



ORRICK, HERRINGTON & SUTCLIFFE LLP
1120 NW COUCH ST.
SUITE 200
PORTLAND, OREGON 97209

tel +1 503-943-4800
fax +1 503-943-4801
WWW.ORRICK.COM

Christine E. Reynolds
(503) 943-4821
cereynoldsi@orrick.com

TESTIMONY IN SUPPORT OF PROPOSED AMENDMENTS TO HOUSE BILL 3199

Chair Barnhart, members of the House Committee on Revenue, my name is Christine Reynolds, I am an attorney with Orrick, Herrington & Sutcliffe LLP and serve as Bond Counsel to the State for bonds issued by the State for the benefit of higher education institutions under Article XI-F(1) and Article XI-G of the Oregon Constitution. I am here today to provide testimony in support of the proposed -1 amendment to House Bill 3199 (“HB 3199”).

The proposed amendment to HB 3199 would establish in statute the process for issuing State of Oregon General Obligation Bonds for the benefit of higher education institutions and activities authorized under Article XI-F(1) (“XI-F(1) Bonds”) and Article XI-G (“XI-G Bonds”) of the Oregon Constitution (together, XI-F(1) Bonds and XI-G Bonds are referred to hereinafter as the “Bonds”).

Under SB 270, Oregon’s seven public universities (defined in ORS 352.002), University of Oregon, Oregon State University, Portland State University, Oregon Institute of Technology, Western Oregon University, Southern Oregon University, Eastern Oregon University, may continue to request the Legislative Assembly authorize the issuance of Bonds to finance projects of the public universities. Because the public universities are now independent public bodies, it is necessary to verify compliance by the public universities with the requirements of the State Constitution before the State issues Bonds that have been approved by the Legislative Assembly. The proposed amendment establishes a process to ensure compliance with the requirements of the State Constitution and federal tax law requirements so that the State can issue the Bonds for the benefit of the public universities.

Under Article XI-G of the State Constitution, the amount of any debt issued by the State in any biennium under that Article must be matched by moneys that are available to the public university in an amount that is at least equal to the amount of the debt issued for the benefit of that public university. The proposed amendment to HB 3199 includes provisions that set out the process for the State to issue XI-G Bonds for the benefit of public universities, including establishing that a grant contract will be entered by the public universities and the State, which will, among other things, establish compliance with the Constitutional requirements for issuance of State general obligation bonds, including verifying that the public university is providing a matching amount required by the State Constitution.

Article XI-F(1) of the State Constitution requires that debt not be issued by the State unless the public university conservatively estimates that it will have sufficient revenues to pay the bonds and operate the projects financed with the proceeds of the bonds. The proposed amendment to HB 3199 includes provisions that set out the process for the State to issue XI-F(1) Bonds for the benefit of public universities, including establishing that a loan agreement will be entered by the public universities and the State. The loan agreement sets out the obligation of the public university to pay the debt service on the XI-F(1) Bonds issued for its benefit and establishes compliance with the Constitutional requirements for issuance of State general obligation bonds, including a process for the public universities to provide



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evidence to the State that they have sufficient revenues to pay the bonds and operate the projects required by the State Constitution.

Federal tax law requires the State, as issuer of the Bonds to assure continuing compliance with tax requirements relating to the investment of borrowed funds before expenditure and the use, over time, of projects financed by the Bonds. Despite the independence of the public universities, the State, like all issuers of bonds that benefit other institutions, remains at the center of post-issuance compliance for as long as the bonds remain outstanding. To fulfill these responsibilities, the public universities must provide the State with all relevant information and consult with the State before taking any actions related to the projects financed with State bond proceeds that could adversely affect the tax status of the Bonds. Because each bond issue typically provides funds to multiple public universities, only the State is in a position to provide the necessary oversight.

To fulfill these oversight responsibilities, the State follows post-issuance compliance procedures established as part of the Bond program that detail how it will fulfill its oversight role. In addition, the State has required each public university to adopt post-issuance compliance procedures detailing the steps that will be taken on an on-going basis to monitor and assure compliance with respect to funds and financed assets under the control of each public university. These procedures, which were created to harmonize with the grant contracts (for XI-G Bonds) and loan agreements (for XI-F(1) Bonds), have two principal areas of focus. First, they require the public universities to consult with the State before taking any action that could result in private business use of bond-financed assets and to provide annual information to the State of the amount of private business use. Second, they require the public universities to provide information with respect to the investment of any bond proceeds under their control, so the State can assure that federal tax arbitrage requirements are satisfied. Finally, the State has simplified the task of monitoring investments of bond proceeds by requiring, in the grant contracts and loan agreements that, to the extent possible, all investments of unspent proceeds will occur at the State level, rather than at the public university level.

The proposed -1 amendment to HB 3199 establishes a clear process for the public universities and the State to follow to ensure compliance with the requirements of the State Constitution and federal tax law when the State issues XI-F(1) Bonds and XI-G Bonds for the benefit of public universities as authorized by the Legislative Assembly. I urge the Committee to approve the proposed amendment and adoption of HB 3199.