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TESTIMONY
IN SUPPORT OF SB 520
PRESENTED BY HAROLD B. SCOGGINS, III
FARLEIGH WADA WITT
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Before the Senate Committee
On General Government, Consumer and Small Business Protection

Mr. Chairman and members of the committee, my name is Harold Scoggins. I am an attorney with Farleigh Wada Witt, outside counsel for the Northwest Credit Union Association. Our firm also represents many individual credit unions throughout Oregon and Washington and the Western U.S. I appreciate the opportunity to talk with you today about SB 520. I will provide a brief overview of the bill and will be happy to answer questions.

SB 520 is primarily a technical improvements bill. SB 520 is primarily a technical improvements bill with one substantive change related to the adjustment of parity powers. The remainder of the bill contains a number of clarifications and adjustments related primarily to operational and governance matters. These changes include: (1) adjustment of bond requirements (this is a technical correction from 2011 amendments to the statute); (2) clarification of the board of directors' role in a number of areas, including employment, payment of dividends on accounts, and standards of liability; (3) clarification of the Supervisory Committee's role in certain governance matters; and (4) adjustment of the statutory loan to one borrower limit to match the amount currently authorized by DCBS through its waiver power. In the remainder of my testimony, I will summarize the bill.

Section 1. Technical Corrections to Bond Requirements.

Credit unions are required to maintain fidelity bonds to cover losses caused by employee or volunteer fraud, embezzlement, etc. ORS 723.122 was amended in 2011 so that the bond requirements under the Oregon Credit Union Act match the requirements imposed by the National Credit Union Administration on all federally insured credit unions (including Oregon state chartered credit unions). However, some wording in the Oregon statute created unintended inconsistencies between the Oregon requirements and the federal requirements. The requirements of the statute as revised in 2011 do not reflect what the DCBS actually intended to require. Section 1 of SB 520 corrects the unintended inconsistencies so that the requirements under Oregon law match those currently applicable under federal regulations.

Section 2. Adjustment of Parity Powers.

Many state credit union acts (and bank acts) include a provision granting state institutions the authority to exercise powers available to their federally chartered counterparts. These "parity" authorities are designed to maintain the ability of state chartered credit unions to compete with federal credit unions operating in the state. Oregon's version of the parity authority requires the DCBS to make a finding about the competitive issue before Oregon credit unions can exercise a particular federal power. Section 2 modernizes and broadens Oregon's parity authority by: a) eliminating the requirement for a DCBS "finding" as a prerequisite for currently existing federal credit union powers; and b) adding a new provision allowing Oregon credit unions to invoke parity with any out-of-state credit union with locations in Oregon.

Given the nature and limitations applicable to federal credit unions, the increasingly competitive marketplace, and the limited resources of the DCBS, there is no ongoing policy justification for requiring a formal finding by DCBS to support exercise of parity powers. Oregon Savings Banks have had federal parity powers for many years and are not required to obtain a DCBS finding to exercise those powers. SB 520 makes federal credit union powers automatically available to Oregon credit unions. The bill preserves DCBS's oversight of parity powers by requiring a credit union to give advance notice to the DCBS before exercising any federal parity power; this gives the agency an opportunity to provide direction and oversight to credit unions exercising federal parity powers.

The second feature of Section 2 is to add a parity power related to state chartered credit unions from other states that are operating in Oregon. At the time the federal parity power was adopted, interstate branching was done almost exclusively by federal credit unions. It was therefore appropriate for the parity power to focus on federal credit unions. However, It is increasingly common for state chartered credit unions from other states to serve Oregonians, in some cases establishing branches in Oregon. By our very conservative count, there are 114,832 credit union members living in Oregon that are members of a credit union chartered outside the state. These credit unions are competing directly with Oregon credit unions for business with Oregon members. If such credit unions have powers not available to Oregon credit unions, they may have a competitive advantage over Oregon credit unions in serving those members.

In order to remain viable and competitive in an increasingly nationwide financial marketplace, SB 520 grants to DCBS the authority to permit Oregon credit unions to exercise powers available to state chartered credit unions headquartered elsewhere in the U.S., but doing business in Oregon. This will offer the competitive parity with such credit unions in the same way that the federal parity power equalizes competition with federal credit unions. However, this power will not be automatic; Oregon credit unions must apply to the DCBS and DCBS must make a finding before this power could be exercised.

Section 3. Removal of Duplicative Language on Employment.

This portion of the bill removes duplicative and unnecessary language regarding the board's employment of certain officers. ORS 723.276 allows—but does not require—the credit union's board of directors to employ a Chief Operating Officer/President and a Security

Officer. The board is already authorized to employ a CEO/President under ORS 723.296, and the CEO/President is generally the person who is responsible for hiring any other credit union employees. Amending ORS 723.276 to delete the language about the board hiring other employees clarifies the roles of the board and CEO.

Section 4. Clarification of Board Duties and Authorities.

Section 4 makes the declaring of dividends by directors a delegable power under Oregon law and removes the wording in Oregon law that requires the board to "perform other duties as the members of the credit union from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members."

The provisions of ORS 723.296 laying out the duties of directors are divided into two sections: delegable powers and non-delegable powers. Under current law, a credit union's board of directors may delegate setting the rate of interest on loans and share or deposit products. However, the Act treats the declaration of dividends in a manner similar to a stock corporation's declaration of dividends, which requires board approval. In reality, credit union dividends are very similar to interest on deposits. As such, it is appropriate to allow management to declare dividends without board approval.

Section 4 also removes language that has created some potential confusion about how members participate in governance of the credit union. The Act provides that members elect the board (and can remove the board) and the board manages the credit union's affairs. There is no real mechanism for the members to direct the board to perform other activities, and the board is subject to fiduciary duties to act in the best interest of all of the membership, while members do not have any such duty. This technical change deletes the wording that creates an ambiguous member right without any clear way of implementing it, and without any protections for members who are unable to participate or are outvoted.

Section 5. and Section 8. Clarification of Supervisory Committee's Role in Governance-Related Matters.

Credit unions are governed by a board of directors, with a supervisory committee that performs audit-type functions and reports to the board and members. The Oregon Credit Union Act contains some provisions that can cause confusion regarding the specific roles of the supervisory committee and the board. SB 520 would remove the confusing language and clarify that the supervisory committee's role is to report problems to the board of directors, while the board's responsibility is to direct the credit union's operations.

Specifically, Section 5 removes language authorizing the supervisory committee to suspend members of the credit committee. With this change, if there is a problem, the supervisory committee will report the problem to the board, and it is up to the board to deal with the issue. Section 8 eliminates the provision authorizing the supervisory committee to call a special membership meeting for any reason other than removal of board members. If the supervisory committee becomes aware of problems in the credit union's operations, the supervisory committee should report to the board and it is incumbent on the board to address the problems. If the problem is with the board or a member of the board, the supervisory committee can initiate a special member meeting to remover the board members in question. This change allows the supervisory committee to focus on its audit, financial reporting, internal control, and oversight functions without taking on the management role.

Section 6. Matching Statutory and Regulatory Limit on Loans to One Borrower.

The statute currently prohibits credit unions from making loans to one borrower exceeding the larger of: $15,000 or 15% of the credit union's equity. The statute also allows the DCBS authority to alter this requirement through rulemaking, and DCBS has in fact done so. For a number of years, the limit set by rule has been the greater of $100,000 or 15% of equity. However, many credit unions are confused by the apparent conflict between the rule and the statute. Recognizing that the DCBS still will have authority to prevent a smaller credit union from making loans deemed to create safety and soundness concerns at any time, the Association proposes to increase the lower end of the loans to one borrower limit to $100,000.

Section 7. Director Duties and Standards of Liability.

Unlike the Oregon Business Corporation Act and the Oregon Nonprofit Corporation Act, the Oregon Credit Union Act has never included explicit standards for director liability. The working assumption of credit unions, the DCBS, and attorneys has always been that the standards applicable to corporations under ORS Chapters 60 and 65 would also apply to credit unions. SB 520 revises the Oregon Credit Union Act to incorporate standards from the Oregon Business Corporation Act regarding director indemnification, liability, and director reliance on expert advice. These standards reflect what courts and practitioners refer to as the "business judgment rule."

The business judgment rule specifies that directors are not liable for actions taken on behalf of the credit union as long as the action or decision was made in good faith, with due care, and in a manner the director reasonably believes to be in the best interests of the credit union. Adoption of this standard in ORS Chapter 723 takes away any question or uncertainty about what standards would apply to a court's evaluation of director actions. Similarly, Section 7 would add a provision allowing directors to rely on advice provided by professionals such as attorneys, accountants, investment advisers, etc. in making decisions. Again, this mirrors a provision in ORS Chapters 60 and 65 and brings clarity to an issue not previously addressed in the Credit Union Act.