

**Testimony of Alison R. Kean, Metro General Counsel  
In Support of Senate Bill 64  
Senate Committee on Finance and Revenue  
February 12, 2015**



Chair Hass and Members of the Committee:

**INTRODUCTION**

Thank you for the opportunity to testify today in support of Senate Bill 64. This bill is necessary to make absolutely clear that Metro has full authority to participate financially in the development of a private convention center headquarters hotel, and that no statute limits or prohibits this participation.

SB 64 clarifies existing law and the legislative intent of Oregon Revised Statute 268.310 – that the statute supplements the powers and authorities of a metropolitan service district with a home-rule charter, and does not limit those powers. Metro has a home-rule charter, approved by voters in 1992, which is the primary statement and source of Metro’s authority. SB 64’s proposed changes to ORS 268.310 confirm that (a) the powers provided for in ORS 268.310(4) are in addition to the broad powers provided Metro under the Metro Charter and Code and (b) the voter approval within the current subsection (4) applies only to districts without a charter whose sole source of authority is ORS Chapter 268.

**STATUTORY AND CHARTER BACKGROUND:**

In 1969, the Oregon Legislature enacted ORS Chapter 268 to govern operations of “metropolitan service districts.” While Metro is currently the only metropolitan service district in the state of Oregon, ORS Chapter 268 contemplates the creation of other metropolitan service districts and bestows statutory authority for those districts in the absence of charter authority. Until the adoption of the Metro Charter in 1992, ORS Chapter 268 was the sole source of power that Metro could rely on to take certain actions.

In 1990, Oregon voters passed a constitutional amendment allowing any metropolitan service district to adopt a charter to enable it to enact district legislation on matters of metropolitan concern.<sup>1</sup> By 1992, voters in the Portland metropolitan region had adopted the Metro Charter, constituting Metro as a home-rule district. The Metro Charter contained explicit direction that, upon its adoption, efforts be made to conform ORS Chapter 268 to the Metro Charter.

In 1997, the Oregon Legislature amended ORS Chapter 268 to make it consistent with the Metro Charter. Included in these changes were amendments to ORS 268.310, which sets forth a list of powers of metropolitan service districts. A preface to this statute was added to make its provisions explicitly “subject to” a district’s charter. To make the point even clearer, the Legislature also added a “charter authority catch-all” provision to the statute, contained in ORS 268.310(6), which states that districts have the authority to “[e]xercise jurisdiction over other matters of metropolitan concern as authorized by a district charter.” Finally, ORS 268.300(1) was also added to unequivocally state that a metropolitan service district has “full power to carry out the objectives of its formation and the functions authorized pursuant to its charter.”

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<sup>1</sup> Oregon Constitution, Section XI, Article XIV, <http://bluebook.state.or.us/state/constitution/constitution11-2.htm>

#### SB 64 ADDRESSES THE FOLLOWING ISSUE:

Despite the clear legislative intent of ORS Chapter 268 in general and ORS 268.310 in particular, opponents of Metro's efforts to financially assist the development of a convention center hotel have filed multiple lawsuits claiming that ORS 268.310(4) limits Metro's charter authority to do so. Two separate courts have summarily rejected their claims and affirmed Metro's interpretation of the legislative intent of this statute, and have affirmed Metro's authority to help finance the convention center hotel project. However, the project opponents continue to delay the project and increase the costs of bond financing through multiple court appeals and lengthy litigation procedures. This bill would moot the litigation regarding Metro's authority by clarifying that the current language in ORS 268.310(4) does not apply to Metro.

#### OREGON CONVENTION CENTER HOTEL PROJECT:

As the owner and operator of the Oregon Convention Center ("OCC"), Metro endeavors to bring more tourism and convention dollars to the region and the state of Oregon through a vibrant and strong convention center. Early in the development of the OCC, it became apparent that the center would provide enhanced economic benefit to the region and the state if there was an adjacent hotel to serve as a lodging "headquarters" for visitors. Over many years, Metro has led the multi-jurisdictional effort to capitalize on the Oregon Convention Center's potential by promoting the development of a privately-owned and privately-operated large, upscale, adjacent hotel (the "Oregon Convention Center Hotel Project" or "Project").

#### CHARTER AUTHORITY:

The Metro Charter, created by regional vote in 1992, empowers Metro with the broadest possible authority to carry out its functions. Owning and operating the Oregon Convention Center is one of Metro's core functions under its voter-approved Charter. Metro Charter, Chapter 2 § 6.

Exercising its broad Charter authority, Metro has acted to promote the development of a hotel adjacent to the Oregon Convention Center through grants of money to the private hotel developer. Most of that money will be raised by selling revenue bonds paid by a financing mechanism expressly permitted by the Metro Code under authority from the Metro Charter. The bonds will be repaid with transient lodging taxes paid by hotel guests, not local taxpayers.

The main opponent of the Oregon Convention Center Hotel Project has sought to derail the Project through litigation. His challenge is based upon the unsound legal theory that ORS 268.310(4) restricts Metro from participating in the financing of the Project without a public vote. Two separate trial courts, however, have found that the opposition's claims lack any basis in state law, Metro's Charter or the Metro Code. Nonetheless, the opposition has chosen to appeal both verdicts, and a final ruling from the Court of Appeals could take years to obtain.

#### STATUTORY LIMITATION DOES NOT APPLY TO METRO'S ACTIVITIES IN THIS PROJECT:

The heart of the opposition's argument is that ORS 268.310(4) requires Metro to seek voter approval of its participation in the financing for the Oregon Convention Center Hotel Project. The statute is inapplicable to Metro's financing for a number of reasons – first, because the requirement of voter approval is inapplicable to the Project because Metro is not "construct[ing] new facilities," as that

phrase is used within the context of the statute. Even under the broadest interpretation of that phrase, it cannot be construed to apply to a third party's construction of a privately-built and privately-owned hotel. Second, the allegation that the statute overrides Metro's charter authority is based upon a fundamental misunderstanding of home rule law. As two trial courts have already found, Metro has not only the authority conferred by ORS Chapter 268, it also has broad home-rule authority to participate in the Oregon Convention Center Hotel Project and issue these revenue bonds under its general powers as a metropolitan service district and under the specific provisions of the Metro Charter and Metro Code.

The authority granted under ORS 268.310(4) is but one source of authority for a metropolitan service district to build or acquire certain types of facilities. As ORS 268.310 specifically contemplates, as a metropolitan service district with a charter, Metro may also rely upon the broad grant of powers granted to it by its home-rule Charter and Code. The narrow limitation in ORS 268.310(4) does not apply to this Project because the entire statute is made explicitly "subject to the provisions of a district charter," (ORS 268.310), making the limitation in subsection (4) inapplicable where, as here, Metro has a charter and code that clearly authorize the financing of this public-private Project.

#### NO PREEMPTION:

The proposed change to ORS 268.310(4) contained in SB 64 makes it clear that the limitation in the statute was not intended to preempt Metro's ability to act as allowed by its Charter and Code. By clarifying that the limitations on the authority conferred by ORS 268.310(4) only apply to districts without charters, there will be no question that the statute is in fact inapplicable to this financing, which is clearly authorized by the specific powers conferred by the Metro Charter and Code.

#### CONCLUSION:

By adopting Metro's home-rule charter in 1992, the district voters made clear they intended to authorize Metro to act with broad authority to carry out the purposes set forth in the Metro Charter. By amending ORS Chapter 268 in 1997 to conform state law to the Metro Charter, the Oregon Legislature made clear it intended to empower Metro to act in accordance with its voter-approved charter.

The passage of SB 64 will moot the opposition's pending appeals, validate the preexisting legislative intent of ORS 268.310(4), and confirm that Metro does indeed have full charter, statutory and constitutional authority to issue the revenue bonds contemplated by the Oregon Convention Center Hotel Project.

We urge you to pass SB 64.