2007 Regular Legislative Session FISCAL ANALYSIS OF PROPOSED LEGISLATION Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 3099 **STATUS:** A-Engrossed **SUBJECT:** Water supplier fluoridation in communities of 10,000 of more persons

GOVERNMENT UNIT AFFECTED: Department of Human Services and local governments

PREPARED BY: John F. Borden **REVIEWED BY:** John C. Britton

DATE: May 10, 2007

2007-2009 2009-2011

EXPENDITURES: See Comments

EFFECTIVE DATE: January 1, 2008

GOVERNOR'S BUDGET: This bill is not anticipated by the Governor's recommended budget.

LOCAL GOVERNMENT MANDATE: This bill may affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: This measure requires that water suppliers serving more than 10,000 persons add fluoride to drinking water in amounts and manner prescribed by the Department of Human Services (DHS). DHS may temporarily exempt a water supplier serving more than 10,000 persons from this requirement until the Department determines that the water supplier has funds sufficient to purchase the fluoridation equipment from a source other than fees, taxes, or charges charged by the water supplier to the supplier's ratepayers, shareholders, local taxpayers, or bondholders.

DHS states that a temporary exemption means that water systems serving more than 10,000 persons are exempt from the mandate until appropriate funding to purchase community water fluoridation treatment equipment is identified and secured. DHS would use the administrative rule process to detail the exemption requirements.

DHS further states that there are currently no funds identified or available to fund this measure, including state General Fund or Other or Federal funds contained with the Department's budget. The Department notes that other states that have enacted this type of legislation have used federal grants provided by the Center's for Disease Control and Prevention as well as local/state foundations Other Funds to fund equipment needs.

The Legislative Fiscal Office (LFO) assumes that this measure does not prohibit the use of non-water supplier taxes to fund the purchase of community water fluoridation treatment equipment (i.e., state General Fund or federal taxes) or the use of private foundation funding. LFO notes, however that beyond the initial purchase of fluoridation treatment equipment, local public and private entities would be responsible for ongoing operational and replacement costs of such equipment. Thus, there is a possible legal question about whether this measure may trigger a Section 15, Article XI of the Oregon Constitution [unfunded] mandate on local government. There are, however, no legal decisions to help ascertain whether this measure represents a new program or an increased level of service to an existing program sufficient to meet the constitutional requirements of an unfunded mandate on local government. Conversely, this measure could be exempt from this constitutional provision on the basis that it falls under an existing program enacted prior to January 1, 1997.