Universities SUPPORT HB 4092 & HJR 203
Legislation to Ensure Investment Authority

Background: SB 270 passed with bipartisan support in 2013. With its passage, the legislature established a process for the creation of governing boards for universities within the Oregon University System. The legislation also granted those universities the authority to manage their finances, including the ability to invest in equities, an important financial and risk management tool. The language of the bill expressly stated that universities were not to be considered a **unit of local or municipal government or a state agency, board, commission or institution for purposes of state statutes or constitutional provisions.**

- ORS 352.087(1)(2015) authorizes a university to invest: "**A university with a governing board may**: (a) Acquire, receive, hold, keep, pledge, control, convey, manage, use, lend, expend and **invest all moneys, appropriations, gifts, bequests, stock and revenue from any source.**"

- ORS 352.033 makes clear a university is not to be considered the State: "A university with a governing board is a governmental entity performing governmental functions and exercising governmental powers. **A university with a governing board is not considered a unit of local or municipal government or a state agency, board, commission or institution for purposes of state statutes or constitutional provisions.**"

Article XI, section 6 of the Oregon Constitution prohibits the State from owning stock, except in the very limited circumstances where the funds invested were gifts or involved in technology transfers.

Problem: As universities have begun exercising the duties, privileges and obligations granted in SB 270, a legal question has arisen as to whether the prohibition against the State owning stock in Article XI, section 6 of the Constitution applies to the SB 270 universities. Independent legal analysis suggests that the prohibition might apply, despite the clear statutory provisions of SB 270 and the underlying legislative intent. The possibility of the prohibition applying makes it impossible for the universities to invest in equities without taking on unacceptable legal risk.

Solution: Formally create an exception for universities to Article XI, section 6, allowing universities to exercise the financial management functions the legislature envisioned. This can be accomplished by referring a constitutional amendment to the voters for the November 2016 General Election to add universities to the list of exceptions to Article XI, section 6.

Importance of Equities: Allowing investment in equities assists universities in reducing financial risk via diversification and provides an opportunity to generate additional revenue to cover operating costs.

- **Reduction in Risk.** Diversification of investments is key to mitigating risk in any financial management strategy. Allowing investment in equities will provide universities the ability to diversify their investments and to better prepare for market fluctuations.
- **Increased Financial Returns.** Investing in equities gives universities the ability to generate additional funds to increase the quality of education for all students and to mitigate future tuition increases and/or job cuts.
- **Transparency.** Investment policies, procedures and summary investment reports are public documents, allowing for public accountability and important checks and balances on university investments.