MEASURE NUMBER: SB 34 STATUS: A-Engrossed SUBJECT: Electronic prescription drug database GOVERNMENT UNIT AFFECTED: Board of Pharmacy PREPARED BY: John F. Borden REVIEWED BY: Deborah Manthe DATE: March 12, 2007

<u>2007-2009</u>

2009-2011

EXPENDITURES: See Comments

REVENUES: See Comments

POSITIONS / FTE: See Comments

EFFECTIVE DATE: On passage

GOVERNOR'S BUDGET: This bill is anticipated by the Governor's recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: This measure would require the Board of Pharmacy ("Board") to establish and maintain a database for electronic reporting of the dispensing of controlled substances. The measure also establishes an Electronic Prescription Drug Database Advisory Commission. The Board may accept grants, donations, gifts or moneys from any source to fund the database. The Board would have the authority to assess civil penalties for failure to report or wrongful disclosure of the data by a reporting person.

The U.S. Department of Justice, Bureau of Justice Programs awarded a \$350,000 federal grant to the Board to develop a prescription drug monitoring program for Oregon. The grant was approved by the Emergency Board in January 2004 and awarded by the U.S. Department of Justice in July 2004. The original grant period ended July 31, 2005, but has been subject to annual extensions since 2005. The expenditure of the entire grant requires state enabling legislation in the form of this measure. A similar measure during the 2005 Legislative Session failed become law (SB 180). Without the enactment of such legislation, only \$50,000 of the grant can be expended for planning purposes. To-date, the Board has expended approximately \$10,000 for planning and has yet to develop a comprehensive plan.

The Governor's recommended budget includes a \$300,000 Federal Funds policy package to carryforward part of the unexpended balance of the grant into the 2007-09 biennium (The remainder of the grant limitation is contained within the Board's base budget). The Board proposes to complete its planning project using the remaining \$40,000 of planning funds, and then use the balance of the grant, which is the \$300,000, to hire two 24-month positions (Program Manager and an Administrative Specialist 1) for \$207,092 and pay for their associated services and supplies of \$48,908. These would be one-time expenditures for the 2007-09 biennium and will be phased-out of the Board's budget during the 2009-11 biennium. The revenue source for the on going funding of the database or the Commission expenditures past the 2007-09 biennium has not been identified.

The Legislative Fiscal Office (LFO) has four concerns with this measure:

- 1) The Board's fiscal impact is premised on the \$300,000 of federal grants funding it has received rather than a clearly articulated plan (and associated budget) detailing how the data will be acquired, validated, managed, stored, secured, and analyzed. Thus, the actual cost of this measure, both for the 2007-09 biennium as well as beyond, is uncertain;
- 2) A similar concern applies to revenue. There is no identified source of revenue beyond the existing federal grant to cover potential expenditures in excess of \$300,000 or for the funding in future biennia; Without such detail, there is a presumption that the Board may be required to used existing Other Funds revenue sources or its ending Other Funds balance to fund this measure in the future or if a deficit arises in the 2007-09 biennium. Of note is that the Board does not have any Other Funds expenditure limitation associated with this measure;
- 3) There is also a question as to whether Commission member travel and other expenses are an appropriate federal grant expense or if such costs must be reimbursed with the Other Funds revenue of the Board (e.g., licensee fees); and
- 4) Lastly, the Board's fiscal impact made no provision for civil penalty revenue, which is to be deposited into the Pharmacy Account.

For these aforementioned reasons, LFO believes this measure warrants a subsequent referral to the Joint Committee on Ways and Means Committee.