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House Bill 4031 – February 8, 2012 Public Hearing House Committee on Transportation and Economic Development

Re: Testimony in support of House Bill 4031

Co-Chairs and Members of the Committee:

My name is Christopher W. Rich, attorney with Perkins Coie, LLP, and I respectfully submit the following testimony in support of House Bill 4031:

1. What is the Purpose of HB 4031?

This remedial bill modifies the Oregon Motorist Information Act (OMIA), ORS 377, to allow property owners the right to maintain nonconforming signs by purchasing an existing sign structure from sign company "owner" at the appraised replacement cost value of the sign structure (as if new) at expiration of lease.

2. What is the Problem HB 4031 Addresses?

The OMIA, ORS 377.762,¹ currently provides a relocation credit and the right to remove nonconforming sign structures at the termination or expiration of a lease ONLY to the statutorily designated sign "owner" (e.g., sign company tenant); and such removal – when it occurs – extinguishes the landowner's property rights to otherwise maintain the sign which has become "nonconforming" under local ordinance.

¹ 377.762 Issuance of relocation credits for removal of sign. The Department of Transportation shall issue a relocation credit upon the owner's request if a sign is removed, the owner has lost the lease for that sign site and the sign and permit meet the requirements of ORS 377.700 to 377.840. [2009 c.463 §3]

3. HB 4031 Protects Property Rights:

- The right to display a sign arises because a landowner had (at some point in the past) a legal right to erect an outdoor advertising sign on his/her property under local codes;
- Sign companies want to take advantage of the landowner's property right, and agrees to build a sign structure, bring a state ODOT permit (credit), and gain exclusive rights under lease to use the sign for advertising.
- Landowner still has to obtain a local sign permit;
- Over time, a sign becomes "nonconforming" under local ordinance (but is still "conforming" under state law, i.e., the size/spacing allowed under OMIA);
- Landowner may continue to exercise property right - but only for as long as nonconforming sign structure remains standing;
- BUT, If sign is removed, property right to continue nonconforming use is lost;

4. Currently, the OMIA Grants all Rights at Lease Termination to Sign Company Tenant - to Detriment of the Landowner's Rights:

- At termination or expiration of lease, OMIA currently grants all rights to the sign company tenant. Under ORS 377.762, ODOT must issue a "relocation credit" to the sign company if the "owner has lost the lease for that sign" and "the sign is removed";
- So the OMIA gives sign company authority and great incentive at the expiration of a lease to take down signs or tell landowner: "continue a lease with us, or we'll take down the sign and you lose right to do business with anyone";
- Sign company may take down sign (and get salvage value of sign structure);
- Only the sign company gets a relocation credit (which never expires) to erect same size sign elsewhere in the future;
- Current statutory scheme protects sign companies but extinguishes the underlying property right of the landowners - and correspondingly diminishes the property values;

5. How Does HB 4031 work to fix the problem?

- At expiration or termination of lease, sign company tenant has no further right to use the property, and ODOT permit converts to relocation credit for sign company tenant;
- If landowner wishes to continue nonconforming land use, landowner provides written notice of intent to purchase sign structure from former sign company tenant;
- Within 60 days, property owner must provide:
 - Appraisal for replacement cost of sign structure (as if new, under current code) by licensed or certified appraiser;
 - Payment of the amount in the appraisal to sign company;
 - Documents to transfer ownership of sign;
- If sign owner disputes the replacement value in appraisal, sign owner gets own appraisal and that value will set the purchase price. Sign owner still gets "relocation credit." per ORS 377.762;

6. What HB 4031 Does Not Do:

- HB 4031 does not increase the number of credits or signs allowed under the state "cap" for outdoor advertising signs;
- HB 4031 does not take property without compensation;
- HB 4031 does not interfere with current contracts – *see* HB 4031, Sec. 5 - effective date;

SUMMARY:

- Fundamentally, the right to erect and display a sign is a *property right* that originates and runs with the land. This is the right that is being protected by this bill;
- However, a nonconforming right only continues if sign structure remains standing, and OMIA currently provides statutory authority and incentive for sign company tenants to extinguish the landowner's property right;
- HB 4031 still gives relocation credit to sign company tenant;
- To change back to "outdoor advertising sign" landowner would have to obtain an existing state ODOT "credit" and permit (e.g., a credit held by another sign company) to use the sign in the future for compensation;
- Law allows landowner to freely contract with any sign company, creating competition in the marketplace;
- Sign owner gets compensated for replacement value of structure (as if sign structure were new);
- Sign owner gets a relocation credit for same size sign, and no new credit is created under the bill;
- Without HB 4031, landowners' property values will continue to be decreased with loss of nonconforming use;