Did Not Pass

This bill would have required businesses or individuals carrying out the application of a soil treatment or pesticide by aircraft to record certain information regarding the application conditions. That information would have been required to be filed with the Department of Environmental Quality which would have posted the information to their website. The bill also would have required the department to send a notice to affected properties if the department

determined that the soil treatment or pesticide drifted beyond the property area targeted for the application. Finally, the bill would have permitted the department to assess a civil penalty, not to exceed \$50,000, for failure to record, falsifying or failing to timely submit information. Several other bills were introduced impacting aerial application of soil amendment and pesticides, none of which passed.

### **SB 104 – Industrial Dairies**

Did Not Pass

This bill would have placed new restrictions on large dairies and would have made it very difficult to establish new large dairies or expand existing dairies by creating a whole bunch of new regulations that various state agencies would have been required to follow.

### **GENERAL GOVERNMENT - PASSED**

### **HB 2001 – Missing Middle Housing and System Development Charges**

Chapter 639, Effective August 8, 2019

As originally introduced, this bill would have limited the ability of a governing body to collect System Development Charges (SDC) for new “middle housing” until a certificate of occupancy had been issued. “Middle housing” being defined as duplexes, triplexes and quadplexes, cottage clusters and townhouses. The bill permitted the local governing body to place an encumbrance on the property in order to collect the SDC, however the bill would have prohibited the collection of any interest on the SDC until the certificate of occupancy had been issued. These provisions were removed from the bill. However, it is anticipated that an interim work group will likely be convened to further discuss SDCs.

Among other things, as passed this bill requires all cities within Metro with a population over 1,000 and all cities outside Metro with a population over 25,000 to allow by June 30, 2022: all “middle housing” types (duplex, triplex, quadplex, cottage cluster, or townhome) in areas zoned for residential use that currently allows a single-family dwelling and a duplex on any lot or parcel zoned for residential use that allows for development of a single-family dwelling. By June 30, 2021, all cities will be required outside of Metro with a population exceeding 10,000 and less than 25,000 to allow a duplex on any lot or parcel zoned for residential use that allows for development of a single-family dwelling. Cities can apply for extensions for rezoning for areas that do not have sufficient water, sewer, storm drainage, or transportation services (subject to approval by DLCD).

### **HB 2093 – Electrical Vehicle Charging Stations**

Chapter 104, Effective September 29, 2019

This bill authorizes the Department of Administrative Services (DAS) to enter into agreements with public or private entities to acquire, install, maintain, or operate electric vehicle charging stations on land owned or controlled by a state agency. DAS is authorized to participate in,

sponsor, conduct, or administer cooperative procurements under which public bodies and other authorized purchasers may acquire, install, maintain, or operate electric vehicle chargers. The bill excludes charging stations from definition of "public improvement" applicable under Public Contracting Code, for the sole purpose of authorizing certain cooperative procurements. The bill also requires that related work be subject to prevailing wage requirements.

### **HB 2306 – Building Permits Upon Substantial Completion**

Chapter 397, Effective January 1, 2020

This bill prevents a local government from issuing a building permit on the basis that the supporting infrastructure is not completed in a subdivision. If a residential subdivision is built, the city must have a process to allow the builder to seek building permits upon “substantial completion” of the infrastructure required as a condition of development. Substantial completion is defined as a completed water system, fire hydrant system, sewer system, storm water drainage (but not including the landscaping that might be included), curbs, demarcation of streets so emergencies responders can navigate, and roads to the condition they can be accessible to emergency vehicles. The developer must also provide a financial guarantee, like a bond, for the incomplete work. A city may decline to issue the certificate of occupancy if all conditions for development are not met.

### **HB 2423 – Fire Sprinklers in Tiny Homes**

Chapter 401, Effective October 1, 2019

This bill makes several changes to Oregon's small home construction standards. Among other things it clarifies the calculation of fire sprinkler systems to avoid triggering a larger water line, which could incur additional system development charge; allows a local building official broad discretion to accept increased detection and alarms in lieu of a fire sprinkler system, and to alter, modify, or waive code requirements when strict adherence to the SHSC is impractical or infeasible; clarifies that small homes are to be zoned and occupied only as single family dwellings; and sunsets the Small Home Specialty Code on January 1, 2026.

### **HB 2682 – Bicycle Lanes in Intersections**

Chapter 120, Effective January 1, 2020

This bill clarifies that a bicycle lane is considered to exist within an intersection if the bicycle lane is marked on opposite sides of the intersection in the same lane of travel.

### **HB 2829 – Oregon Conservation and Recreation Fund**

Chapter 531, Effective July 15, 2019

This bill establishes the Oregon Conservation and Recreation Fund within the State Department of Fish and Wildlife for carrying out activities that serve to protect, maintain, or enhance fish and wildlife resources in Oregon. Activities include: implementing conservation programs and strategies; improving engagement of the public in hunting, fishing, and other outdoor

recreation opportunities; improving educational outreach and engagement of the public, including diverse and underserved communities; joint projects with the Oregon Parks and Recreation Department or other state agencies as recommended by the Oregon Conservation and Recreation Advisory Committee; other conservation, management, research, habitat improvement, enforcement, outdoor recreation, or education activities. The fund sunsets July 1, 2021.

The measure also establishes the Oregon Conservation and Recreation Fund Advisory Committee to make recommendations on the use of the money in the fund. The bill establishes a \$1 million General Fund special purpose appropriation to the Emergency Board. This money is set aside for the 2019-21 biennium and can be released to the Department of Fish and Wildlife if \$1 million of private funds from non-state or federal sources are received as match. If matching funds are received, the Department may return to the Legislature for any necessary limitation or position authority. If matching funds are not received, the money in the special purpose appropriation is returned to the General Fund at the end of the 2019-21 biennium.

### **HB 2835 – Recreational Waterways**

Chapter 409, Effective September 29, 2019

This bill requires state agencies to post a notice on its agency website before restricting or closing a public access site to a floatable natural waterway. The measure would also require agencies to report annually to the Legislative Assembly on any public access sites restricted, closed, opened, or reopened in the previous calendar year.

### **HB 3061 – Public Property Transfer for Broadband**

Chapter 112, Effective May 13, 2019

Current statute allows a political subdivision to convey property not needed for public use to any governmental body provided the property will be used for at least 20 years for a public purpose. These transfers do not require the receiving body to give consideration beyond complying with conditions for use indicated in the conveyance. The conveyance must contain a reversionary clause which returns the property to the political subdivision if the recipient fails to use the property for the identified public purpose. Political subdivisions can also transfer property to a qualifying nonprofit or municipal corporation for low income housing, social services, and child-care services. Public property may also be conveyed to a nonprofit or municipal corporation for open space, parks, or natural areas for perpetual use. This bill adds providing broadband service to the purposes for which a political subdivision may convey property. The measure allows property to be conveyed to a nonprofit, municipal, or private corporation for the purpose of providing broadband service.

### **SB 68 – Public Utility Fee Increase**

Chapter 173, Effective May 24, 2019

This bill increases the annual fee imposed on public utilities and telecommunications providers

for the purposes of defraying costs of Oregon Public Utility Commission. Specifically, this bill increases the fee for a public utility from 0.3 percent to 0.45 percent of utility's gross operating revenues derived within the state.

### **SB 79 – Delinquent Accounts**

Chapter 359, Effective January 1, 2020

Among other things, this bill expands the authority of the Department of Revenue (DOR) to collect debt, through DOR's tax refund offset program (setoff), originating from local and special government bodies such as: schools, ports, parks and recreation or health districts.

### **SB 684 – Data Breach**

Chapter 180, Effective January 1, 2020

This bill modifies the Oregon Consumer Identity Theft Protection Act. Specifically, it details the process for notification to a consumer when that consumer's data that is held by a third-party vendor is subject to a 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 or having reason to believe a breach occurred. The vendor is required to notify the Attorney General if a breach involved the personal information of more than 250 customers or an undetermined number of customers. Among other things the bill specifies that an entity that is in compliance with Gramm-Leach-Bliley Act (GLBA) or Health Insurance Portability and Accountability Act (HIPAA) for information that is subject to regulation by those Acts need not provide notice as outlined in the measure.

## **GENERAL GOVERNMENT – Did Not Pass**

### **HB 2272 – State Lands Lease Surcharge**

Did not Pass

This bill, introduced at the request of the Department of State Lands would have authorized the department to impose a surcharge on all state-owned land leases. Proceeds from the surcharge would have been deposited in a newly established Restoration Subaccount. Money in the subaccount would have used to purchase insurance or to otherwise defray costs to clean up or otherwise address damage to state-owned submerged or submersible lands

## **LABOR**

### **HB 2005 – Paid Family Medical Leave**

Chapter 700, Effective September 29, 2019

Oregon requires family medical leave for employers with 25 or more employees. Leave can be taken for a serious illness, care for a family member who is ill, or bonding with a newborn or newly adopted child. More than half of Oregon workers are eligible for unpaid family and medical leave benefits under the federal Family and Medical Leave Act of 1993 (FMLA) and the

Oregon Family Leave Act (OFLA).

Oregon requires employers of 10 or more workers (six for employers in Portland) to allow employees to accrue and use up to 40 hours of paid sick leave each year.

Under HB 2005 an insurance program is created to provide employees with a portion of wages while on family and medical leave or military family leave. The bill requires employee to have received at least \$1,000 in wages during base year and to have contributed to the fund in an amount determined by the Director of the Employment Department to be eligible for the benefit. The bill directs the Employment Department to set contribution rates, collect payroll contributions and otherwise administer the program.

On January 1, 2022 premiums will begin to be collected and on January 1, 2023 employees could begin to access the paid leave benefit.

Employers with 25 or more employees pay (40% of 1% of payroll) and employees pay (60% of 1% of payroll); Employers with less than 25 employees don't pay the "employer premium" (40% of 1% of payroll). The cap on premiums is tied to the Social Security cap of \$132,900

Benefits are capped to a weekly benefit amount at 120 percent of state average weekly wage (approximately \$1,215). It also establishes a minimum weekly benefit amount as 5 percent of state average weekly wage (approximately \$50). The bill allows employees to use accrued paid leave (i.e., vacation leave, sick time) in addition to receiving paid family and medical leave insurance benefits to replace wages up to 100 percent.

Job protections for employees taking leave attaches after 90 days of employment. The job protections for employees who work for employer with fewer than 25 employees: they may be returned to a different position with similar job duties and with the same pay and benefits. Prohibits civil action against employer who takes necessary action to restore employee returning from leave by terminating temporary replacement or returning employee transferred to fill vacancy to prior position

A few additional details include the use of leave will be permitted for specified crime-related purposes ("safe leave"). Requires employee who commences unforeseeable leave without advance notice to provide oral notice to employer within 24 hours and written notice within three days. There is also explicit language that this Act does not require any collective bargaining agreements to be reopened. Extensive rulemaking will need to be undertaken to fill in the gaps.

### **HB 2016 - Union Business During Work Hours**

Chapter 429, Effective January 1, 2020

This bill introduced in part due to the US Supreme Court's *Janus* decision requires public employers to allow persons designated by a bargaining unit to conduct union related activities during their normal work hours. The bill also requires that employers deduct union dues of

employees who are on a list provided by the collective bargaining unit. Finally, the bill also requires employers to allow meetings hosted by the bargaining unit in workplace common areas.

### **HB 2341 – Reasonable Accommodations for Pregnant Employees**

Chapter 139, Effective January 1, 2020

This bill makes it an unlawful employment practice for an employer to deny employment opportunities, fail to make reasonable accommodations, or take certain actions because of known limitations of an employee or applicant related to pregnancy, childbirth, or a related medical condition. The bill authorizes an exemption if the reasonable accommodation requires significant difficulty or expense that imposes an undue hardship on the business operations. The bill also exempts employers with fewer than six employees. Employers are required to post a sign informing employees of these protections. The bill also directs the Commissioner of Bureau of Labor and Industries (BOLI) to develop training and education materials for employees and employers. Finally, the bill provides an employee a private right of action or ability to file a complaint with BOLI.

### **HB 2589 – Disability Discrimination**

Chapter 71, Effective May 6, 2019

HB 2589 updates language in employment discrimination statutes. The bill specifies that sexual orientation is not considered a physical or mental impairment and that an individual does not have a disability solely by reason of the individual's sexual orientation. Current law also specifies that an employer may not be found to have engaged in an unlawful employment practice solely because the employer failed to provide reasonable accommodation to an individual with a disability arising out of transsexualism. The bill updates language relating to sexual orientation and removes language stating that employer's failure to provide a reasonable accommodation arising out of transsexualism is not an un-lawful employment practice.

### **HB 2593 – Expression of Milk**

Chapter 118, Effective September 29, 2019

Currently in Oregon, employers with 25 or more employees are required to allow an employee a 30-minute rest period to express milk during each four-hour period and specifies that the rest period be taken approximately in the middle of the work period. Oregon's requirements extend to the first 18 month after a child's birth and to coincide with rest periods and meal periods that are already provided. An employer is not required to comply with the rest period to express milk if doing so would impose an undue hardship on the business. HB 2593 removes the limitations on frequency and duration of rest periods employer must provide an employee to express milk. It also limits the ability to claim an undue hardship to employers who have 10 or fewer employees. Finally, the bill extends the requirements to all employers by removing the exemption for employers with fewer than 25 employees.

### **SB 123 - Pay Equity Fix**

Chapter 617, Effective January 1, 2020

SB 123 was intended to be a technical fix bill for the pay equity legislation passed in 2017. The bill clarifies that pay differentials are acceptable for merit, travel, bona fide reasons contained in a collective bargaining agreement, and other factors. It will also trigger a new round of rulemaking to provide additional clarity to employers.

### **SB 164 – Retirement Savings**

Chapter 149, Effective January 1, 2020

In 2015, the legislature created the seven-member Oregon Retirement Savings Board, chaired by the State Treasurer. In 2017, the Board created OregonSaves, a defined contribution retirement plan. Oregon employers with 20 or more employees are required to automatically enroll their employees in OregonSaves if the employer does not offer a qualified retirement plan. Over the next year, smaller employers will also be required to automatically enroll their employees if the employer does not offer a qualified plan. Employees enrolled in OregonSaves make post-tax contributions to a Roth IRA that is administered by the Oregon State Treasury. Employers do not contribute to OregonSaves accounts and employees may opt not to contribute after their employer enrolls them. However, there were no provisions to enforce these requirements. SB 164 authorizes Bureau of Labor and Industries (BOLI) to enforce the Board's rules governing retirement plans using BOLI's contested case process. The Oregon Retirement Savings Board can request BOLI to investigate if, after making three attempts using different forms of communication, the Board has reasonable grounds to believe the employer remains in violation. BOLI can accept complaints from employees no earlier than two years following the date by which an employer is required to register with OregonSaves.

### **SB 370 – Employee Notification of Anticipated Immigration Inspections**

Chapter 260, Effective June 6, 2019

The Immigration and Customs Enforcement (ICE) implements the Immigration Reform and Control Act of 1986. That Act requires employers to verify the identity and employment eligibility of their employees using the Employment Eligibility Verification Form I-9. Employers are also required to maintain for inspection original I-9 forms. Any person or entity required to retain I-9 forms must be provided with at least three business day's notice prior to an inspection of the forms by an officer of an authorized agency of the United States. SB 370 requires an employer to notify employees that an inspection of I-9 forms or other employment records used by the employer to verify the identity and employment eligibility will be conducted by a federal agency. The notice must be provided within three business days of the employer receiving the federal notice of inspection. The bill also directs the Commissioner of Bureau of Labor and Industries (BOLI) to generate a standardized notice template for employers use that contains specified information, including contact information for a raid resistance hotline currently in use in Oregon.

### **SB 478 – Prohibited Payments for Non-Disclosure Agreements**

Chapter 462, Effective June 20, 2019

This bill prohibits payments made in connection with a non-disclosure agreement (NDA) relating to workplace harassment from campaign contributions, political committee contributions, petition committee contributions, or public moneys. The bill also prohibits the use of third-party money to make a payment in connection with a NDA relating to workplace harassment if the harassment occurred when the holder of public office or candidate was acting as an office holder or candidate. The bill defines "payments in connection with a nondisclosure agreement" as any form of consideration provided in exchange for the silence of another. This includes money, stock, or personal property, severance pay or benefits, the promise of a positive reference or assistance in obtaining future employment in public employment, alternative work arrangements, and any termination agreement that includes a waiver of past or future claims against the public official, public body, or public employee. Finally, the bill allows a civil penalty of up to two times the amount of the penalty provision for violating the NDA.

### **SB 479 – Public Workplace Harassment Requirements**

Passed (Effective Jan 1, 2020)

This bill requires public employers to have a written policy to prevent workplace harassment. The policy must prohibit workplace harassment and contain information on how to report and pursue claims. Additionally, the measure requires the public employer to have policy and procedures relating to investigating workplace harassment. The measure prohibits a public employer from requiring employees to enter into nondisclosure agreements as a condition of employment, continued employment, promotion, compensation, or receipt of benefits if the agreement prohibits the person from discussion or disclosure of workplace harassment or sexual assault. Finally, the bill provides a five-year statute of limitations for action based on prohibited conduct rather than the existing one-year timeframe.

### **SB 494 – Wages for the Disabled**

Chapter 371, Effective September 29, 2019

Employers who obtain a federal certification are authorized under Oregon and federal law to employ individuals experiencing disabilities at a subminimum wage. This bill requires employers who are authorized to pay subminimum wages to individuals with disabilities to annually increase those wages until reaching the state minimum wage rate by July 1, 2023.

### **SB 726 – Workplace Conduct**

Chapter 343, Effective September 29, 2020

This bill places several requirements on private sector employers, similar to SB 479, but also increases the statute of limitations for claims of harassment or sexual misconduct from one to five years. The bill does not revive old claims, and the statute of limitations extension will apply

to cases occurring after the enactment date.

### **SB 796 – Family Leave for Organ Donation**

Chapter 265, Effective January 1, 2020

This bill makes a period of absence for donation of body part, organ or tissue a “serious health condition for which family leave may be taken. Please see HB 2005 (above).

### **LABOR BILLS – Did Not Pass**

#### **SB 332 – Veterans Preference In Public Employment**

Did Not Pass

Under current law, public employers must grant preference to a veteran who applies for a vacant civil service position or who seeks promotion if they meet the minimum and special qualifications and if they successfully complete an initial screening or examination, or successfully complete a test used to establish eligibility for the position. A public employer shall appoint an otherwise qualified veteran or disabled veteran to a vacant position if the veteran's application examination, when combined with preference points, are equal to or higher than the results of other applicants. A veteran may request the public employer provide, in writing, the employer's reasons for not hiring the veteran. The public employer may base a decision not to hire a veteran solely on the veteran's merits or qualifications with respect to the vacant position. Current law also requires public employers to interview every veteran applicant who meets the minimum and special qualifications and who provides evidence that they have the transferable skills required or requested by the public employer. A veteran claiming they were aggrieved by a violation of the preference requirements may file a complaint with the Bureau of Labor and Industries. This bill would have rewritten the veterans' preference requirements in civil service hiring and probably did not pass due to the fiscal impact to the state.

#### **SB 379 – Marijuana In the Work Place**

Did Not Pass

Under current statute, ORS 659A.315, an employer may not prohibit an employee or prospective employee from using tobacco products during nonworking hours. However, an employer can prohibit the off-duty use of other products legal to Oregon, including alcohol and marijuana. This measure would have prohibited employers from restricting or banning the use of marijuana, alcohol, and other products legal to Oregon by their employees or prospective employees during nonworking hours. Several exceptions were included in the bill including if: the restriction related to a bona fide occupational qualification relating to health and safety; the business was a federal contractor or employer receiving grants subject to the federal Drug-Free Workplace Act; the employer was required by federal law or regulation to drug test employees or potential employees; the employee was subject to a collective bargaining agreement that prohibits use; the employee fit within the statutory definition of public safety personnel, emergency service provider, or licensed health care professional; the

employer/employee operated a public transit vehicle or taxi; or performed job functions that could involve a risk of injury to others, including the operation of heavy machinery or equipment. Under the bill employers could still impose restrictions that relate to an employee's performance of work while impaired. A similar measure was introduced in the House.

## **LAND USE – PASSED**

### **HB 2577 – Delayed Annexation**

Chapter 197, Effective May 30, 2019

In 2007, the legislature passed HB 2760, which provided a three-to ten-year waiting period from the time a city decided to annex an "island" territory to the finalization of the annexation. The delayed annexation waiting period applied to property zoned for residential use that was also in residential use when a city-initiated annexation. HB 2577 clarifies the type of property for which a city must provide a delayed effective date for an annexation decision. The measure would also allow a property owner to waive such a delay.

### **SB 92 – Phase-In Taxation and Island Annexation Changes**

Chapter 315, Effective January 1, 2020

ORS 222.750, known as the "island annexation statute," allows a city to annex a territory that is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore, a river, creek, bay, lake, or Interstate Highway 5 following a properly noticed public hearing. This bill authorizes a city to provide for as much as a 20-year ramp-up to full taxation rate for property in an annexed territory and, for purposes of "island annexation," would allow the corporate boundaries of another city to constitute part of the boundary of the territory to be annexed.

### **SB 408 – Siting Utilities on EFU**

Chapter 262, Effective January 1, 2020

This bill allows a county to approve a proposed division of land in an exclusive farm use (EFU) zone for utility facilities necessary for public service if it finds the parcel for the non-farm use is not larger than the minimum size necessary for the use. Prohibits land divided under the act from being later rezoned by the county for retail, commercial, industrial, or other non-resource use, except as provided under the statewide planning goals or goal exceptions.

## **LAND USE – DID NOT PASS**

### **HB 2109 – Annexation Voting**

Did Not Pass

If a city charter, ordinance, or resolution requires a city to conduct an election for annexation

approval, ORS 222.750 requires that the city allow electors in the territory proposed to be annexed to vote in that election. Currently, a majority of combined votes in the city and territory to be annexed are required to approve the annexation. This bill would have required votes from the city and territory to be annexed to be counted separately to determine separate majorities if the territory to be annexed was 100 acres or more. For territories less than 100 acres a combined a single majority would have sufficed for the approval of a proposed annexation.

### **HB 3099 – City of Happy Valley Withdrawal From NCPR**

Did Not Pass

This bill would have authorized a city that was annexed into a county service district to petition the county board for withdrawal from that district, and would have required the city to call a city-only election on the question of the withdrawal, provided that the city was annexed into the district upon a city-only election. The bill also would have required that the governing bodies of the city and county service district negotiate and finalize an agreement for the equitable division and disposal of the district assets within 90 days following the effective date of a withdrawal. This bill was introduced at the request of the City of Happy Valley in an attempt to withdraw from North Clackamas Parks and Recreation District (NCPR).

## **PUBLIC CONTRACTING**

### **HB 2094 – Bidder Responsibility**

Chapter 124, Effective September 29, 2019

Contracting agencies are required by the Public Contracting Code to make a determination of whether a bidder or proposer is "responsible." This determination requires the bidder or proposer to demonstrate a number of factors to the contracting agency, including that the bidder or proposer has the appropriate resources and skills to complete the contract, has a satisfactory record of integrity, and has complied with the tax laws in this state. The results of this determination may dictate whether a bidder or proposer is awarded a contract. HB 2094 authorizes contracting agencies to consider at any time before executing a public contract whether the bidder or proposer owes a liquidated and delinquent debt to the state.

### **HB 2415 - Retainage in Public Contracts**

Chapter 486, Effective January 1, 2020

This bill requires retainage to be held in an interest-bearing escrow account if the contract price exceeds \$500,000, with interest accruing from the date the payment request is approved, and with interest paid to the contractor or subcontractor. This new requirement applies to public and private construction contracts.

### **HB 2496 – Green Technology in Public Improvements**

Chapter 160, Effective September 29, 2019

This bill modifies current state law that requires public contracting agencies to set aside 1.5 percent of the total contract price for certain public building projects to incorporate green energy technology as part of the project. The bill increases the project threshold for required compliance from \$1 million to \$5 million. The bill also allows the 1.5 percent funds to be used for battery storage or for passive solar energy efficiency that reduces energy use from other sources by at least ten percent (the current passive solar provision requires reductions of at least 20 percent).

### **HB 2769 – Qualified Based Selection for Professional Services**

Chapter 55, Effective Sept. 29 2019.

This bill provides local contracting agencies with an optional, alternative qualification-based selection (QBS) process for procuring certain professional services, including architectural and engineering services. The existing QBS process, outlined in ORS 279C.110, requires contracting agencies to rank prospective consultants based solely on qualifications, and does not allow for the consideration of pricing information until a contracting agency has entered a negotiation with the top-ranked firm. Under the current process, the contracting agency may terminate any negotiation and enter a subsequent negotiation with the next firm on the ranked list until the agency makes a final selection.

Under HB 2769, this process remains in place. However, the new optional process outlined in the bill allows for the selection of up to three prospective consultants, based on qualifications. Pricing information can then be received from all three firms but could be weighted no more than 15 percent in the final evaluation and score. In addition, the bill clarifies that a prospective consultant has the right to protest solicitation documents or the agency's selection of a consultant.

### **HB 3431 – Blind Vending Preference**

Chapter 505, Effective June 25, 2019

HB 3431 clarifies that certain "visitor venues" are exempt from an existing state mandate that requires state agencies and local governments (as defined in ORS 174.116) to provide a priority or preference for the operation of vending facilities to persons who are blind. The bill defines the term "visitor venue" as a public building or property that is a convention center, event center, exposition center, zoo; performing arts center; museum; golf course; facility primarily used for sporting events; or a commercial airport owned and operated by a city or a port district.

### **SB 369 – Statute of Limitations**

Chapter 327, Effective January 1, 2020

An action against a person arising from the construction, alteration, or repair of any improvement to real property, including those providing supervision, inspection, design,

planning, surveying, or architectural or engineering services must be commenced within ten years of substantial completion or abandonment of the project. ORS 12.135 defines substantial completion as the date when the contractee accepts, in writing, that the property has reached a state of completion when it may be used or occupied for its intended purpose. SB 369 includes two additional occurrences that are now defined as substantial completion of a project. Under the measure, substantial completion can include the date when a public body issues a certificate of occupancy or the date when the owner uses or occupies the improvement for its intended purpose.

### **SB 471 – Conflict Minerals Preference**

Chapter 294, Effective September 29, 2019

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires all publicly traded companies to report and disclose if conflict minerals from the Democratic Republic of the Congo (DRC) can be found anywhere in their supply chain, and the City of Portland adopted standards in August of 2018 that give preference to bidders that source conflict-free minerals. As originally introduced, this bill would have required all public contracting entities to give a preference to contractors certifying that they do not use conflict minerals from the DRC or its neighboring countries. However, the bill was amended to exclude local government and will require state contracting agencies to obtain bids that detail what conflict minerals might be used in a project and the contractor's due diligence standards used to ensure the use of conflict-free minerals.

### **PUBLIC CONTRACTING – Did Not Pass**

#### **SB 305 – Increasing Threshold For Prevailing Wage Projects**

Did Not Pass

This bill would have increased the minimum contract price at which prevailing rate of wages would apply to public works projects from \$50,000 to \$64,000 for the year ending on December 31<sup>st</sup> 2020. It then would have required the Department of Administrative Services (DAS) to increase the threshold on an annual basis of the US Consumer Price Index by March 31<sup>st</sup> of each subsequent year.

### **PUBLIC RECORDS/PUBLIC MEETINGS - Passed**

#### **HB 2353 – Fines and Waivers of Fees for Late Public Records Production**

Chapter 205, Effective Date: June 4, 2019

In 2017, the Legislative Assembly enacted new timelines for the production of public records. Generally speaking, a public body is required to acknowledge a public records request within five business days and produce the records within an additional 10 business days, with some specific exceptions. This bill gives the Oregon attorney general, district attorneys and courts the authority to impose a \$200 fine and fee waiver when an agency doesn't respond to a

records request or processes it within the statutory timelines or with “undue delay.”

### **HB 2430 – Extension of Public Records Advisory Committee**

Chapter 107, Effective January 1, 2020

In 2017 the Legislative Assembly created the office of the Public Records Advocate (PRA) and the Public Records Advisory Council (PRAC). The PRA is nominated by the PRAC, appointed by the Governor, and provides public records training and dispute resolution services for disputes arising from a request to inspect or receive copies of public records. The PRAC is composed of representatives from the Secretary of State, Attorney General, Department of Administrative Services, news media, state and local government, public sector workforce, and the general public. The PRAC meets at least twice annually to consider issues related to public records and make recommendations to enhance transparency. The PRAC reports annually to the Governor and the Legislative Assembly on its findings. Under that 2017 legislation the PRAC was going to sunset on January 1, 2021. This bill removes the sunset date of the PRAC and establishes two-year terms for PRAC members other than the PRA. The measure allows existing PRAC members to complete three- and four-year terms that began January 1, 2018.

### **SB 288 – Special District Meetings in Indian Country**

Chapter 286, Effective January 1, 2020

Current statute allows the public body of the state, a county, or city to hold public meetings within Indian country of federally recognized Indian tribes located within Oregon. Special districts do not have this authorization. SB 288 simply adds special districts to the units of government that can hold public meetings on the land of federally recognized Indian tribes located within Oregon.

### **PUBLIC RECORDS/PUBLIC MEETINGS – Did Not Pass**

#### **SB 240 – Electronic Records and Signatures**

Did Not Pass

In 2001, the Legislative Assembly enacted the Uniform Electronic Transactions Act. The statute states that a record or signature may not be denied effect or enforceability because it is in electronic form. The statute also requires each governmental agency to determine if it will accept electronic records and signatures and allows each agency to determine the manner and format in which electronic records and signatures must be created, communicated, and stored. This bill would have required governmental agencies to use electronic records and signatures by July 1, 2020. The measure also would have required all governmental agencies to ensure websites are accessible on mobile devices and to persons with disabilities by July 1, 2021. Finally, all governmental agencies would have been required to submit modernization plans to the State Chief Information Officer and the Legislative Assembly by September 15, 2020.

## **PUBLIC SAFETY – PASSED**

### **HB 2206 – Building Inspections After Earthquake**

Chapter 649, Effective January 1, 2020

This bill directs the Office of State Fire Marshal to administer a statewide program to evaluate the condition of buildings in the aftermath of an emergency and determine which buildings may be safely occupied. It also directs the State Fire Marshal to work with local governments to designate local program coordinators to implement program. Finally, it authorizes the Fire Marshal's Office to enter into mutual-aid agreements with other states.

### **HB 2209 – Oil by Rail**

Chapter 581, Effective January 1, 2020

This bill requires railroads that own or operate high hazard train routes to institute oil spill contingency plans and to have those plans reviewed and approved by Department of Environmental Quality. The bill also requires railroads that own or operate high hazard train routes to annually submit financial responsibility statements to DEQ. The bill also outlines a training schedule for training for response to high hazard oil train spills. The bill sets forth additional requirements for a plan adopted by the Oregon State Fire Marshal for coordinated response to oil or hazardous material spills or releases that occur during rail transport. The bill creates a High Hazard Train Route Oil Spill Preparedness Fund and continuously appropriates money in the Fund to DEQ for the purposes related to contingency planning for high hazard train routes. The bill also authorizes a gross revenue fee of up to 0.05 percent on railroads required to submit contingency plans which is scheduled to sunset January 2, 2027. Finally, it authorizes a per-car fee of up to \$20 on oil tank rail cars entering the state or originating in the state. This fee is also scheduled to sunset January 2, 2027.

### **HB 3309 – Tsunami Zones**

Chapter 502, Effective January 1, 2020

Currently, the Department of Geology and Mineral Industries (DOGAMI) determines a tsunami inundation zone on the Oregon coast, where essential facilities may not be constructed (schools, hospitals, fire stations, and the like). This bill repeals the current restriction that new essential facilities and new special occupancy structures may not be constructed in tsunami inundation zone (ORS 455.446). The bill repeals a requirement that the DOGAMI Board adopt tsunami inundation zone parameters and repeals a requirement that DOGAMI grant exceptions to restrictions in tsunami inundation zone. Importantly, the bill establishes that excavation or grading operations that are associated with on-site construction activities, and do not result in excavated materials being sold commercially, are not defined as 'surface mining' (ORS 517.750).

### **SB 775 – Criminal Background Check Liability**

Chapter 424, Effective January 1, 2020

This bill requires any criminal background check conducted by a State agency for purposes of employment be requested through the Department of State Police. Local governments can also request that the State Police conduct a criminal background check. This bill limits the liability in a claim against a public body for failure to conduct an adequate criminal record check if the criminal background check was conducted by the Department of State Police.

### **SB 998 – Bicycles at Intersections**

Chapter 683, Effective January 1, 2020

Under current Oregon law, individuals riding bicycles on public roads are treated like other vehicles and must stop at intersections controlled by stop signs or a flashing red light before proceeding through the intersection. This bill allows a bicyclist approaching an intersection regulated by a stop sign or flashing red light at a safe speed to proceed through that intersection or make a turn without stopping. It also creates the traffic violation of improper entry into an intersection controlled by a stop sign and improper entry into an intersection controlled by a flashing red light. A violation of either occurs when a bicyclist fails to yield to traffic within the intersection or to traffic that is approaching so close as to constitute an immediate hazard, disobeys a police officer or flagger, fails to exercise care to avoid an accident, or fails to yield the right of way to a pedestrian. Committing this offense is a Class D traffic violation.

### **WASTEWATER/WATER QUALITY – Passed**

#### **HB 3273 – State-wide Drug Take-back**

Chapter 659, Effective September 29, 2019

This measure creates a drug take-back program for the safe disposal of unused or unwanted prescription drugs. Specifically, the bill requires drug manufacturers to pay for and run a statewide drug take-back program. The new law will ensure that every community in Oregon has free and convenient access to safe drug disposal. The law takes effect in September 2019 and the program must be operational by July 1, 2021. Oregon is the sixth state to require manufacturers to fund and safely manage drug take-back.

#### **HB 5017 – Department of Environment Quality**

Chapter 663, Effective August 9, 2019

The Department of Environmental Quality restores, maintains, and enhances the quality of Oregon's air, water, and land. DEQ regulates industrial air pollution, conducts vehicle emissions testing, sets and enforces water quality standards, monitors river basins, measures groundwater quality, and regulates waste discharges from city sewage treatment and industrial facilities. It also regulates hazardous waste disposal, promotes solid waste reduction, regulates underground storage tanks, and enhances environmental cleanup.

The budget for the agency is \$453.6 million total funds, which is a 10.8% increase from the

legislatively approved budget for the 2017-19 biennium. The budget includes \$52 million General Fund, \$5.3 million Measure 76 Lottery Funds, \$218 million Other Funds, \$148 million of Nonlimited Other Funds and \$29.5 million Federal Funds.

The General Fund is 7.6% higher than the 2017-19 levels. General Fund was added for the wood smoke reduction program and a comprehensive investment to develop water quality standards, implement clean water plans, monitor harmful algae blooms, and to address the water quality permit backlog.

The budget assumes fee increases in water quality permits (see below) and the air quality program to address the permit backlogs and to permanently establish the air toxics program. The budget also includes fee increases for hazardous waste, underground heating oil tanks, oil spill prevention and high hazard rail.

The Water Quality Program responsibilities include implementing the federal Clean Water Act, monitoring and regulating the use of water and wastewater, developing federally required plans for water quality standards, implementing the Oregon Plan for Healthy Salmon and Streams, providing financial and technical assistance, monitoring groundwater, and implementing the Safe Drinking Water Act. The water quality program received a total funds budget of \$74,461,124 and 241 positions (231.61 FTE). The following packages were also adopted related to the water quality program:

Package 120: to minimize impacts from urban & highway stormwater. This package includes a \$421,696 General Fund appropriation to support two permanent full-time Water Quality Specialist Natural Resource Specialist (NRS)-2 positions (0.88 FTE each) to work with the municipal separate storm sewer systems (MS4) permits. The package also provides \$152,143 Other Funds expenditure limitation and a limited duration full-time NRS-4 Transportation Stormwater Specialist position (0.50 FTE) to work specifically on the Department of Transportation's (ODOT) MS4 stormwater permit renewal.

Package 122: Setting and Implementing WQ Standards. This package includes \$195,557 General Fund for a permanent full-time NRS-4 Water Quality Standards Specialist position (0.88 FTE) and \$296,717 Other Funds for a permanent full-time NRS-3 Water Quality Standards Analyst position (0.75 FTE). These positions will provide capacity for timely development and implementation of water quality standards that serve as the basis for clean water plans, also referred to as total maximum daily loads - TMDLs.

DEQ currently has three positions (2.80 FTE) working on water quality standards, which is the largest factor in permitting delays. The Other Funds for this package are derived from the fee increase assumed in Package 127 that is expected to generate \$1,170,185 in 2019-21 through an approximate 17 percent fee increase on wastewater permit fees. This increase is in addition to the annual three percent increase already assumed in the Department's budget.

Package 123: Harmful Algae Bloom Response and Assessment. This package includes a \$579,590 General Fund appropriation and two permanent full-time positions (2.00 FTE), a Chemist and a Project Manager. The positions, originally approved by the September 2018 Emergency Board, will monitor and analyze water samples as part of Oregon Health Authority's rules for drinking water testing around Harmful Algal Blooms.

Package 125: Effectively Managing the Clean Water State Revolving Loan (CWSRF) Portfolio. This package includes \$169,392 Other Funds expenditure limitation to establish a permanent Loan Specialist position (0.88 FTE) to ensure stable and efficient loan servicing and effective financial management of DEQ's CWSRF. The CWSRF currently has 178 active loans and funds 10 to 15 new loans per year. There is only one other Loan Specialist who manages all aspects of the loans. Adding an additional Loan Specialist will alleviate some of the workload and allow for the program to invest time in process and service improvements as well as optimizing financial management of the loan fund.

Package 127: Water Quality Permit Program Improvements. This package includes \$913,132 General Fund and \$873,468 Other Funds for a total cost of \$1,786,600 in 2019-21. The package also includes nine permanent positions (6.76 FTE) phased-in to coincide with revenue from a fee increase. These positions are to improve DEQ's regulation of wastewater and stormwater discharges, including improved permit timeliness and quality.

DEQ has struggled with permit processing backlog for some time. In 2015, the Legislature directed DEQ to hire an independent consultant to review and make recommendations on how to improve permit quality and timeliness. Recommendations were made in 2016 with short-term and long-term solutions. One of the recommendations was a fee increase for Wastewater Permitting Program. The fee increase is anticipated to fund this package and package 122, is anticipated to generate \$1,170,185 Other Funds revenue in 2019-21. The fee increase represents a 17 percent increase to wastewater permit fees and will retain the historical ratio of 60/40 fund split for this program between fees and General Fund support. The positions will work to ensure timely issuance of quality permits, verifying compliance with permit conditions, complying with federal e-reporting requirements, improving availability of permit and program information to the public, and improving opportunities for stakeholder engagement.

### **SB 98 - Renewable Natural Gas Portfolio Targets**

Chapter 541, Effective September 29, 2019

This bill requires the Public Utility Commission (PUC) to adopt rules for a renewable natural gas program with specific portfolio targets for large natural gas utilities (defined as serving more than 200,000 customers) and a voluntary, opt-in program for small natural gas utilities. Large utility targets start at 5 percent in 2020 and ramp up to 30 percent by 2045. The PUC rules will establish a process for natural gas utilities to fully recover prudently incurred costs associated with both the large and small renewable natural gas program. The bill authorizes large natural gas utilities to make qualified investments and to procure renewable natural gas from third parties to meet the established targets in the bill. "Renewable natural gas" is defined as biogas;

hydrogen gas derived from renewable energy sources; or methane gas derived from certain sources.

### **SB 884 – On-Site Septic Systems**

Chapter 558, Effective July 15, 2019

This measure authorizes non-profit qualified institutions to apply for a loan from the Water Pollution Control Revolving Fund to finance projects to repair or replace failing on-site septic systems or to replace failing on-site septic systems with connections to an available sewer.

### **Wastewater/Water Quality – Did Not Pass**

### **HB 3182 – On Site Non-Potable Water Systems**

Did Not Pass

This bill would have created a framework for the authorization of onsite systems for the treatment and reuse of non-potable water. Non-potable uses under the bill included: toilet and urinal flushing, clothes washing, ornamental plant irrigation, and dust suppression.

### **SB 286 – Local regulation of Biosolids**

Did Not Pass

This bill was introduced at the request of Lincoln County and would have permitted local governments to restrict or condition onsite treatment of septage or land application of reclaimed water or biosolids. Local wastewater treatment interests opposed the bill and it did not get heard although the Chair of the Senate Environment and Natural Resources Committee does intend to conduct a hearing during the interim on the issue.

### **SB 756 – Money For Failing Septic Systems**

Did Not Pass

This bill would have appropriated \$2 million to the Department of Environmental Quality to award grants for developing and administering low-interest loans for the repair, replacement, upgrade, or evaluation of residential or small business on-site septic systems under ORS 454.779 and to cover administrative costs necessary to implement the same statute. Similar legislation has been enacted in the past, however, this session the program failed in securing any General Fund or Lottery Funds for the program. Refer to SB 884 (above).

### **SB 932 – Wastewater Technical Assistance**

Did Not Pass

This bill introduced at the request of the League of Oregon Cities would have required the Department of Environmental Quality to contract with an independent third-party entity to provide technical assistance to municipalities on matters related to state and federal

wastewater permitting requirements.

## **WATER**

### **HB 2084 – Place-Based Planning Sunset Extension**

Chapter 482, Effective June 25, 2019

In 2015, the legislature passed Senate Bill 266, which provided statutory authority and funding for the Oregon Water Resources Department to issue grants and provide technical assistance to facilitate place-based integrated water resources planning efforts through July 1, 2019. Place-based planning is voluntary, locally led, and tailored to the specific water challenges and stakeholder needs and preferences of the place where the planning effort is occurring. Participating communities are required to build a collaborative and inclusive process; gather information to understand water resources and identify gaps in knowledge; examine current and future water needs for people, the economy, and the environment; identify and prioritize strategic, integrated solutions to meet water needs; and develop a place-based integrated water resources plan.

Grant recipients currently participating in the program include the Gilliam Soil and Water Conservation District in the Lower John Day Sub-Basin, Union County in the Upper Grande Ronde Sub-Basin, the Harney County Watershed Council in the Malheur Lake Basin, and the City of Newport in the Mid-Coast Basin. This bill extends the sunset for the place-based integrated water resources strategies program by four years, to July 1, 2023.

### **HB 2085 – Dam Safety Statute Update/Modernization**

Chapter 390, Effective September 29, 2019

The Oregon Water Resources Department (WRD) is the state agency charged with overseeing the safety of more than 960 dams across the state. These dams store water for agriculture, municipal water use, industry, recreation, fisheries, and other purposes. Many of Oregon's dam safety statutes have not been updated since 1929. According to WRD, dam owner responsibilities; the WRD's role during emergencies; and the process for approval of constructing, removing, and maintaining dams are currently unclear.

This bill creates new provisions to regulate the construction, modification, and removal of dams; provide for WRD inspection of dams; require dam owners to supply information to WRD and to prepare an emergency plan; requires WRD to notify a dam owner if a dam has a significant or high hazard rating and is in need of a maintenance action; establishes dam enforcement authority for the Water Resources Commission and WRD; and authorizes the Commission to impose civil penalties for certain violations.

### **HB 5043 – Water Resources Department Budget**

Chapter 535, (2019 Laws): Effective date July 15, 2019

The Water Resources Department (WRD) operations are funded, generally, from a combination of General Fund and fees for water right and storage transactions, licensing, and permits. Of the total available revenues anticipated in the 2019-21 biennium, General Fund accounts for 36.4 percent. Other Funds comprise 54.4 percent, but roughly \$42 million of the \$55.4 million in Other Funds resources are from Lottery Bond proceeds carried forward into the 2019-21 biennium from issuance in prior biennia. Lottery Funds, equaling 8.3 percent of total funding, are exclusively for debt service.

The Legislature provided a total funds budget of \$101,944,355, including \$37,158,507 General Fund, \$8,493,320 Lottery Funds for debt service, \$55,415,794 Other Funds expenditure limitation, \$876,734 Federal Funds expenditure limitation, and 177 positions (171.79 FTE). The total funds budget is a 4.0 percent decrease from the 2017-19 biennium Legislatively Approved Budget.

The following two approved policy option packages (POPs) are of interest and contained in the WRD Budget:

Package 101, Place-Based Planning Community Support. This package provides a General Fund appropriation of \$550,000 to provide financial and technical assistance to the four planning groups participating in a pilot, place-based integrated water resources planning project. The funding is provided in conjunction with the four-year extension of the statutory sunset of the program contained in House Bill 2084. The participating basins are: Upper Grand Ronde, Lower John Day, Malheur Lake Basin, and the Mid-Coast. The funding will be used by the Water Resources Department and the participating groups to complete the planning phase and transition to plan implementation.

Package 102, Groundwater Data. This package includes a \$1,659,740 General Fund appropriation and authorizes the establishment of six permanent positions (5.28 FTE) for the evaluation of groundwater basin studies in cooperation with the U.S. Geological Society and the Oregon Department of Geology and Mineral Industries. Each basin study takes between five to six years to complete. This package will double the Department's capacity to conduct the studies. In addition to the funding included in this package, the Department will be using existing Other Funds expenditure limitation of \$300,000 for cost-sharing expenses related to the studies from exempt well use fee funds.

### **SB 27 – Drinking Water Fee**

Chapter 509, Effective July 1, 2019

The Drinking Water Services (DWS) program within the Oregon Health Authority Public Health Division regulates and monitors state drinking water systems and is the primacy agency enforcing the federal Safe Drinking Water Act. This responsibility includes the implementation of federal requirements for 2,500 water systems that serve at least 25 people or have at least 15 service connections. In addition, state law requires the regulation of approximately 900 public water systems that serve between 10 and 24 people. The program surveys community

water systems, investigates the detection of contaminants, ensures system compliance, provides technical assistance to community water systems, and provides training to water system operators.

Currently, DWS charges sanitary survey fees to help support the costs of conducting these surveys. This measure broadens the statutory authority for DWS to collect fees by replacing the sanitary survey fee with an annual regulatory fee established through the rules process in order for the agency to support a wider range of regulatory functions and provide assistance to local public health authorities. The bill requires the new fee schedule to be graduated based on the size and type of the water system, and limits fee increases to no more than once per calendar year. It is expected that the new fee will raise approximately \$1.85 million during the biennium.

### **SB 935 – Landscape Contractors**

Chapter 692, Effective September 29, 2019

This bill, as originally introduced would have allowed a person in possession of a newly created modified landscape professional license to design and install an irrigation system with up to 12 heads without any formal training, education on new technologies, or a demonstration of skills. Water providers opposed the bill due to concerns about water conservation efforts, particularly during peak demand. As a result of that opposition this portion of the bill was removed and then and then passed.

### **SB 5525 – Oregon Health Authority Drinking Water Program**

Chapter 695, Effective August 9, 2019

The Drinking Water Services (DWS) program within the Oregon Health Authority Public Health Division regulates and monitors state drinking water systems and is the primacy agency enforcing the federal Safe Drinking Water Act. This responsibility includes the implementation of federal requirements for 2,500 water systems that serve at least 25 people or have at least 15 service connections. In addition, state law requires the regulation of approximately 900 public water systems that serve between 10 and 24 people. The program surveys community water systems, investigates the detection of contaminants, ensures system compliance, provides technical assistance to community water systems, and provides training to water system operators. During the previous biennium the legislature replaced declining medical marijuana money with General Funds to run the program. This upcoming biennium water providers will be required to pay a new fee enacted based on population served which was enacted under SB 27 (see below). As a result of the passage of that measure five additional FTE were added to the drinking water program with anticipated revenue from the new fee being \$1.85 million for the biennium.

### **SCR 1 – Closed Loop Storage and Electricity Generation**

Filed with the Secretary of State

According to the Federal Energy Regulatory Commission (Commission), pump storage projects store energy and generate electricity by moving water between two reservoirs at different elevations. When the demand for electricity is low, excess electric generation capacity is used to pump water from the lower to the upper reservoir. Conversely, when the demand for electricity is high, water is released from the upper to the lower reservoir through a turbine to generate electricity. To date, the Commission has authorized a total of 24 pump storage projects currently in operation, with a total installed capacity of over 16,500 megawatts. Additionally, there are two classifications of pump storage projects, closed-loop and open-loop. Closed-loop pump storage projects are projects that are not continuously connected to naturally flowing water, whereas open-loop pump storage projects refer to projects that are continuously connected to naturally flowing water. This resolution provides legislative support for the development and utilization of closed-loop pump storage projects by Oregon utilities as a possible energy resource to meet future energy needs.

### **Water Related Bills – Did Not Pass**

#### **HB 2331 – Well Construction Statute of Limitation**

Did Not Pass

This bill would have prohibited the Water Resources Commission from enforcing general or special well standards more than three years after a well log had been filed for logs filed on or after the effective date of enactment. It also would have established a Task Force on Oregon Well Construction Enforcement Activities.

#### **HB 2656 – New Forest Management Practices in Source Water Areas**

Did Not Pass

This bill would have created a host of new forest practice restrictions in source-water areas. Significant new restrictions on the types of activities included the prohibition of the application of certain pesticides and fertilizers as well as certain forest harvest management activities.

#### **HB 2856 – Ground Water Studies**

Did Not Pass

This bill, introduced by a number of water user interests would have appropriated \$9 million for the Oregon Water Resources Department (WRD) to conduct groundwater studies in priority basins and would have required WRD to develop a 10-year groundwater study plan and report back to the legislature on how the appropriation was spent.

#### **HB 2860 – Well Water and Renters**

Did Not Pass

Among several things, this bill would have established requirements for testing and reporting groundwater contaminants for residences that depend on well water as a drinking water source

and established Safe Well Water Fund (Fund). It would have required sellers of real estate and landlords of a dwelling that includes a well for drinking water to have the well tested by a certified laboratory. OHA would have been directed to analyze results of well water tests to identify areas with groundwater contamination problems and provide education about groundwater contamination. Furthermore, OHA would have been directed to share results of well water tests with Oregon Department of Environmental Quality (DEQ) to be used in identifying groundwater concern areas. OHA would have been authorized to make grants and loans from the Fund to low income property owners and rental property owners who have had their groundwater tested by an accredited environmental laboratory and have received test results indicating that the groundwater supply poses a health risk. Those grants and loans would have been used to assist with the installation of treatment systems or repair or replacement of wells due to groundwater contaminant problems.

### **HB 3132 – Environmental Restoration Weirs**

Did Not Pass

Historically, many small streams in eastern Oregon were inhabited by beaver populations and strongly influenced by beavers' ability to modify their physical surroundings. Beaver dams have the effect of slowing the flow of water, allowing for natural overflow onto surrounding flood plains and providing many positive benefits to stream ecosystems and their hydrologic function. This bill would have required the Oregon Department of Fish and Wildlife to administer a program to authorize voluntary stream restoration and habitat improvement projects by participating landowners, through the construction of environmental restoration weirs.

### **HB 3326 – Funding for HAB Testing at DEQ**

Did Not Pass

This bill would have appropriated \$983,919 to DEQ to fund laboratory services for susceptible public water systems, and an unspecified amount to OHA to hire a recreational harmful algal bloom coordinator. Although this bill did not pass funding was included for testing in the DEQ Budget (see HB 5017 above under budgets).

### **HB 3430 – Water Resources Commission Final Orders**

Did Not Pass

This bill would have eliminated routine staying of Water Resources Commission or Water Resources Department final order enforcement upon the filing of a petition for judicial review of the order.

### **SB 51 – Transfer of Character and Location of Stored Water**

Did Not Pass

In 2017, the Water Resources Department, as a result of a Department of Justice opinion, announced that it no longer had the legal authority to consider applications for the change of

character of stored water or the ability to permit the location transfer of stored water. This bill along with SB 903 and SB 946 sought to fix this problem. Negotiations between stakeholders took place before and over the course of the session without any agreement being reached. Most stakeholders agree on fixing the character of use but there remains wide disagreement over the change in location. Some environmental interests are hoping to attach a public interest review to the location fix, which most water users oppose in whole or in part. This will remain a topic of discussion over the interim and is a critical component to completing the Willamette River Project reallocation and to address future water needs as well.

### **SB 894 – Funding for Newport Dams**

Did Not Pass

This bill would have appropriated \$44 million out of the General Fund to the Water Resources Department to issue grants to the City of Newport for land acquisition, design services, construction or other capital costs relating to the construction of a dam to supersede dams commonly known as Big Creek Dam Number 1 and Big Creek Dam Number 2. It should be noted that Newport did receive \$4 million in the Lottery Bonding Bill, HB 5030.