

House Education Committee

May 13, 2021

Testimony on SB 667A

Chair Alonso Leon and members of the committee, for the record my name is Karen Smith, Senior Policy Advisor and General Counsel of the Oregon Community College Association. I am submitting this written testimony on behalf of Oregon's 17 community colleges. We have continuing concerns about this legislation and oppose it as amended.

SB 667A was amended by the Senate Education Committee and language was added to include community colleges. At the time we expressed concerns about the inclusion of community colleges in the bill as the issue of intellectual property ownership is most often governed by collective bargaining agreements negotiated locally between colleges and faculty unions. We believe this is the appropriate mechanism for addressing these issues because these bargained agreements contain the contractual duties and expectations of the faculty and the administration and allow for a balancing of interests.

SB 667A changes the current presumption related to ownership rights. This change in the presumption in the absence of a written agreement goes against long standing precedence under federal copyright law related to the principle of "works made for hire." While we recognize issues have arisen due to the sudden move to remote instruction due to COVID-19, we believe more time should be spent examining the long-term impact of this change in precedent as a requirement that must be adopted in community college board of education policies.

As publicly funded institutions, we have an interest in ensuring that there is an incentive for partnership between colleges as Oregon public employers and faculty members as employees and contributors to the education enterprise when work is created at the direction of the college as a part of the faculty member's regular work assignment or when directly compensated for a specified work; when substantial college resources are used in creating works; and/or when work is created in the regular course of a faculty member's employment and is related to administration of the college. There have been innovative instructional and technological benefits of these partnerships – maximizing public resources for the benefit of the students we serve.

I would also like to note that in 2017 we worked with OEA to pass legislation to protect faculty from violations of Oregon Ethics law related to intellectual property ownership income. SB 206 (2017) added a provision to the community college statute (ORS 341.556) identical to language applicable to public university faculty. ORS 341.556 allows community college boards to define faculty compensation to include outside income from intellectual property and avoid violating the financial gain prohibition in ethics law. We need to be careful not to expose faculty as public employees to violations of ethics law through the change in the ownership presumption.

If you move forward with the bill, we request that at a minimum you amend the current bill language to clearly state that the requirements of the bill do not apply if intellectual property and copyright ownership is governed by a collective bargaining agreement. This explicit exemption will clarify that the term "contrary agreement" on page 2, line 23 includes collective bargaining agreements.

Thank you for your consideration.