

STATEMENT OF HOWARD ARNETT

REGARDING HB 2148

OREGON SENATE COMMITTEE ON FINANCE AND REVENUE

Oregon State Capitol

April 28, 2015

Good morning, Chairman Hass and Committee members. My name is Howard Arnett. I am Tribal Attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon and I am also an Adjunct Law Professor of Federal Indian Law at the University of Oregon School of Law.

I am here today to testify in support of HB 2148, which is based on a recent United States Ninth Circuit Court of Appeals ruling (Oregon is part of the Ninth Circuit) and a subsequent Washington State Department of Revenue rule regarding the exemption from local taxation of "permanent improvements" on tax-exempt Tribal and Tribal member trust land.

As background, let me define some terms. The legislation applies to "trust land" located within "Indian Country" in Oregon. "Indian Country" is an established legal term and means all land within existing Indian reservations (there are nine in Oregon), off-reservation "dependent Indian communities" and off-reservation "trust land".

"Trust land" means land that is held in trust by the United States Government for the benefit of a Tribal government or individual tribal members. The United States is the actual legal owner of trust land, which it holds subject to its legal obligations to manage and care for the land as trustee for the beneficial owner Tribe or individual Tribal members. Under federal court rulings and federal statutes (25 USC Sec. 465), trust land has always been regarded as exempt from State and local taxation.

"Trust land" is distinguished from "fee land", which is privately owned land held by a Tribal government, individual Tribal members or non-Indians. Fee land exists within the boundaries of several Oregon Indian reservations, but it is not affected by HB 2148. The legislative concept only applies to trust land.

HB 2148 is the result of three developments over the past three years. The first development is the United States Bureau of Indian Affairs ("BIA") issuance in 2012 of new regulations governing leasing of trust land. The BIA is the federal government agency responsible for carrying out the Federal Government's trust responsibility to Indian tribes and for managing Indian trust land. The new regulations declare that "permanent improvements" to trust lands that are leased pursuant to the BIA's authority are not subject to taxation, except by the Tribal government.

The second development is the 2013 ruling by the United States Ninth Circuit Court of Appeals in the case of *Chehalis Tribe v. Thurston County (WA) Board of Equalization*, which held that long-standing U.S. Supreme Court precedents dating from 1903 and reaffirmed in 1973 provide an exemption from local government property taxes applied to permanent improvements located on Tribal trust land. In that

case, the permanent improvements involved a hotel/water park complex called Great Wolf Lodge that was part of a parcel of tribal trust land leased to a development company. Like Washington, Oregon is part of the Ninth Circuit and therefore is bound by the *Chehalis* ruling.

The third and most recent development is the Washington Department of Revenue's ("DOR") issuance last year of an administrative rule implementing the *Chehalis* ruling by declaring permanent improvements on trust land exempt from local property taxes. Like the Ninth Circuit ruling, the Washington DOR administrative rule declared that ownership of the permanent improvements—whether by a tribal or non-tribal entity—makes no difference. The permanent improvements are exempt from local property taxes regardless of ownership.

HB 2148 was crafted in light of these three developments to clarify Oregon law regarding taxation of permanent improvements on trust land and align Oregon law with our sister state Washington's practice. Indeed, the Washington DOR administrative rule is the model for HB 2148.

Additionally, HB 2148 does not disrupt existing practice in Oregon. To our knowledge, no local governments in Oregon currently tax permanent improvements on trust land. Accordingly, the revenue impact of this legislation is zero.

We also note that the *Chehalis* decision involved only local government property taxes; it did not address taxation of centrally assessed property. In keeping with the Ninth Circuit ruling, HB 2148 does not impact centrally assessed property.

The Oregon Tribes believe strongly that HB 2148 would benefit not only the Tribes but all Oregonians without disrupting current tax practices or tax revenues. It would do so by avoiding costly and unnecessary litigation that would only result in Oregon courts following the binding precedent of the Ninth Circuit's *Chehalis* decision, and by providing Tribes and their business partners with certainty as they evaluate development opportunities in Oregon's Indian Country.

Thank you.