

Testimony in Support of HB 2608
Norman R. Williams
Member of the Board of Directors, Oregon Law Foundation
Before the House Business and Labor Committee
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I am Norman R. Williams. I am the Ken & Claudia Peterson Professor of Law at Willamette University, where I also serve as Director of the Center for Constitutional Government. I am a member of the board of directors of the Oregon Law Foundation (OLF), and I am its immediate past President last year. I appear here as a member of OLF's board in support of HB 2608.

The Oregon Law Foundation is a nonprofit whose mission it is to grant funds to organizations that provide legal services to Oregonians of lesser means. The OLF provides funding to legal aid programs that are the primary source for civil legal assistance for low income Oregonians statewide. 25% of cases handled by legal aid focus on housing. 95% of the OLF's revenue comes from the Interest on Lawyer Trust Account Program or the IOLTA program. Let me describe what IOLTA is.

Lawyers are responsible for the safe keeping of their client funds and must keep those funds in a trust account separate from their own funds. Client funds that are too small in amount or held for too short of a time to earn interest back to the client, net of bank charges or administrative fees, are placed in a pooled interest-bearing trust account. The interest from these accounts is remitted by the bank to the Oregon Law Foundation. If a client's deposit is large enough or will be held for a long enough time to earn interest for the client net of banking charges and administrative fees, this is referred to as anticipating a "positive net return" on the deposit. In these cases, the money cannot be placed into an IOLTA account, and instead the lawyer must place the funds into a separate interest bearing account, the interest on which is returned to the client.

Because interest rates are at record lows, IOLTA revenues have plummeted in recent years---from a high of \$3.6 million to \$970,000 received in 2012. This is a 75% drop in annual revenue and has meant that legal aid organizations have lost \$1 million in revenue from the OLF on an annual basis. This has been devastating for those organizations that provide legal aid service to low income Oregonians. Unfortunately, the Federal Reserve has signaled that interest rates are not expected to rebound any time soon, and, even when a rebound ultimately takes place, it is predicted that interest rates will still remain low.

Like lawyers, escrow agents must establish bank accounts to hold client funds entrusted to the escrow agent. An example of a typical escrow arrangement involves the sale of residential real estate. In such transactions, the parties typically retain an escrow agent to which the earnest money and other funds for the purchase (such as bank financing). These funds are deposited by the agent for a limited period in an escrow account before being disbursed to the seller at closing. Similar to IOLTA accounts, these escrow accounts must be set up as trust accounts and kept separate and distinct from funds belonging to the escrow agent or their employer.

Other states have recognized the similarities between lawyer trust accounts and escrow trust accounts and require that interest on escrow accounts be dedicated to legal aid. Washington is one of those states. In Washington, the interest earned on many escrow accounts currently goes to the Legal Foundation of Washington to fund programs that provide legal aid services to persons of lesser means.

Modeled on Washington's experience, this proposal would require that escrow accounts be interest bearing. In cases where a positive net return is anticipated, the escrow agent would be required to deposit the funds in an account in which the interest would be returned to the parties or otherwise disposed of in the manner decided by the escrow agent and their clients. However, in situations in which the amount of money is too small or the duration of the deposit is too short to earn any interest after payment of banking fees, the escrow agent would be required to deposit the money into a pooled interest-bearing account, the interest on which would be paid to the Oregon Law Foundation to assist the funding of legal services for low-income Oregonians. In this way, client funds entrusted to escrow agents would be treated the same as client funds entrusted to lawyers in Oregon, and the interest earned on the pooled escrow accounts would generate interest for the benefit of low-income Oregonians.

I would like to make the committee aware of two changes that have been proposed for this bill, both of which we are in agreement with.

The first is the dash-2 amendments which I believe have been distributed. This change would restore existing statutory language that allows escrow agents and their clients to agree to dedicate interest payments to a public benefit corporation that provides first-time home buying assistance and for development of affordable housing. As a practical matter, this change would not impact any monies that might go to the Oregon Law Foundation, because in any case where an individual client's money could generate enough interest to dedicate to another purpose, then that would constitute a "positive net return", meaning that the interest should not go to the Oregon Law Foundation anyway.

Additionally, an amendment has been requested from legislative counsel that would exempt the Oregon Housing and Community Services agency from the requirement that escrow accounts it administers must be interest bearing. This is because the agency administers some federal programs that specifically prohibit the agency from placing certain funds interest bearing accounts.

Thank you for your time, and I am happy to answer any questions.