

TO: House Judiciary Committee

FR: Jacquie Weber, Multnomah County Attorney

RE: HB 3478

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House Bill 3478, if enacted, will have serious impacts on public bodies and public treasuries by subjecting local governments to increased litigation and associated costs. The bill laudably seeks to protect the rights of victims of child abuse, but does so at the expense of eviscerating valuable notice provisions long a staple of the Oregon Tort Claims Act (OTCA), while also crippling governments in their ability to defend themselves from frivolous and stale claims.

The proposed bill exempts prospective plaintiffs in cases of alleged child abuse from having to provide public bodies with a notice of claim as is otherwise required for all other tort actions against public bodies. The notice requirement serves a valuable purpose by allowing public bodies to investigate allegations, gather evidence and relevant documentation, interview potential witnesses, and if warranted, settle cases and alter policies prior to the plaintiff having to file suit. In addition, the notice provisions allow public bodies to plan ahead and budget for reasonably anticipated or expected meritorious claims. Exempting claims from the notice requirement will impose a significant burden on public bodies and expose public bodies to a greater number of claims, higher litigation costs, and greater costs associated with liability premiums. The exemption from the notice requirement will also exert a greater burden on the court system, and allow meritless claims to remain in the court system longer. Prior notice of potential claims also encourages self assessment, and promotes judicial economy by disposing of cases prior to the initiation of lawsuits.

In addition, the notice provided to public bodies under the OTCA allows prospective public body defendants to determine early on at a pre-litigation stage whether the plaintiff's claims arise out of or result from the malfeasance of a public employee, as a claim for child abuse necessarily would. If such a determination is made, the public body may not defend or indemnify the offending employee. See ORS § 30.287(1) and (3). Exempting claims of child abuse from the OTCA's notice provisions undermines the legislature's policy prohibiting the expenditure of public funds on such claims by delaying the initiation of a malfeasance investigation until after litigation has already commenced.

The exemptions from the OTCA's notice requirement are particularly onerous because the proposed bill also replaces that current statute of limitations with the limitations period set forth in ORS § 12.117. Further, the proposed changes in the law allow for previously dismissed claims to be revived within 2 years of the passage of the proposed law if the claims were previously dismissed as a result of failing to give tort claim notice or as being beyond the statute of limitations or ultimate repose. As a result, public bodies could be subjected to

litigation for acts that occurred decades prior, without a prior opportunity for investigation, and with no prior warning. The proposed changes to the statute of limitations and the revival provision completely disregard the common law's long established antipathy toward stale claims, and disregard the value the law places on the finality and certainty of judgments.

With these proposed changes to ORS § 30.275 public bodies will no longer have the myriad benefits and efficiencies provided by receiving tort claim notice. In addition, public bodies will be forced to defend decades old claims where witnesses have died or become unavailable, documents have been lost or destroyed, and the memories of available witnesses have faded or disappeared. The proposed laws will expose already financially burden governments to additional litigation costs and liabilities for claims that have already been dismissed for being old, stale, and beyond the statute of limitations and ultimate repose. The costs and expenses associated with such changes could be crippling to public coffers and will allow for the prosecution of many more meritless claims simply because the evidence to refute them no longer exists. The proposed changes to ORS § 30.275 will do great harm to public treasuries while doing little to prevent child abuse.