

Testimony of Eli Justman
Member of Institute for Modern Government Collections Workgroup
Formerly Legislative Policy Staff for Representative Vicki Berger

March 2, 2015
Senate Committee on Rules
SB 56

Chair Rosenbaum and Members of the Committee:

Thank you for taking the time to hear these complex and important bill. Representative Vicki Berger arranged for the drafting of the legislative concepts that became SB 55 and 56. I worked on these issues for Representative Berger throughout most of last year, and at her direction I attended numerous meetings and workgroups with stakeholders and agencies to discuss what could be done to improve the efficiency and effectiveness of efforts to collect the State's liquidated and delinquent debt.

Those meetings and a great deal of work led to these bills. The focus of the bills is to increase oversight and accountability for the timely and effective collection of liquidated and delinquent accounts, provide agencies with tools to collect on these accounts, and to ensure that every agency is able to conduct collections and accounting within this scheme in a lawful, efficient, and effective manner. I'm happy to elaborate on how the various parts of the bills work, and other subject matter experts should be testifying as well.

Due to submission timelines, these drafts came to the committee before the stakeholders and agencies had been able to comment upon them. As a result, several mechanisms within both of the bills will not work as intended unless they are amended. In order to address this, I attach to this testimony a proposed amended version of each bill. I'll briefly note what the primary changes would be, below. If you approve of these, our hope is that you would ask legislative counsel to prepare these amendments for you.

SB 56

1. This bill was intended to provide creditor agencies with a tool to obtain a security interest in debtor property. The bill gave agencies with warrant authority the ability to file in the new lien register. However, we learned that many agencies had no warrant authority, but had well established law underlying their debts. Some agencies obtain judgements, and others use an administrative process which leads to a final order. Accordingly, we propose that the bill include judgments and agency final orders as instruments which agencies can record in the register to achieve the effect of a lien.
2. Section 4, 3(b) is intended to clarify rules of priority in certain cases, and its language was carried over from a previous version of this bill. No stakeholder or agency person could provide a reason that it remain in the bill. Default rules of priority should work just fine in this instance. We propose that the amendments delete Section 4, 3(b) unless a compelling reason exists for it.

3. We propose that you amend Section 7 to clarify that underlying judgments, orders, and warrants are not affected by the expiration of a lien.
4. We propose that you remove the restriction on renewing liens only once. Some OJD judgments last more than 30 years, and OJD might want to continue pursuing them in certain cases.
5. We propose that the amendments set clear timelines to ensure that an agency will transmit a release of lien promptly, in our version the agency would have 14 days.

Thank you again for taking the time to consider these bills, and hear our proposed changes.

Eli Justman

Senate Bill 56

SUMMARY

Directs Secretary of State to maintain Statewide Lien Register. Allows state agencies that have authority to issue warrants or state agencies with certain judgments or administrative orders to transmit notice of lien to Secretary of State for filing in register. Specifies effect of filing notice of lien. Allows state agencies to amend notice of lien. Allows state agencies to release, subordinate or extend lien. Requires state agencies to release lien when debt on which warrant is based is satisfied within 14 days. Allows Secretary of State to specify format for notice or certificate of extension and manner in which state agencies transmit notice or certificate for filing in register.

A BILL FOR AN ACT

1
2 Relating to a statewide lien register.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 to 11 of this 2015 Act are added to and made**
5 **a part of ORS chapter 87.**

6 **SECTION 2. (1) The Secretary of State shall maintain a Statewide**
7 **Lien Register for the purpose of filing notices of lien issued under war-**
8 **rants, described in section 3 of this 2015 Act or issued pursuant to**
9 **judgments owed to the State of Oregon, including support judgments**
10 **assigned to the state as a matter of law or issued pursuant to an admin-**
11 **istrative order. Only state agencies may transmit notices of lien to the**
12 **Secretary of State for filing in the Statewide Lien Register.**

13 **(2)(a) The Secretary of State shall maintain the Statewide Lien Regis-**
14 **ter as an electronic database to which the public has access through the**
15 **Internet under the conditions specified in paragraph (b) of this subsec-**
16 **tion.**

1 (b) The Secretary of State shall provide the public with access to in-
2 information concerning notices of lien that the Secretary of State file in
3 the Statewide Lien Register under the same conditions, in the same
4 form and to the same extent that the Secretary of State provides infor-
5 mation on financing statements that the Secretary of State files under
6 ORS chapter 79.

7 **SECTION 3. (1) A state agency, board or commission, that has au-**
8 **thority to issue a warrant to collect a tax or debt owed to the State of**
9 **Oregon, including but not limited to a warrant that a state agency issues**
10 **under ORS 179.655, 267.385, 293.250, 314.430, 316.207, 319.182, 319.742,**
11 **320.080, 321.570, 323.390, 323.610, 324.190, 411.703, 657.396, 657.642,**
12 **705.175 or 825.504, may transmit an electronic notice of lien for the war-**
13 **rant to the Secretary of State for filing with the Statewide Lien Register.**
14 **The state agency may transmit a single notice of lien for two or more**
15 **warrants against a debtor.**

16 **(2) A state agency, board or commission, that has authority to issue**
17 **an administrative order for a debt owed to the State of Oregon, may**
18 **transmit an electronic notice of lien for the order to the Secretary of**
19 **State for filing with the Statewide Lien Register. The state agency may**
20 **transmit a single notice of lien for two or more orders against a debtor.**

21 **(3) A state agency, board or commission, that is a judgment creditor**
22 **in a money judgment entered in the circuit court for the State of Ore-**
23 **gon, or for which a judgment is assigned to the state as a matter of law,**
24 **may transmit an electronic notice of lien for the judgment to the Secre-**
25 **tary of State for filing with the Statewide Lien Register. The state agen-**
26 **cy may transmit a single notice of lien for two or more judgments**
27 **against a debtor.**

28 **(24)** A state agency must include in a notice of lien that the state
29 agency transmits to the Secretary of State:

30 (a) The debtor's name and last-known address;

31 (b) The state agency's name and address and information about the
32 state agency that allows an interested person to contact the state agency
33 about the debt, the notice or the warrant;

34 (c) The balance due on the debt;

1 (d) The rate of and manner in which interest accrues on the debt, the
2 date from which interest accrues and the principal upon which interest
3 accrues; and

4 (e) Other information the Secretary of State requires.

5 **(35)** A state agency may transmit a notice of lien to the Secretary of
6 State at any time after the state agency issues a warrant.

7 **(46)** The Secretary of State shall post the information necessary to
8 contact a state agency that has filed a notice of lien under this section on
9 the website by means of which the public has access to the State-wide
10 Lien Register.

11 **SECTION 4.** (1) The Secretary of State shall note in the Statewide
12 Lien Register when the Secretary of State receives from a state agency a
13 notice of lien that meets the requirements specified under section 9 of
14 this 2015 Act. The Secretary of State's notation files the notice of lien
15 and creates a lien in favor of the state agency on the debtor's real and
16 personal property in all counties of this State as of the time of filing. The
17 lien is for the amount of the debt owed on the warrant, order or judg-
18 ment for which the state agency transmitted the notice of lien. Upon re-
19 ceiving the notice of lien (or amendment, subordination, release or ex-
20 tension), the Secretary of State shall cause the notice of lien (or amend-
21 ment, subordination, release or extension) to be held, marked and in-
22 dexed pursuant to ORS chapter 79.

23 (2) At the time the Secretary of State files the notice of lien in the
24 Statewide Lien Register, a lien that the filing creates under subsection
25 (1) of this section has the same lien effect that recording a judgment un-
26 der ORS 18.152 in all of the County Clerk Lien Records for the counties
27 of this state would have.

28 (3)(a) A lien that a filing creates under subsection (1) of this section is
29 subordinate to an interest in personal property to the same extent that a
30 security agreement for the personal property that is perfected by filing
31 under the Uniform Commercial Code would be subordinate to the in-
32 terest if the security agreement were perfected by filing at the same time
33 as the time at which the Secretary of State filed the notice of lien in the
34 Statewide Lien Register.

35 ~~(b) Unless the purchaser, security interest holder or lienholder has~~
36 ~~actual knowledge of a lien created under subsection (1) of this section,~~
37 ~~the lien is not valid against a security interest holder's security agree-~~
38 ~~ment for, a lienholder's or attorney's lien on or a sale of:~~

- 1 ~~—(A) A security, as defined in ORS 78.1020;~~
- 2 ~~—(B) A retail purchase in the ordinary course of business;~~
- 3 ~~—(C) Personal property in a casual sale;~~
- 4 ~~—(D) An insurance contract loan; or~~
- 5 ~~—(E) A passbook loan.~~

6 (c) A lien created under subsection (1) of this section is in addition to
7 and not in lieu of another lien or remedy that is available to a state
8 agency.

9 **SECTION 5.** (1) A state agency that has transmitted a notice of lien
10 for filing under section 3 of this 2015 Act may transmit to the Secretary
11 of State for filing in the Statewide Lien Register an electronic notice of
12 amendment for the previously filed notice of lien. The Secretary of State
13 shall note when the Secretary of State receives the notice of amendment
14 and shall file the notice of amendment in the manner provided for filing
15 a notice of lien under section 4 of this 2015 Act.

16 (2)(a) Filing a notice of amendment for a lien on real property has
17 the same effect on the previously filed lien as rerecording a mortgage
18 lien or trust deed in the County Clerk Lien Record would have on a
19 previously recorded mortgage or trust deed.

20 (b) A state agency may transmit and the Secretary of State may file a
21 notice of amendment only for changes in the lien on real property that
22 could be made in a previously recorded mortgage or trust deed by re-
23 recording the mortgage or trust deed in the County Clerk Lien Record.

24 (3) A notice of amendment must include the debtor's name, the date
25 on which the Secretary of State filed the original notice of lien and other
26 information the Secretary of State requires.

27 **SECTION 6.** (1) A state agency that has transmitted a notice of lien
28 for filing under section 3 of this 2015 Act may transmit an electronic re-
29 lease of lien or an electronic subordination of lien to the Secretary of
30 State for filing in the Statewide Lien Register. The Secretary of State
31 shall note when the Secretary of State receives the release of lien or sub-
32 ordination of lien and shall file the release of lien or subordination of
33 lien in the manner provided for filing a notice of lien under section 4 of
34 this 2015 Act.

35 (2) A state agency may release or subordinate a lien that a filing cre-
36 ates under section 4 of this 2015 Act to the same extent that the state
37 agency may release or subordinate other liens that are based on war-

1 rants that the state agency issued. The release of lien or subordination
2 of lien must specifically identify the notice of lien the state agency in-
3 tends to release or subordinate and must include information that the
4 Secretary of State requires. The release of lien may be for all or a part
5 of the debtor’s property.

6 **SECTION 7.** (1) Except as otherwise provided in this section, a lien
7 that a filing creates under section 4 of this 2015 Act expires 10 years af-
8 ter the Secretary of State files the notice of lien. The expiration of such
9 lien has no effect on the validity of the underlying judgment, warrant,
10 order, or any lien obtained pursuant to other methods.

11 (2) At any time before a lien expires as provided in subsection (1) of
12 this section, a state agency may transmit a certificate of extension for
13 the lien to the Secretary of State for filing in the Statewide Lien Regis-
14 ter. The Secretary of State shall note when the Secretary of State re-
15 ceives the certificate of extension and shall file the certificate of exten-
16 sion in the manner provided for filing a notice of lien under section 4 of
17 this 2015 Act. If the state agency transmits the certificate of extension
18 after the lien expires as provided in subsection (1) of this section, filing
19 the extension of lien has no effect. The certificate of extension must in-
20 clude information that the Secretary of State requires.

21 (3) If a state agency transmits a certificate of extension for a previ-
22 ously filed notice of lien before the lien expires as provided in subsection
23 (1) of this section, the lien expires 10 years after the Secretary of State
24 files the certificate of extension. A state agency may extend a lien under
25 the provisions of this section ~~only once~~ as many times as necessary, so
26 long as the underlying warrant, order, or judgment is valid.

27 **SECTION 8.** A state agency that has transmitted a notice of lien for
28 filing under section 3 of this 2015 Act shall transmit a release of lien to
29 the Secretary of State for filing in the Statewide Lien Register as soon as
30 is practicable, and no later than 14 days after the debt on which the lien
31 is based is satisfied. The Secretary of State shall note when the Secre-
32 tary of State receives the release of lien and shall file the release of lien
33 in the manner provided for filing a notice of lien under section 4 of this
34 2015 Act. After the state agency releases the lien, the Secretary of State
35 shall eliminate all references to the lien from the Statewide Lien Regis-
36 ter within a period of time the Secretary of State establishes.

37 **SECTION 9.** (1) The Secretary of State shall specify the format for a
38 notice or certificate that a state agency transmits for filing in the

1 **Statewide Lien Register and the manner in which the state agency must**
2 **transmit the notice or certificate. The Secretary of State shall file a no-**
3 **tice or certificate only if the state agency has transmitted the notice or**
4 **certificate in the format and manner that the Secretary of State speci-**
5 **fies.**

6 **(2) The Secretary of State may establish a fee for accepting a notice**
7 **or certificate that a state agency transmits to the Secretary of State for**
8 **filing in the Statewide Lien Register. The Secretary of State may estab-**
9 **lish a fee for providing access to or information from the State-wide**
10 **Lien Register.**

11 **SECTION 10. The Secretary of State may adopt rules for imple-**
12 **menting the provisions of sections 2 to 9 of this 2015 Act.**

13 **SECTION 11. A state agency may transmit a notice of lien under sec-**
14 **tion 3 of this 2015 Act and the Secretary of State may file the notice of**
15 **lien under section 4 of this 2015 Act for any warrant that the state agen-**
16 **cy issues before, on or after the effective date of this 2015 Act.**

17