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To: Chair Doherty and Members of House Committee on Business and Labor
Oregon State Capitol
900 Court Street, N.E., Room 453
Salem, OR 97301

MEASURE: HB 3343
EXHIBIT: 13
H BUSINESS & LABOR
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SUBMITTED BY: Gene Mechanic

From: Gene Mechanic

Date: March 18, 2013

Re: Testimony of Gene Mechanic before House Business and Labor Committee
Regarding HB 3343

Good morning Chair Doherty, Members of the Committee. My name is Gene Mechanic. I am a Portland attorney in private practice with the Mechanic Law Firm. I have represented employees and labor unions in Oregon and elsewhere for over 30 years. I am here today on behalf of Service Employees International Union, Local 49 to support the passage of HB 3343.

Enactment of HB 3343 is necessary to provide the Port of Portland with the legal authority to consider best value standards in awarding contracts. The Oregon courts have held that ports have only those powers expressly granted them by statute to achieve their stated purposes, and others that are necessarily implied from them.¹

The functions and powers of the Port of Portland are set forth in ORS Chapter 778, separately from those of other Oregon ports, whose powers are described in ORS Chapter 777.² While the Port of Portland currently has the power to regulate the use of airport property, its uses of that power are limited to those which serve to promote aviation, commerce and industry, as opposed to the general welfare. In other words, although the Port of Portland is a municipal corporation, it is not granted the same general powers as cities and towns under Articles IV and XI of the Oregon Constitution.³ As a result, any attempt by the Port of Portland to impose best value standards at the Portland International Airport could face a legal challenge on the ground

¹ *Seafeldt v. Port of Astoria*, 141 Or. 418, 16 P.2d 943 (1932); *Harrison v. Port of Cascade Locks*, 27 Or. App. 377, 380, 556 P.2d 160, 162 (1976), rev. den., 227 Or. 1 (1977); see also, appeal after remand, *Harrison v. Port of Cascade Locks*, 37 Or. App. 391, 587 P.2d 496 (1978), rev.den., 286 Or.303 (1979).

² ORS 778.015 states: "The object, purpose and occupation of the Port of Portland shall be to promote the maritime, shipping, aviation, commercial and industrial interests of the port as by law specifically authorized." The port may acquire, hold, use, dispose of and convey real and personal property, make any and all contracts the making of which is not by this chapter expressly prohibited. It may do any other acts and things which are requisite, necessary or convenient in accomplishing the purpose described or in carrying out the powers granted to it by law. The port may supply surface and air craft with fuel and other supplies at reasonable cost as may be for the best interests of the port."

³ *State v. Port of Astoria*, et. al 79 Or. 1, 23 (1916) (The Oregon Constitution distinguishes between cities and towns, which have general power to enact legislation, and other municipal corporations, such as ports, which may only legislate in exercise of powers previously granted them); accord, *Rose v. Port of Portland*, 82 Or. 541, 162 P. 498 (1917).

that such action is beyond the Port's legal authority.

Other provisions of ORS Chapter 778 grant the Port of Portland various specific powers. For example, ORS 778.025 provides that the Port, in part, may acquire, construct, lease and rent airports and piers, docks and buildings. ORS 778.260, in turn, authorizes the Port to adopt ordinances regulating the use of port properties. But courts construing the powers of Oregon ports tend to read such powers narrowly.⁴

Importantly, HB 3343 in no way modifies the state requirements for public contracting under ORS Chapter 279. Rather, it merely gives the Port of Portland the same ability to implement best value standards to protect employees, passengers, customers, and other users of Port property that, for example, are currently possessed by the cities of Portland, Tigard, Keizer, Oregon City, Dallas, Yamhill, Eugene, Gresham, Clatskanie.

Without this amendment, the Port of Portland would continue to be unreasonably restricted in establishing best value standards which other municipal corporations already have the power to implement. It's time to grant Port of Portland, a major driver of our State's economy, the authority to establish best value standards to better ensure the most effective use of taxpayer dollars and minimum labor standards for employees who serve the public so that Port of Portland passengers, customers, and users will receive the highest quality service.

Thank you for your consideration and time.

Very truly yours,

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Gene Mechanic
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⁴ See, e.g., *Seafeldt, supra* and *Harrison, supra*; see also, *Brusco Towboat Co. v. State*, 30 Or. App. 509, 532, 567 P.2d 1037, 1050-51, *affirmed in pertinent part*, 284 Or. 627, 648-49, 589 P.2d 712, 725 (1978).