

## HB 4080 -9 STAFF MEASURE SUMMARY

### House Committee On Revenue

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**Meeting Dates:** 2/6, 2/8, 2/19, 2/26

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#### WHAT THE MEASURE DOES:

Updates connection to the Internal Revenue Code and to other provisions in federal tax law from December 31, 2016 to December 31, 2017.

#### ISSUES DISCUSSED:

2/6/2018

- Balancing Oregon's 529 program and associated Oregon tax benefits with recently passed federal changes allowing for 529 funds to be used for public, private and religious elementary or secondary schools
- Distinction of 529 program and use of funds prior to recent federal law changes
- Article 1, Section 5 of the Oregon Constitution and its potential limitations on use of 529 funds
- Risk of jeopardizing Oregon's 529 program being in compliance with federal law.

2/8/2018

- Overview from Legislative Counsel regarding interactions of federal 529 changes and interaction with Oregon's Constitution
- Owner of the 529 account
- Ability to disconnect from the entire K-12 federal change, not just religious primary and secondary education
- Health savings accounts contrasted with 529 and limits on withdrawals for care received at religious hospitals
- Current use of 529 funds for higher education received from private colleges and universities affiliated with a religion, lack of litigation to provide guidance
- Definition of religious language as used in Article 1, Section 5 of Oregon's Constitution.

#### EFFECT OF AMENDMENT:

-9 Replaces contents of measure.

For purposes of ABLE accounts, updates connection date to Internal Revenue Code from December 31, 2015 to December 31, 2017.

Requires taxpayer that makes a withdrawal from a 529 savings network account to pay expenses in connection with enrollment or attendance at an elementary or secondary school, to add to federal taxable income: amount of withdrawal that is attributable to contributions that were subtracted from federal taxable income along with previously untaxed earnings and gains.

#### BACKGROUND:

Oregon has had a continuing connection ("rolling reconnect") to the definition of taxable income since tax year 2011. Other ties to federal tax law must be updated on a regular basis, with December 31st being the usual connection date.

Oregon allows an income tax subtraction for contributions made to Oregon 529 College Savings Network accounts for higher education. Proceeds of the accounts are intended to be used to pay higher education related expenses for a designated beneficiary. Changes to federal law regarding 529 programs made in the Tax Cuts and Jobs Act passed in December of 2017 expanded the definition of qualified higher education expenses to include public, private and

religious elementary or secondary schools (up to \$10,000 per taxable year).

Article 1, Section 5 of the Oregon Constitution (Commonly referred to as the Blaine Amendment) reads:

**Section 5. No money to be appropriated for religion.** No money shall be drawn from the Treasury for the benefit of any religious [sic], or theological institution, nor shall any money be appropriated for the payment of any religious [sic] services in either house of the Legislative Assembly.—