



# Oregon

John A. Kitzhaber, MD, Governor

## Housing and Community Services

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### **Testimony to the Senate General Government, Consumer and Small Business Protection Committee**

**Re: Senate Bill 204**

**February 20, 2013**

Mr. Chair and members of the committee:

The Oregon Department of Justice (“DOJ”) would like to express its support of Senate Bill 204, which clarifies that the Housing and Community Services Department (“OHCS”) is among those agencies exempt from certain statutorily-imposed property disposal protocols. SB 204 modifies ORS 270.100 and ORS 273.785 to expressly identify OHCS in the list of state agencies exempt from the statutory obligations: (1) to give certain political subdivisions first right to acquire real property owned by the state, when the state agency acting for the state intends to dispose of that property; and (2) to retain certain mineral or geothermal resource rights or proceeds in real property that a state agency conveys to others.

The exemption for certain other agencies from the first-right protocols are contained in ORS 270.100. The exemption for certain other agencies from the obligation to retain mineral or geothermal resource rights is contained in ORS 273.785. SB 204 would add OHCS to the list of exempt agencies in both statutes.

OHCS operates a large bond-financed mortgage lending program, both for single homes and for multifamily housing rental developments, as well as certain community development financing programs. This lending program is designed to ensure that safe, sanitary, and affordable housing is available to Oregonians on a sustainable basis. That need is particularly acute given the troubled state of our current economy.



In order to successfully administer its affordable lending programs, OHCS must, *inter alia*, adhere to federal bond requirements, ensure the rights of bondholders, ensure that bond funds benefit intended beneficiaries, and protect its ability to repay resulting bond indebtedness. OHCS also endeavors to maximize the efficiency of its housing finance and community development financing programs.

To achieve those ends, ORS 456.625(7) expressly and specifically empowers OHCS to exercise all appropriate remedies to protect and enforce its security interest in its bond-financed loans, including to “dispose of such propert[ies] in such manner as the department determines necessary to protect its interests under ORS 456.515 to 456.725 [its bond-financed mortgage lending programs]and ORS chapter 458 [its community development financing programs].

Historically, this office and OHCS bond counsel have taken the view that the very specific and discretionary authority given OHCS in ORS 456.625(7) to “dispose of such property in such manner as the department determines necessary” trumped the more general property disposal protocols contained in ORS 270.100 and ORS 273.785. Additionally, those latter property disposal protocols make little sense in the administration of housing loan programs. However, over time, as other agencies without statutory authority equivalent to ORS 456.625(7) were expressly exempted from those latter statutes, OHCS became more conspicuous by its absence from the list of exempt agencies. Accordingly, DAS has recommended that OHCS be added to the list of exempted agencies in those latter statutes to avoid potential confusion that its absence from the list of exempted agencies be construed as legislative intent that OHCS be subject to such property disposal protocols. DOJ concurs in that recommendation.

D. Kevin Carlson, Senior Assistant Attorney General

Oregon Department of Justice

