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Written Testimony of David A. Rabbino;
In Support of HB 2734

Barnhart
Vice Chair Helm and members of the Revenue Committee:

I am submitting this written testimony in support of HB 2734, which will authorize local governmental entities to establish Land Bank Authorities and provide for special tax assessments to eligible entities to enhance the redevelopment and reuse of environmentally impaired properties. I have been an environmental attorney for the past approximately 24 years, including approximately 12 years as an enforcement attorney with the U.S. EPA. Throughout my career, I have been counsel in matters that involve the redevelopment of brownfield/contaminated properties, both as a government attorney and as a private practitioner. It is my belief, as I will discuss in more detail shortly, that passage of HB 2734 will enhance and speed up the redevelopment and reuse of environmentally impaired properties throughout the state of Oregon.

Problem:

For several decades federal, state, and local governments throughout the country have been wrestling with how best to bring back into productive use real property contaminated with hazardous substances. These properties, known as "brownfields," exist in urban, suburban, and rural communities. The difficulty in redeveloping these properties, in large part, is that potential developers are "scared" of acquiring unknown cleanup liabilities. As a result, the developers choose instead to develop either virgin, or "green" property, or properties that have no contamination issues. The development of green property, however, comes with a different set of issues, and the number of properties with no contamination issues that are suitable for redevelopment in and around metro areas are becoming fewer and fewer. The state of Oregon is no different in this regard than any other state.

The failure to develop brownfields leads to a variety of problems. First, these properties may present a real health hazard to the people that live in the area. Second, these properties result in "dead areas" in what could otherwise be vibrant neighborhoods. Finally, these properties impair the value of other properties in the surrounding community, reducing property tax revenues, and contributing to general blight conditions.

The federal and state governments, including Oregon, have been attempting to address the "liability" concerns through various programs. These include Prospective Purchase Agreements, Voluntary Cleanup Programs, and the issuance of "No-Action Letters." These programs are helpful, allowing parties to define the extent of remedial costs early on, and providing either liability relief or some assurance against enforcement actions by a regulatory agency in exchange for the successful completion of the agreed upon cleanup by the purchaser. While useful, these programs have proven insufficient in providing the necessary incentives for full-scale redevelopment of these troubled properties. It is clear that additional tools are needed to further enhance the redevelopment and reuse of brownfields here in Oregon.

Process:

I have been an active member of the Brownfield Coalition, a diverse and broad-based coalition of interests including representatives from Metro, the public and private sectors, and the non-profit and environmental communities. Through the collaborative efforts of the members of the Coalition, the Coalition determined that legislation focusing on providing "local-control" to city, county, and other governmental entities would provide greater opportunities for the accelerated redevelopment of brownfield properties. HB 2734, which allows for the establishment of Land Bank Authorities and the provision

of tax abatement by local governmental entities, will provide two hopefully very useful additional tools to further the development of brownfields in our state.

What is a Land Bank:

A land bank is a separate legal entity from the City, County, or other governmental entity that is granted specific authority with regard to the acquisition, lease, and redevelopment of environmentally impaired properties. As drafted, HB 2734 provides legal protections to the City, County or other governmental entity regarding the acquisition of contaminated properties, while still providing a "local option" regarding the redevelopment of the property.

The purpose of the Land Bank is to:

The purpose of a land bank is to "acquire, rehabilitate and reutilize real property impacted by hazardous substances." The Land Bank Authority in HB 2734 is an effort to help local governments "jump start" the redevelopment of environmentally impacted properties by letting the local government establish a Land Bank, which would be able to acquire, consolidate, etc., land for future development without becoming a "potentially liable party" under Oregon law. Essentially Land Banks can serve as "patient capital" – acquiring properties and holding them until the right development alternative arises, something many private developers are unwilling to do.

Land Bank may:

Under HB2734, Land Banks may acquire, lease, or otherwise handle real property impacted by hazardous substances and handle the property in the same manner as any other "corporate" or private entity. The Land Bank could conduct removal/remedial actions under agreement with Department of Environmental Quality ("DEQ") through a Prospective Purchaser Agreement ("PPA"). They can assist parties interested in acquiring or leasing land bank properties in entering into agreements with DEQ (e.g., PPAs). They can issue bonds, take on debt, and buy/sell and manage properties as a means of financing their long-term operation.

Land Bank May Not:

HB 2734 does not authorize or allow for Land Banks to acquire/lease property located outside the jurisdiction of local government that establishes them, nor can they exercise the right of eminent domain.

Designed to Provide for Local Control:

HB 2734 gives Land Banks the ability to establish priority of uses for the properties they acquire – these can include residential, commercial, low-income, open space. This should allow for greater conformity with local governmental development goals.

HB 2734 as proposed requires the Board of Directors of a Land Bank Authority to be made up of local representation – school boards, city/county council, and community representation – thus ensuring that a broad spectrum of the community is represented in Land Bank Authority decisions.

A Land Bank would be a "public body" for record inspection purposes. Its meetings will be open to the public, and its records would be as well to the same extent as other "public body" entities.

Above all – the choice to establish a Land Bank Authority will be up to the local government, and the choice of what properties a Land Bank Authority acquires will also up to the local interests represented on the Board of Directors – in short, this legislation provides local control over these decisions.

Liability Limitation:

Critically, Land Banks will not be liable to State of Oregon or any person under ORS 465.255, 466.640, or 468B.305 for hazardous substances present at the facility at the time of acquisition. In other words, there is no automatic "owner" liability simply as a result of acquiring the property.

The Land Bank, if it cleans up the contamination, may seek to recover "remedial costs" under ORS 465.255(1). This will provide an

incentive potentially for some degree of remedial work to be done by the Land Bank, making it more attractive to an outside developer.

These provisions are important – they provide initial liability protection to the Land Bank Authority, which should remove the initial concern that exists when acquiring a brownfield property, and they provide an incentive for the Land Bank Authority to engage in some cleanup activities, since it can seek to recover those costs later. This too should assist in making brownfield properties more attractive for redevelopment by removing key "risks" that have heretofore held up such development.

Accountability:

The Land Bank Authority would be required to prepare annual reports and submit them to the Governor and the Legislative Assembly per ORS 192.245, and they are subject to periodic audit.

Conclusion:

I join the other members of the Brownfield Coalition in believing that enacting HB 2734 and creating Land Bank Authorities will provide a new and hopefully dynamic tool to assist in the redevelopment and reuse of brownfield properties in the state of Oregon. This, in conjunction with other tools such as PPAs, will hopefully: 1) make the redevelopment of brownfield properties more certain from a liability perspective; 2) make brownfield redevelopment easier in terms

of enabling parties to obtain necessary financing; and, 3) ensure that development is more in tune with the needs and desires of the local community.

I would urge you to move HB 2734 through the legislative process for ultimate passage. I am happy to answer any questions the committee may have.

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