



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 7, 2015

Representative Ann Lininger
900 Court Street NE H485
Salem OR 97301

Re: Constitutionality of requiring submission of statement of purpose for tax credit bills

Dear Representative Lininger:

You asked whether House Bill 3542 is an unconstitutional impediment to legislators being able to introduce legislation or an unconstitutional attempt to bind the hands of a future Legislative Assembly. The answer is no.

HB 3542 requires the chief sponsor of a legislative measure that creates or expands a tax credit to submit to the appropriate legislative committee related to revenue a statement of purpose, addressing the items that are required for the Legislative Revenue Officer's report under ORS 315.051, namely:

- The stated public policy purpose of the credit;
- The expected timeline for achieving the public policy purpose;
- The best means for measuring achievement;
- The taxpayers or other persons that will benefit from the credit;
- The effectiveness of the credit in benefiting its targets;
- The expected results if the credit is allowed to expire;
- Background information on similar credits from similar states;
- Information on whether use of a tax credit is an effective and efficient way to achieve the stated policy goal;
- Administrative and compliance costs associated with the credit;
- Analysis on whether a direct appropriation might achieve the stated public policy purpose more efficiently; and
- A listing of other incentives that are available in this state and that have a similar public policy purpose.

Although the information required to be submitted by a chief sponsor is extensive, HB 3542 does not require the chief sponsor to individually and personally prepare this information. Rather, if HB 3542 were to become law, it would be within each legislator's purview to direct either the legislator's personal staff or the Legislative Assembly's nonpartisan staff to actually prepare the information required by HB 3542 on the legislator's behalf. Because existing law—

ORS 315.051—already requires the Legislative Revenue Officer to prepare this information with respect to existing credits, it seems very unlikely that requiring that information to be prepared for proposed measures as well rises to the level of being an unconstitutional impediment to the creation of new legislation. Any question related to the adequacy of resources among legislative staff to perform this additional work is a budget question rather than a legal question.

It is also worth noting that nothing in HB 3542 would permit an aggrieved party from challenging in court the validity of a duly enacted tax credit on the grounds that the information provided by a chief sponsor was inadequate. Oregon employs a variation of the “enrolled bill rule” under which a duly enacted law is conclusively presumed valid unless the procedural record as recorded in the House or Senate journal affirmatively shows a constitutional defect in the legislative record. *Oregon Business & Tax Research, Inc. v. Farrell*, 176 Or. 532, 540-541 (1945). A statement provided by a chief sponsor that contained none of the information required under HB 3542 would not create a defect of that magnitude in the legislative record.

Finally, HB 3542 does not run afoul of the prohibition against one Legislative Assembly binding the hands of a future assembly. Were HB 3542 to become law, nothing in HB 3542 purports to limit the ability of a future Legislative Assembly to repeal or modify HB 3542 if the future assembly chooses to do so.

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Very truly yours,



Dexter A. Johnson
Legislative Counsel