

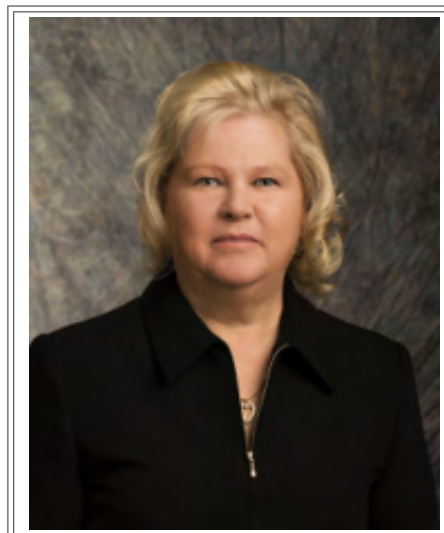
SESSION AT-A-GLANCE

When Oregon's 2019 Legislative Session convened in January, AGC's Legislative Leadership Team, including 2019 Board President Sandy Trainor and Legislative Forum Co-Chairs Dee Burch and Tom Gerding, recognized the chapter faced unprecedented threats that could fundamentally impact all segments of our industry. In response, AGC's Board of Directors adopted six core legislative priorities, brought forward by the Legislative Leadership Team, and directed AGC's lobbying team to focus its efforts on the priorities listed here:

- ✔ Defeating SAIF Raid
- ✔ Maintaining Workers' Compensation System
- ✔ Preventing Workplace Marijuana Accommodation
- ✔ Limiting Diesel Equipment Regulation
- ✔ Limiting Expansion of Public Works/Prevailing Wage Laws
- ✔ Defending Highway Trust Fund (Cap and Trade)

The chapter's lobbying team went to work, sometimes leading, sometimes joining, broad-based business coalitions – including, among others, manufacturers, truckers, loggers, materials suppliers, home builders, and the motoring public – to defend our mutual interests. Inside this report, our members will find more detailed information, not only on our successes regarding our six core priorities, but also significant other new laws that did pass that our members, industry, and association will be forced to navigate. If you have any questions on the six core priorities listed above, please reach out to John Rakowitz, 503-317-1781 or johnr@agc-oregon.org.

MESSAGE FROM OUR PRESIDENT:



As AGC President, when I look at what has been coming at business in the Salem legislature, the glass is half full or the glass is half empty. There is no doubt that all industries, our industry included, have faced an unprecedented anti-business climate. That certainly includes the passage of a brand new and worst kind of new business tax possible "gross receipts" and the new employer mandate and costs associated with providing all employees with paid family leave beginning in 2023. AGC's mission as an industry trade association is to protect and defend essentials to our members, companies, and the industry at large. I can say with confidence that AGC did that in the 2019 Legislative Session. AGC was successful protecting SAIF and the long-standing Mahonia Hall reforms that have made Oregon's workers' compensation system affordable for decades, ensuring that employees have a fair, reliable workers' compensation program in their best interests. AGC's legislative leaders and Public Affairs team was at the forefront of fighting off attempts in increasing the scope of

expanding prevailing wages into private construction markets and requiring marijuana accommodation, undermining jobsite safety. On the environmental front, there was a duel threat: proposed on and off-road diesel statewide regulations and a cap and trade program. AGC worked with Oregon Trucking Associations, AAA, Associated Oregon Counties, and Oregon Concrete & Aggregate Producers Association to narrow the diesel regulations to apply only to the Portland tri-county area. In the last two days of the session (after a nine day walkout on the part of the eleven Senate Republicans and rallies by loggers and truckers) I am honored to say that AGC also did its part to ensure the defeat of the cap and trade legislation that essentially would have threatened the viability of the Highway Trust Fund. I personally want to thank our legislative leaders, Dee Burch (Advanced American Construction), Tom Gerding (Gerding Companies), and Larry Gescher (HP Civil) along with AGC's Public Affairs Team, John Rakowitz, Kirsten Adams, Lauren Kuenzi, and consultant Drew Hagedorn for their diligent effort ensuring Oregon's commercial construction industry was heard with a maximum impact in Oregon's State Capitol.

503-682-3363
9450 SW Commerce Circle, Suite 200
Wilsonville, OR 97070

DEFEATED

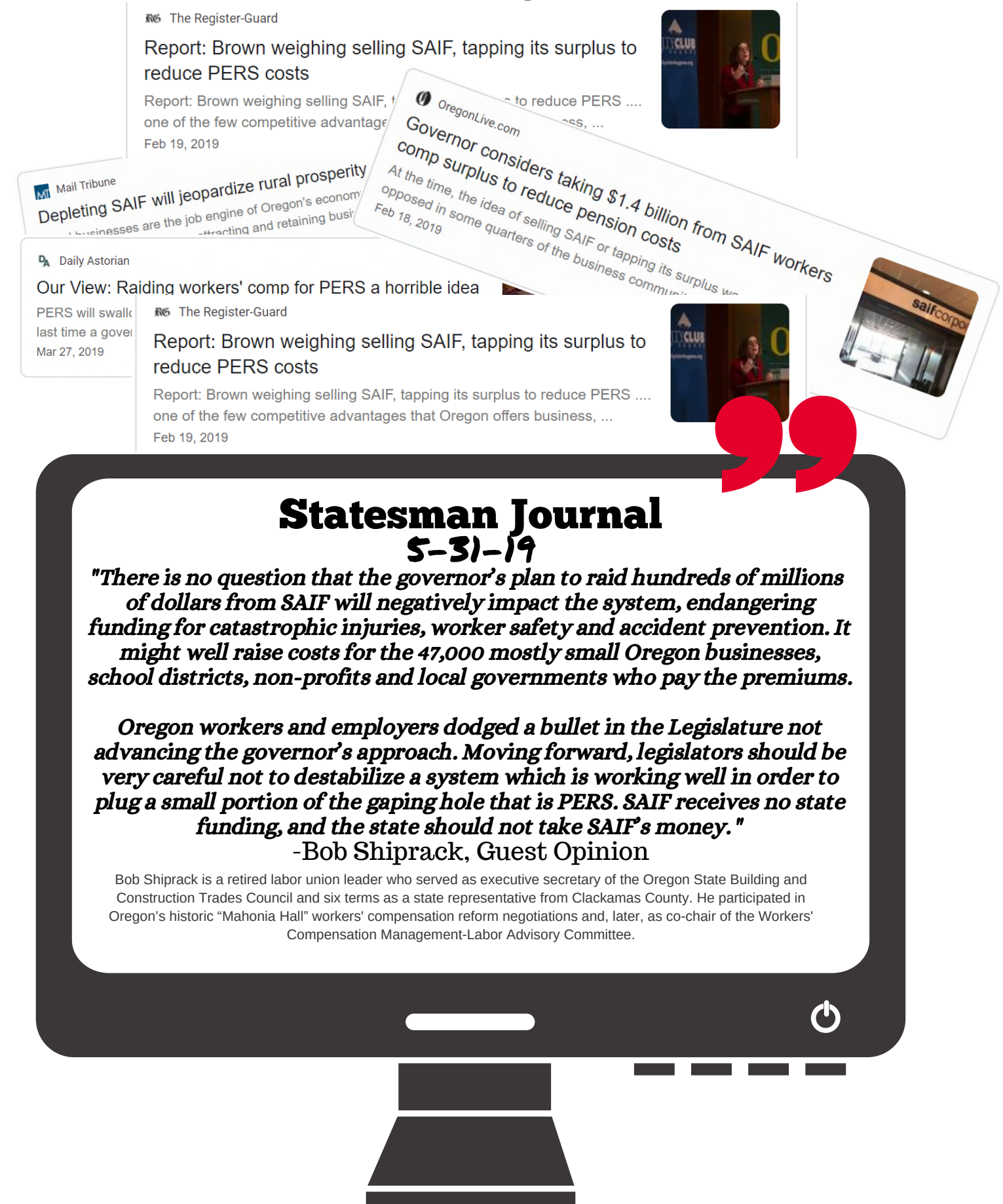
SAIF RAID

ISSUE: IN APRIL, THE GOVERNOR UNVEILED A PROPOSAL TO RAID \$486,000,000 OF SAIF'S RESERVES. THE STATED PURPOSE WAS TO REDUCE SCHOOL DISTRICTS' PERS LIABILITY.

Background: The first threat of a raid of SAIF's reserves came in 2017, when the governor convened a task force to propose ways to buy down the PERS liability, and it recommended selling SAIF or raiding its reserves. AGC responded by forming a broad coalition of employers to prevent legislation from being introduced in 2018. Without a permanent and substantial solution to the \$25 billion PERS liability, SAIF's reserves remained an appealing source of revenue to solve unrelated state financial liabilities.

Result: In 2019, The Defend SAIF Coalition, led by AGC, consisted of over 30 business associations, companies, and employers, including self-insured companies. This coalition met individually with more than half of the 90 members of the Oregon State Legislature and took its case to the public, meeting with editorial boards and reporters throughout the state. As a result of these efforts, the legislature took no action on the governor's proposal this session.

What's next: The Defend SAIF Coalition is prepared to do what is needed to defend against future proposals to raid SAIF's funds. The coalition has committed to an ongoing effort to continue educating Oregon legislators regarding the value of SAIF Corporation, one of Oregon's last remaining business incentives.



OREGON'S HIGHLY RANKED WORKERS' COMPENSATION SYSTEM

DEFENDED

ISSUE: HB 3022 PROPOSED UNDOING THE 1990'S MAHONIA HALL REFORMS AND RISKED REVERSING ONE OF OREGON'S DECADES-LONG SUCCESS STORIES. THE BILL INCLUDED A PROPOSAL TO CHANGE THE DEFINITIONS OF "PREEXISTING CONDITION" AND "COMPENSABLE INJURY." THE CHANGES IN THIS BILL WOULD HAVE LED TO SIGNIFICANT COST INCREASES IN WORKERS' COMPENSATION.

Background: Built on the foundation of the Mahonia Hall reforms, Oregon's workers' compensation system has long ranked as one of the best in the country. HB 3022 threatened to undo these reforms that have been critical for both employers and injured workers. After weeks of negotiations that included SAIF's attorneys, and several other workers' compensation defense attorneys, AGC reached a negotiated compromise with only two limited changes to the workers' compensation system. The Workers' Compensation Division's Management-Labor Advisory Committee (MLAC), co-chaired by AGC Board Member Kimberly Wood (Perlo Construction), reviewed and recommended the negotiated compromise to the Oregon State Legislature. The bill passed out of the House with strong bipartisan support.

Result: Before the bill received a vote in the Senate, the Oregon Supreme Court decided the *Garcia-Solis* case, which dealt with one of the issues addressed by HB 3022. As a result, MLAC recommended not moving forward with the bill. AGC supported MLAC's position.

What's next: AGC will continue to support MLAC as the gatekeeper to any potential changes or improvements to the workers' compensation system.

"MLAC IS A VEHICLE FOR REACHING CONSENSUS AND TO MINIMIZE THE DANGER OF MAKING MAJOR STRUCTURAL CHANGES FROM ONE LEGISLATIVE SESSION TO ANOTHER." - **KIMBERLY WOOD (PERLO CONSTRUCTION) TESTIMONY – HOUSE RULES COMMITTEE, APRIL 22, 2019**

"OUR EMPLOYEES WORK IN SAFETY-SENSITIVE POSITIONS... THEY HAVE A RESPONSIBILITY TO KEEP THEMSELVES SAFE, TO KEEP OTHERS SAFE, AND TO KEEP THE PUBLIC SAFE." **CRISTINA REYES (IN-HOUSE COUNSEL, HOFFMAN CONSTRUCTION) TESTIMONY – SENATE JUDICIARY COMMITTEE, FEBRUARY 7, 2019**

DEFEATED

MARIJUANA ACCOMMODATION IN THE WORKPLACE

ISSUE: SB 379 WOULD HAVE REQUIRED THAT ALL EMPLOYERS ACCOMMODATE THE USE OF MARIJUANA BY EMPLOYEES. THIS BILL WOULD HAVE PROHIBITED EMPLOYERS FROM TAKING ANY EMPLOYMENT ACTION AGAINST EMPLOYEES FOR USING MARIJUANA DURING OFF-DUTY HOURS.

Background: With no test for marijuana impairment, employers are not be able to determine whether an employee's off-duty use of marijuana impaired them on the jobsite. This bill would have forced employers to choose between enforcing a drug-free workplace and following the new law. Additionally, the proposed legislation would have prevented employers from creating the safest workplace possible. The passage of this bill would have been particularly problematic for employers working on federal projects with drug-free workplace requirements, because they would be forced to choose between complying with federal law and state law.

Result: AGC successfully led a coalition to defeat this bill which passed out of committee, but did not receive a Senate vote.

What's next: A similar bill passed in Nevada in June 2019 and AGC fully expects to see this bill again in future legislative sessions in Oregon.

DIESEL REGULATIONS: LIMITED BILL PASSED

NEGOTIATED

ISSUE: AS INTRODUCED, HB 2007 PROPOSED TO REGULATE AND EVENTUALLY OUTLAW ALL OLDER MEDIUM-DUTY AND HEAVY-DUTY ON-ROAD DIESEL TRUCKS THROUGHOUT THE STATE. ON THE OFF-ROAD SIDE, THE ORIGINAL BILL PROPOSED REQUIRING 80% CLEAN DIESEL FLEETS ON ALL STATE-FUNDED AND LOCAL-FUNDED PUBLIC PROJECTS OVER \$20 MILLION THROUGHOUT THE STATE.

Background: In 2015, and again in 2017, Portland-focused environmental organizations advocated for importing California's strict off-road diesel regulations to Oregon. AGC and its allies (OCA, Oregon Trucking Associations, Associated Oregon Loggers, AAA, Oregon Farm Bureau, and Associated Oregon Counties) defeated these bills in both sessions. In 2017, AGC successfully advocated for a third-party, state-funded diesel equipment emissions inventory to be completed in advance of any consideration of adopting off-road diesel regulations.

Result: After months of negotiations with the sponsors of HB 2007, AGC joined its allies in dramatically narrowing the bill as passed.

OFF-ROAD: This new law limits the public contracting requirement (80% clean diesel fleet utilization) to apply **ONLY to state projects over \$20 million** in Washington, Clackamas, and Multnomah counties starting in January 2022. (The Rose Quarter, Route 217 widening projects, and the I-205 projects will also require 80% clean diesel fleets.)

Project Advertisement Date	Motor Vehicles	Off-Road Equipment
January 1, 2022 or Later	2010 or Newer	Tier 4 Exhaust Emissions

ON-ROAD: The new law only applies to diesel trucks registered in Washington, Clackamas, and Multnomah counties, and exempts log and farming trucks statewide.

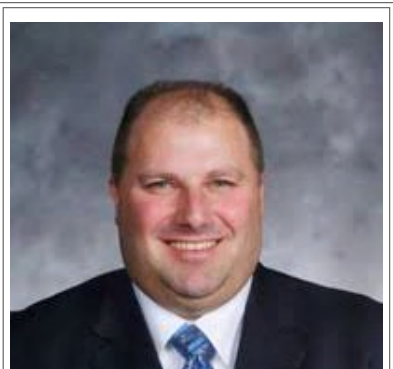
Implementation Date	Medium Duty	Heavy Duty
Registration: January 1, 2023	1997 or Newer	1997 or Newer
Titling: January 1, 2025	2010 or Newer	2007 or Newer
Registration: January 1, 2029	2010 or Newer	2007 or Newer

Medium-duty GVWR 14,000 – 26,000 lbs.
Heavy-duty GVWR greater than 26,000 lbs.

Exemptions:

1. Trucks that operate less than 5,000 miles per year.
2. Carriers with a fleet of five or fewer trucks.

What's next: DAS, DEQ, and ODOT are expected to conduct multiple rulemakings to implement this bill. If you have any questions about the bill or are interested in rulemakings, please contact Larry Gescher (HP Civil), John Rakowitz (AGC), or Kirsten Adams (AGC).



Larry Gescher, HP Civil
AGC PAST
PRESIDENT, 2015

DEFEATED

SUITE OF PREVAILING WAGE BILLS

ISSUE: UNLIKE PAST SESSIONS, AGC FACED AN UNPRECEDENTED NUMBER OF PREVAILING WAGE BILLS THAT, IF ALL PASSED, WOULD HAVE DRAMATICALLY ALTERED THE PUBLIC WORKS MARKET AND ASSOCIATED CONSTRUCTION COSTS. AFTER TESTIFYING IN OPPOSITION TO THE SERIES OF BILLS BELOW, AGC WAS INVITED TO A WORK GROUP CONVENED BY LEGISLATORS FROM BOTH PARTIES AND PROPONENTS AND OPPONENTS OF THE BILLS. AFTER WEEKS OF MEETINGS, A COMPROMISE WAS REACHED ON ONE SINGLE NARROWED BILL THAT WOULD MOVE FORWARD (HB 2408).

THE SUITE OF PREVAILING WAGE BILLS INCLUDED:

- HB 2408: This bill proposed requiring prevailing wages on private construction projects that received a broad range of tax subsidies, including enterprise zones, strategic investment programs, and other tax abatements. AGC agreed **not to oppose** this bill if applied only to projects in enterprise zones above \$20 million. **The bill passed out of the House, but did not pass out of the Senate committee.**
 - HB 2407 and HB 2409: Both of these bills would have changed the method of establishing prevailing wage rates. HB 2407 proposed to reduce the number of prevailing wage survey districts from the current 14 districts to five districts, each encompassing larger, more urban construction markets. HB 2409 proposed eliminating the prevailing wage survey and replacing it with collectively bargained rates, similar to the new Washington state law currently being challenged in court. **Neither bill moved out of committee.**
 - HB 2414: This bill proposed requiring prevailing wages be paid at manufacturing facilities producing prefabricated materials used in public works in Oregon. The likely result would have been to severely limit prefabricated material options available for public works in Oregon and substantially increase the cost associated with such materials. **This bill did not move out of committee.**
- What's next:** AGC anticipates participating in a legislator-led workgroup in fall 2019 to discuss the issues HB 2408 sought to remedy and leading to potential legislation during the 2020 legislative session.

CAP-AND-TRADE: DEFENDING THE HIGHWAY TRUST FUND

DEFEATED

ISSUE: HB 2020 PROPOSED FOLLOWING CALIFORNIA'S MODEL IN ESTABLISHING STRICT CARBON EMISSIONS CAPS REQUIRING LARGER MANUFACTURERS AND ENERGY AND FUEL PRODUCING INDUSTRIES TO TRADE OR PURCHASE COSTLY EMISSION "ALLOWANCES" ABOVE STATE AGENCY-SET CAPS. AGC SPECIFICALLY OPPOSED TRANSPORTATION "ALLOWANCES" AND THE DIVERSION OF THESE REVENUES TO NON-TRADITIONAL HIGHWAY TRUST FUND PURPOSES.

Background: HB 2020 undoubtedly dominated the 2019 Legislative Session. Beginning with controversial carve outs for preferred business entities to the introduction of more than 117 amendments, this bill divided the business community. A number of Oregon's traditional industries (forestry, logging, agriculture, construction, manufacturing, and cement production) joined together in a coalition advocating for substantial delays and changes. Unfortunately, the Joint Committee on Carbon Reduction failed to consider all proposed industry amendments. The transportation stakeholders who own, maintain, build, use, and pay for Oregon's transportation infrastructure, remained united in defense of the Highway Trust Fund, protecting Oregon's 2017 \$5.2 billion transportation investment package, and opposing unfeasible public contracting requirements.

Result: After a six and a half hour contentious debate on the floor of the Oregon State House, this legislation passed 36-24 on June 17. Only a Senate vote remained before cap and trade would head to the governor's desk for her signature to become law. On June 20, the 11 Oregon Republican Senators walked out in protest of the likely vote and passage of HB 2020. With three days left in the session, on June 27, thousands of Oregon's truckers and loggers gathered in protest in the Capitol, on the Capitol steps, and its surrounding streets. Republican Senators returned to the Capitol on June 29 only after Senate President Courtney announced the Senate did not have the 16 votes necessary to pass HB 2020.



"Should that bill pass... I think that it has the very real potential to cripple Oregon's economy and to change our economic landscape, particularly in rural Oregon, in ways that we could not have imagined."

- Sen. Betsy Johnson (D-Astoria)
"This Week with State Senator
Betsy Johnson" podcast
May 2019



What's next:

GOVERNOR KATE BROWN'S POST-SESSION PRESS CONFERENCE, 7-1-2019

"We need to pass a cap and invest program that will achieve the state's greenhouse gas reduction goals... Let me be very clear, I am not backing down..."

Over the next few months, I will redouble my efforts with impacted industries and communities to ensure that we truly understand their concerns.

I am also directing my staff to meet with transportation interests to discuss reducing greenhouse gas emissions in the transportation sector and further incentivize the transition to lower-emitting vehicles under a cap and invest system.

My goal for the next few months is to present proposed modifications to the legislation that still achieves the state's greenhouse gas reduction goals at the least possible cost while continuing to grow our economy.

I am also directing my staff and agencies to explore alternative paths in case collaborative approaches do not lead to successful legislation.

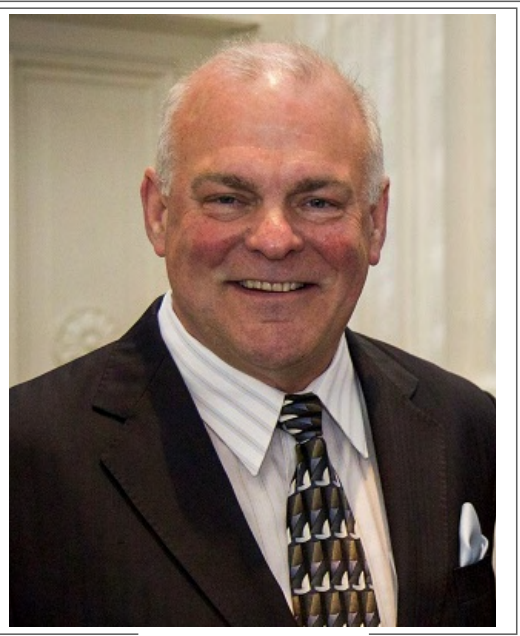
This includes the use of my executive powers and direction of agencies...

doing nothing to reduce emissions is not an option."

CORE POLICIES

Every member of AGC is encouraged and invited to join AGC's Legislative Committee Forum to help shape the core policies that inform our legislative positions.

Contact: Kirsten Adams, kirstena@agc-oregon.org, to become a member of AGC's Legislative Forum and attend our annual meeting



2019 LEGISLATIVE CO-CHAIRS

Dee Burch (Advanced American Construction) + Tom Gerding (Gerding Companies)

"AGC delivered on its mission to be the 'voice and choice of the construction industry' during this challenging session. AGC's decision to focus on six core legislative priorities and the strategic use of alliances and relationships developed over many years exceeded our expectations. As small contractors we are very thankful for AGC's ability to influence legislative actions. Oregon is a much better place to do business thanks to AGC and its nearly 900 members."

OREGON'S NEW GROSS RECEIPTS TAX & WHAT'S NEXT?

ISSUE: THE STUDENT SUCCESS ACT, HB 3427 (OREGON'S NEW GROSS RECEIPTS TAX), IS PROJECTED TO RAISE \$2.8 BILLION IN ITS FIRST BIENNIUM. \$2.2 BILLION WILL BE DISTRIBUTED TO SCHOOL DISTRICTS (WITH A PERCENTAGE TARGETED FOR CAREER TECHNICAL EDUCATION) AND \$600 MILLION WILL BE DEDICATED TO REDUCING PERSONAL INCOME TAX RATES.

Background: Public unions referred to the November 2016 ballot a 2.5% gross receipts tax on c-corps. Oregonians rejected that measure (Ballot Measure 97) by 59-40%. In 2017, the legislature again considered new taxes including a gross receipts tax and a Washington-style business and occupation tax. In response, a unified business community proposed a fiscally responsible approach that balanced cost containment and increased revenues requiring: 1) addressing the PERS unfunded liability, 2) a limited revenue increase dedicated to targeted educational investments, including career technical education, and 3) no new gross receipts tax.

Result: In the 2019 session, the business community split between those rejecting a gross receipts tax and those electing to negotiate with the supermajorities, the specifics of a new 0.57% gross receipts tax. Effective January 2020, this tax applies to all business entities with \$1 million+ of in-state revenues. In an attempt to mitigate the worst impacts of "pyramiding" that come with a gross receipts tax, the new law includes a 35% deduction of labor or cost of goods sold. Late in the session, a "fix-it" bill passed (HB 2164) attempting to answer technical questions not addressed in the original bill. Unfortunately, the lack of engagement with many impacted industries and interests leaves sectors such as construction with more questions than answers as to how to navigate this new tax.

What's next: AGC has a four-part plan to assist its members in navigating Oregon's new gross receipts tax. (1) Gather members' questions/key issues for consideration at one of our annual convention's break-out sessions on this gross receipts tax. (2) To inform Department of Revenue's fall/winter required rulemaking. (3) Offer members a technical assistance package upon completion of DOR's rules implementing the law that becomes effective January 1, 2020. (4) Develop potential amendments for consideration by the 2020 legislature.

If you're interested in engaging in this discussion, please reach out to either of our Legislative Co-Chairs, Dee Burch and Tom Gerding or AGC staff, John Rakowitz and Kirsten Adams.

WHAT OTHER BILLS PASSED THAT WILL IMPACT MY BUSINESS?

UNPAID WAGES: Two bills (HB 3193, HB 3217) were introduced to address the issue of unpaid wage claims in the construction industry. AGC opposed HB 3217 which proposed shifting liability to general contractors for any unpaid wages on the jobsite. After months of negotiations involving the Oregon Building Trades, Oregon Council of Laborers, NW Council of Carpenters, Oregon Home Builders Association, Associated Builders and Contractors, and AGC, all parties agreed to support an amended bill, HB 3193. This new law provides a multi-phased process to ensure contractors are held accountable only for valid wage claims. This new law provides contractors multiple opportunities to pay wages and/or make arrangements to pay before any further action is taken. If a contractor fails to pay a valid wage claim and any penalties assessed within 60 days of the final BOLI determination, the Construction Contractors Board will be notified. At this juncture, CCB will suspend the contractor's license until the claim has been paid in-full or the contractor has established a payment plan. If there are three or more valid wage claims filed in a one year time period, CCB may also elect to revoke, suspend, or refuse to issue a license to the business. CCB may also consider probation and/or increased surety bond amounts for these contractors.

RETAINAGE LAW: HB 2415 started as a bill that would have prohibited retainage if the contractor had supplied security performance, and prohibited retainage deduction from the portion of progress payment relating to cost of materials or equipment stored at the jobsite. In response to AGC's opposition to the original bill, the bill that passed is limited to a new requirement that if the contract exceeds \$500,000, the retainage must be placed in an interest-bearing escrow account.

APPRENTICESHIP REQUIREMENTS: SB 455 began as a bill that would have required 15% apprenticeship usage on all community and state college projects over \$200,000. Upon passage, the bill requires state college and community college projects above \$8 million contract with BOLI licensed apprenticeship training agents only. AGC's opposition centered on the impact to contractors with no access to apprenticeship programs or those unable to meet this new requirement.

PAID FAMILY LEAVE: HB 2005 was introduced as the compromise paid family leave program. The program will be funded 40% by employers and 60% by employees; employers with fewer than 25 employees are not required to pay into the program. It allows for 12 weeks of leave following the birth or adoption of a child or a serious medical condition of an employee or employee's family member. An additional two weeks are allowable for pregnancy and childbirth complications. Employers must keep the position available for the employee. For employers with fewer than 25 employees, the employee may be returned to a different position with similar responsibilities and pay, if the original position is no longer available and there is a business necessity. HB 2005 allows for private plans if they are equivalent in benefits. Collective bargaining agreements are not required to be re-opened to accommodate the new requirements. The payroll tax will begin in 2022, with leave allowable beginning in 2023. The next step for this program is rulemaking, which will determine the specifics of the program.

PAY EQUITY TECHNICAL FIX: SB 123 made several "fixes" to the Pay Equity Bill that passed in the 2018 Legislative Session. This law will now allow employers to pay employees their same wages while doing light duty or modified work. This applies for both workers' compensation and when employers offer modified work to their employees for other health issues. In addition, the new law will now allow employers to keep some employees at one wage while increasing wages for other employees to resolve pay inequity.

WORKPLACE HARASSMENT: SB 726, as introduced, was a sweeping bill that included personal liability for harassment for owners, presidents, partners, and corporate officers, and contained a seven-year statute of limitation for a long-list of employment claims. The bill as passed extends the statute of limitations for employment discrimination complaints, for certain claims, from one year to five years and limits the use of non-disclosure agreements and no-rehire provisions. The bill is effective Oct. 1, 2019 and operative Oct. 1, 2020.

If you have questions on issues relating to the bills defeated or new laws relating to employment requirements or workers' compensation issues, please contact Kirsten Adams, 503-990-2262 or kirstena@agc-oregon.org.

WHAT OTHER BILLS WERE DEFEATED THAT WOULD HAVE IMPACTED MY BUSINESS?

INDEPENDENT CONTRACTOR: HB 2498 proposed changing the multi-part test for distinguishing independent contractors from employees by adding a new provision to the test, stipulating that independent contractors may not provide services that are within the usual course of the other person's business. This change would result in reclassifying individuals currently deemed as independent contractors, including specialty contractors, as employees requiring payment of benefits, unemployment insurance, and workers' compensation. AGC led a diverse business coalition that defeated the bill.

PRIVATE ATTORNEY GENERALS BILL: SB 750 would have allowed private individuals and organizations to file actions (including OSHA, workers' compensation, wage theft, CCB, and prevailing wage claims) against employers, in place of the attorney general or BOLI. This bill would have encouraged workers' justice groups to target worksites and bring lawsuits against employers. AGC worked in a coalition to defeat the bill.

INSURANCE REQUIREMENTS: HB 2711 proposed changing the requirements for insurance policies for construction companies and restricted what exclusions can be included in these policies. AGC engaged in conversations on this bill and it died after substantial concerns were raised by insurance and construction industries.

2019 LEGISLATIVE SESSION
ADJOURNED
SUNDAY, JUNE 30
5:25 P.M.



TO READ THE BILLS FEATURED IN THIS REPORT, VISIT THE OREGON
LEGISLATIVE INFORMATION SYSTEM WEBSITE BY CLICKING HERE.



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