Oregon Tackles Equal Pay…
and Wrestles with Bipartisan Compromise

At the end of the summer of 2016, Ann Lininger, a Democrat representing the affluent Portland suburb of Lake Oswego in the Oregon House of Representatives, convened a meeting of stakeholders—including business interests, labor, women's organizations, trial lawyers—to announce her intention to introduce an Equal Pay Act in the 2017 legislative session. In this, Oregon Democrats were joining ranks with a nationwide movement to introduce pay equity laws at the state level, given the 20-year failure of efforts to pass such legislation at the federal level.

During the fall of 2016, Lininger worked to draft her bill, using a just-signed 2016 Massachusetts bill as a model. Introduced at the beginning of the session, Lininger's Equal Pay Act was identified early on as one of the state Democrats' "top ten" legislative priorities for 2017. [See Exhibit 1 for a summary of the bill.]

Once Lininger filed the bill, it was referred to the House Committee on Business and Labor on February 7, 2017. Lininger held a seat on this committee.

The Oregon Legislature

In 2017, Democrats held the Governor's seat and a majority in both the Oregon House and Senate—but there were important differences between the two chambers. By comparison to the Senate, the House membership was younger, more junior, and more partisan, with a 35-25 Democrat-Republican margin. That said, there were 6-8 Democrats in the House who were, by reputation, more moderate than their fellow party members. The older, more senior Senate was not only more moderate than the House, overall, it had a far narrower Democrat majority of 17-13. What's more, 3-4 of the Democrat Senators were quite centrist, and sometimes voted with their Republican colleagues. In addition, the longtime Senate President, Democrat Peter Courtney, was a passionate believer in the value of bipartisanship and tried to avoid partisan votes whenever possible. [See Exhibits 2 & 3 for flow charts

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This case backgrounder was conceived and written by Pamela Varley, Senior Case Writer, and Patricia Garcia-Rios, Multimedia Case Producer, in collaboration with Kessely Hong, Faculty Chair of MPA Programs, at the Harvard Kennedy School of Government (HKS). It is part of Version 1 of the Oregon Equal Pay case, which is a "no-prep" video case, divided into segments to play in a class or executive training session. This backgrounder is intended as a handout to accompany the video. These materials were developed with support from the William and Flora Hewlett Foundation. HKS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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showing the path of the Equal Pay Act (HB2005) through the House and Senate. See Exhibit 4 for the Key Players interviewed or referenced in this case/video package.]

Republicans & Employer Lobby Consider Their Best Move

It was clear to Republican lawmakers and to business lobbyists that Democrats planned to make the Equal Pay Act a priority in 2017 and that—strictly by the numbers—they had the votes to get the law enacted without any Republican votes. Opinion polls showed that popular support for the equal pay cause in Oregon was high—in the 80 percent range. What's more, women's rights initiatives were receiving a surge of support, in reaction to the election of U.S. President Donald Trump, whose controversial remarks about women had been widely publicized during the campaign. "Pay equity had become this political messaging conversation, I think, across the country," recalls one business lobbyist. "We felt the wave, if you will, and we knew it was coming. It was not a question of *if*, it was just *when*."

In this climate, Republicans knew, therefore, that to be recorded voting "no" on an equal pay bill could be politically costly with voters; a Democratic opponent could easily use such a vote to paint the Republican incumbent as a throw-back who did not believe in even basic tenets of fairness to women and minorities in the workplace. On the other hand, voting "yes" on such a bill could be politically costly with business supporters. Employers saw in the Equal Pay Act the specter of added regulations and potentially devastating damages if instances of pay inequity were asserted and found valid in court. They were dead-set against a law that increased their liability in this way.

Under the leadership of Jodi Hack, a Republican House representative from Salem, business lobbyists and other Republicans began to ask themselves whether they could amend the bill such that business interests were protected so that Republicans could actually support the bill. For Democrats and advocates, however, the employer penalties in the bill were crucial to its effectiveness. After all, equal pay was, technically, already the law of the land; it just wasn't enforced. In large measure, the point of the bill was to put some teeth behind the requirement for equal pay. Democrats and Republicans in first the House and then the Senate would have to decide whether the prospect of enacting a bipartisan bill held enough appeal to be worth the difficulties of sorting through their differences on this point.

Affirmative Defense

The particular mechanism Republicans and business groups hit upon as a "fix" for the bill was to allow employers to invoke an "affirmative defense." The idea was that if a court found that an employer had conducted a pay equity study and had made progress in rectifying any inequities uncovered, it would be protected against legal claims on pay equity grounds. Republicans and business representatives argued that this was an ideal solution, because it created an incentive for employers to "do the right thing" and avoid the necessity of resolving issues in court. Democrats feared that the affirmative defense concept opened a giant loophole in the law, and might provide legal cover for employers who conducted low quality studies and made only cursory gestures toward improving pay inequities.

The House Committee on Business and Labor began consideration of HB2005 with a public hearing

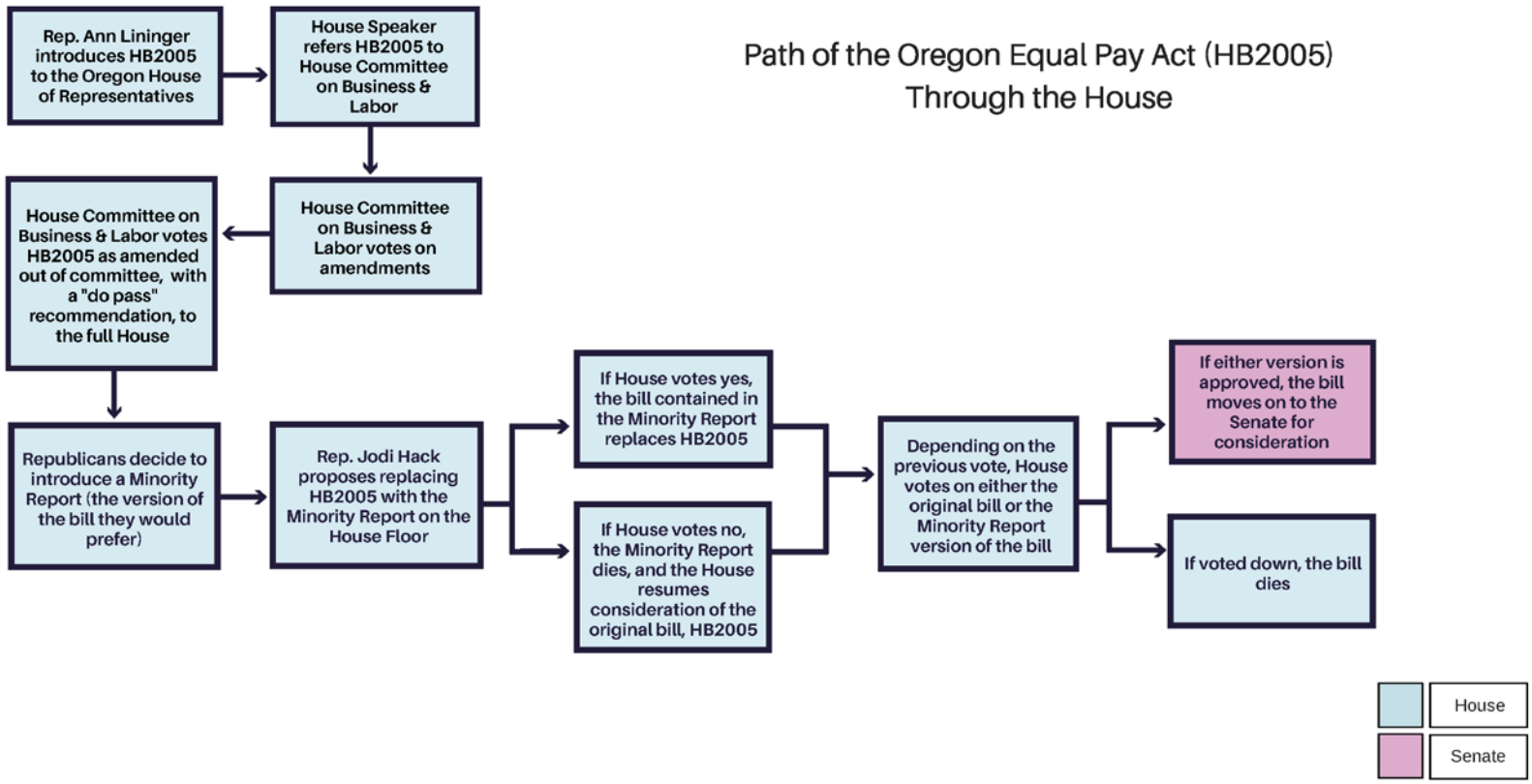
on February 22, 2017.

Exhibit 1.

Summary of the Oregon Equal Pay Act of 2017, HB2005, as initially introduced in the Oregon House

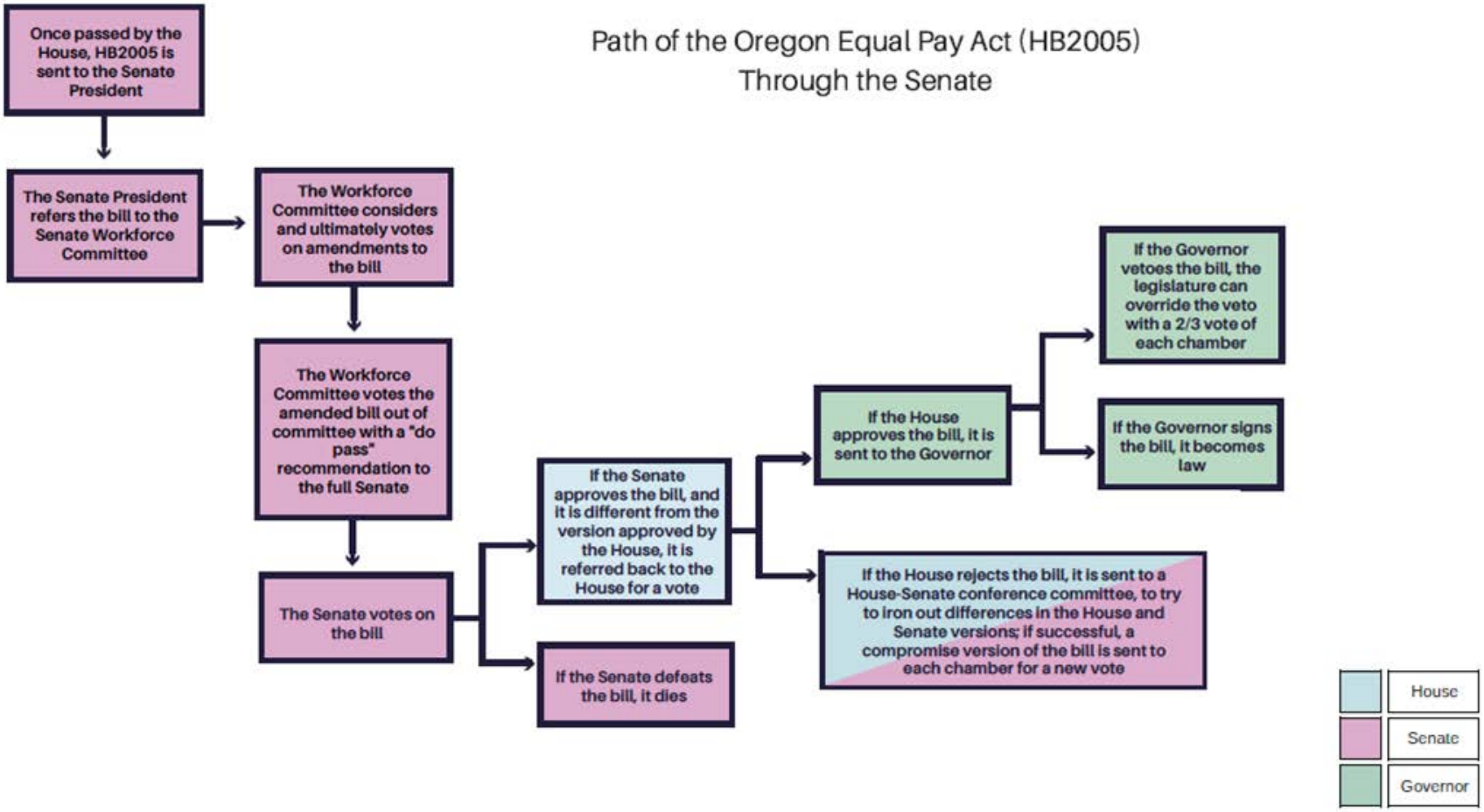
- Made it unlawful for an employer to discriminate in the payment of wages or other compensation on the basis of protected class, though differential wages were permitted based on merit, seniority, production or other bona fide factors such as education, training, or experience if certain criteria were met.
    - The protected classes named in the original bill: race, color, religion, sex, sexual orientation, national origin, marital status, age. (Oregon's list of protected classes was more expansive than most—maybe all—other states; many states passed laws that established pay equity for women only. Other states included racial and ethnic minorities, but stopped there.)
- Prohibited an employer from asking an employee's salary history in order to screen applicants or determine compensation. Employees, however, were allowed to disclose salary history when negotiating compensation.
- Expanded remedies for pay equity violations to include compensatory and punitive damages and a jury trial. The rationale for this was that payment of unequal wages based on race and gender discrimination was already against the law, but the law was widely ignored, and effectively unenforced.

Exhibit 2.[a]



[a] Created by Marin Soquelle Sklan

Exhibit 3.[b]



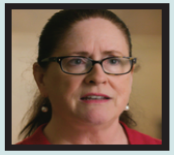
[b] Created by Marin Soquelle Sklan

Exhibit 4.[c]

KEY PLAYERS IN THE OREGON HOUSE OF REPRESENTATIVES DEBATE

EQUAL PAY ADVOCATES

KATE NEWHALL
Policy Director, Family Forward, an advocacy group for women and working families.



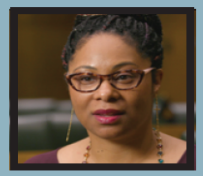
TRISH GARNER
Policy Director, American Association of University Women (AAUW), an advocacy group for women and girls.

DEMOCRATS

REPUBLICANS

OREGON HOUSE OF REPRESENTATIVES

REP. ANN LININGER (D-LAKE OSWEGO)
Original sponsor of HB2005, the 2017 Equal Pay Act, and member of the House Business and Labor Committee.



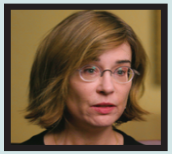
REP. JANELLE BYNUM (D-CLACKAMAS)
Co-sponsor of the bill and member of the House Business and Labor Committee.

REP. BRIAN CLEM (D-SALEM)
One of four Democrats who crossed party lines to support the Minority Report for HB2005.

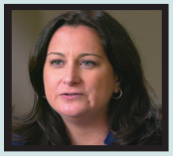
JODI HACK (R-SALEM)
House Minority Whip and leader of the effort to create a more moderate, bipartisan version of the bill, and member of the House Business and Labor Committee.

REP. MIKE MCLANE (R-POWELL BUTTE)
House Minority Leader and author of a controversial amendment to HB2005, which became part of the Minority Report on that bill.

EMPLOYER REPRESENTATIVES



BETSY EARLS
Vice President and counsel, Associated Oregon Industries (since renamed Oregon Business Industry Association), and representative of a group called the Business Lobby in the Equal Pay Act negotiations.



AMANDA DALTON
Contract lobbyist for the Northwest Grocery Association and other agricultural businesses, and representative of a group called the Business Lobby in the Equal Pay Act negotiations.

[c] Created by Marin Soquelle Sklan

KEY PLAYERS IN THE OREGON SENATE DEBATE

EQUAL PAY ADVOCATES

KATE NEWHALL

Policy Director, Family Forward, an advocacy group for women and working families.

TRISH GARNER

Policy Director, American Association of University Women (AAUW), an advocacy group for women and girls.

OREGON SENATE

DEMOCRATS

SEN. PETER COURTNEY (D-SALEM)

Senate President since 2003, a staunch believer in bipartisanship who pushed Senators Taylor and Knopp to come up with a bipartisan Equal Pay Bill.

SEN. KATHLEEN TAYLOR (D-PORTLAND)

Chair of the Workforce Committee, who regarded the Equal Pay Act as her top legislative priority in the 2017 session.

REPUBLICANS

SEN. TIM KNOPP (R-BEND)

Vice Chair of the Workforce Committee, who committed to working with Taylor to develop a bipartisan Equal Pay Act.

EMPLOYER REPRESENTATIVES

BETSY EARLS

Vice President and counsel, Associated Oregon Industries (since renamed Oregon Business Industry Association), and representative of a group called the Business Lobby in the Equal Pay Act negotiations.

AMANDA DALTON

Contract lobbyist for the Northwest Grocery Association and other agricultural businesses, and representative of a group called the Business Lobby in the Equal Pay Act negotiations.