

Senate Bill 764

Sponsored by COMMITTEE ON VETERANS AND EMERGENCY PREPAREDNESS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires counties to establish policy for law enforcement response to incident involving active shooter. Requires submission of plan to Attorney General for approval.

Authorizes Attorney General to conduct all investigations related to force used during incident involving active shooter. Requires Attorney General to issue report declaring police officer's actions as being consistent or inconsistent with established policy.

Removes certain legal protections for police officers not acting consistently with established policy.

A BILL FOR AN ACT

1
2 Relating to emergency responses; creating new provisions; and amending ORS 30.285 and 30.287.

3 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 4 of this 2013 Act:

4
5 (1) "Active shooter" means a person who is discharging a firearm or has recently dis-
6 charged a firearm and is threatening human life.

7 (2) "Law enforcement agency" means the Department of State Police, the Department
8 of Justice, a district attorney or a political subdivision of this state, or a municipal corpo-
9 ration of this state, that maintains a law enforcement unit as defined in ORS 181.610.

10 (3) "Police officer" means a person who is a police officer or a reserve officer as defined
11 in ORS 181.610 and employed by a law enforcement agency to enforce the criminal laws of
12 this state.

13 SECTION 2. (1) There is created in each county an active shooter planning authority
14 consisting of the following members:

15 (a) The district attorney and sheriff of the county.

16 (b) Two nonmanagement police officers selected by the district attorney and sheriff. If
17 there are unions representing police officers within the county, the district attorney and
18 sheriff shall select the police officers from among candidates nominated by any union rep-
19 resenting police officers within the county.

20 (c) If at least one city within the county employs a police chief, a police chief selected
21 by the police chiefs within the county.

22 (d) A representative of the public who is not employed by a law enforcement agency se-
23 lected by the district attorney and sheriff.

24 (e) A representative of the Oregon State Police selected by the Superintendent of State
25 Police.

26 (2) The district attorney and sheriff are cochair of the planning authority.

27 (3) The law enforcement agency that employs a police officer selected under subsection
28 (1)(b) of this section shall release the officer from other duties for at least 16 hours per year

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 to enable the officer to serve on the active shooter planning authority. The law enforcement
2 agency shall compensate the officer at the officer's regular hourly wage while the officer is
3 engaged in planning authority activities.

4 (4) The active shooter planning authority shall develop a plan consisting of the following:

5 (a) An element dealing with the appropriate use of force, including deadly force, during
6 an incident involving an active shooter;

7 (b) An element dealing with education, outreach and training regarding incidents involv-
8 ing an active shooter;

9 (c) An element dealing with the immediate aftermath of an incident involving an active
10 shooter; and

11 (d) An element dealing with the investigation of an incident in which a police officer used
12 physical force, including deadly physical force, during an incident involving an active shooter.

13 (5) The active shooter planning authority shall conduct at least one public hearing before
14 submitting a plan, or a revision of a plan, to the governing body of each law enforcement
15 agency within the county except for the Department of State Police and the Department of
16 Justice.

17 (6) A governing body shall approve or disapprove the plan submitted to it under sub-
18 section (5) of this section within 60 days after receiving the plan. The governing body may
19 not amend the plan.

20 (7) If the plan is not approved by at least two-thirds of the governing bodies within the
21 county to which the plan is submitted, the active shooter planning authority shall develop
22 and submit a revised plan.

23 (8)(a) If the plan is approved by at least two-thirds of the governing bodies within the
24 county to which the plan is submitted, the active shooter planning authority shall submit the
25 approved plan to the Attorney General. No later than 30 days after receiving the plan, the
26 Attorney General shall review the plan for compliance with the minimum requirements de-
27 scribed in section 3 of this 2013 Act. If the Attorney General determines that the plan com-
28 plies with the minimum requirements, the Attorney General shall approve the plan.

29 (b) Upon approval of the plan under paragraph (a) of this subsection, each law enforce-
30 ment agency within the county to which the plan applies is subject to the provisions of the
31 plan.

32 (c) Notwithstanding paragraph (b) of this subsection, a law enforcement agency is not
33 subject to a provision of an approved plan that conflicts with a provision of a city or county
34 charter or a general ordinance that applies to the law enforcement agency.

35 (9) The Attorney General shall periodically publish all approved plans.

36 (10) A law enforcement agency within a county has a duty to participate in good faith in
37 the planning process of the active shooter planning authority for the county.

38 **SECTION 3.** In the plan required by section 2 (4) of this 2013 Act, an active shooter
39 planning authority shall, at a minimum:

40 (1) Set a protocol for what actions are permitted, required and prohibited for police offi-
41 cers responding to an incident involving an active shooter; and

42 (2) Specify in what situations a police officer responding to an incident involving an active
43 shooter may use deadly force.

44 **SECTION 4.** (1) The Attorney General shall direct an investigation of the use of force
45 during any incident involving an active shooter.

1 **(2) The Attorney General may appoint to participate in an investigation under this sec-**
 2 **tion an investigator who is employed by a law enforcement unit other than the law enforce-**
 3 **ment unit that employs the police officer whose use of force is being investigated.**

4 **(3) After conducting the investigation, the Attorney General shall decide whether the**
 5 **police officer was using force consistent with and as authorized by the plan adopted pursuant**
 6 **to section 2 of this 2013 Act by the county in which the police officer is employed. The At-**
 7 **torney General shall prepare a written report of the findings and decision.**

8 **SECTION 5.** ORS 30.285 is amended to read:

9 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any
 10 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-
 11 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the
 12 performance of duty.

13 (2) The provisions of subsection (1) of this section do not apply:

14 (a) In case of malfeasance in office or willful or wanton neglect of duty[.]; or

15 **(b) In cases in which the Attorney General, pursuant to an investigation under section**
 16 **4 of this 2013 Act, finds that a use of force was not consistent with a plan adopted pursuant**
 17 **to section 2 of this 2013 Act.**

18 (3) If any civil action, suit or proceeding is brought against any state officer, employee or agent
 19 which on its face falls within the provisions of subsection (1) of this section, or which the state of-
 20 ficer, employee or agent asserts to be based in fact upon an alleged act or omission in the per-
 21 formance of duty, the state officer, employee or agent may, after consulting with the Oregon
 22 Department of Administrative Services file a written request for counsel with the Attorney General.
 23 The Attorney General shall thereupon appear and defend the officer, employee or agent unless after
 24 investigation the Attorney General finds that the claim or demand does not arise out of an alleged
 25 act or omission occurring in the performance of duty, [or] that the act or omission complained of
 26 amounted to malfeasance in office or willful or wanton neglect of duty, **or that a use of force was**
 27 **not consistent with a plan adopted pursuant to section 2 of this 2013 Act**, in which case the
 28 Attorney General shall reject defense of the claim.

29 (4) Any officer, employee or agent of the state against whom a claim within the scope of this
 30 section is made shall cooperate fully with the Attorney General and the department in the defense
 31 of such claim. If the Attorney General after consulting with the department determines that such
 32 officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the
 33 claim, the Attorney General may at any time reject the defense of the claim.

34 (5) If the Attorney General rejects defense of a claim under [subsection (3)] **subsections (3) or**
 35 **(4)** of this section [or this subsection], no public funds shall be paid in settlement of said claim or in
 36 payment of any judgment against such officer, employee or agent. Such action by the Attorney
 37 General shall not prejudice the right of the officer, employee or agent to assert and establish an
 38 appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission
 39 occurring in the performance of duty, or that the act or omission complained of did not amount to
 40 malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or
 41 agent shall be indemnified against liability and reasonable costs of defending the claim, cost of such
 42 indemnification to be a charge against the Insurance Fund established by ORS 278.425.

43 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of
 44 liability of any public officer, agent or employee under ORS 30.260 to 30.300, or obviate the necessity
 45 of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of

1 any other public officer, agent or employee on any claim arising out of the same accident or oc-
2 currence.

3 (7) As used in this section, "state officer, employee or agent" includes district attorneys and
4 deputy district attorneys, special prosecutors and law clerks of the office of district attorney who
5 act in a prosecutorial capacity, but does not include any other employee of the office of district at-
6 torney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the
7 county.

8 **SECTION 6.** ORS 30.287 is amended to read:

9 30.287. (1) If any civil action, suit or proceeding is brought against any officer, employee or
10 agent of a local public body which on its face falls within the provisions of ORS 30.285 (1), or which
11 the officer, employee or agent asserts to be based in fact upon an alleged act or omission in the
12 performance of duty, the officer, employee or agent may file a written request for counsel with the
13 governing body of the public body. The governing body shall thereupon engage counsel to appear
14 and defend the officer, employee or agent unless after investigation it is determined that the claim
15 or demand does not arise out of an alleged act or omission occurring in the performance of duty,
16 or that the act or omission complained of amounted to malfeasance in office or willful or wanton
17 neglect of duty, **or that a use of force was not consistent with a plan adopted pursuant to**
18 **section 2 of this 2013 Act**, in which case the governing body shall reject defense of the claim.

19 (2) Any officer, employee or agent of a local public body against whom a claim within the scope
20 of this section is made shall cooperate fully with the governing body and counsel in the defense of
21 such claim. If the counsel determines and certifies to the governing body that such officer, employee
22 or agent has not so cooperated or has otherwise acted in prejudice of the defense of the claim, the
23 governing body may at any time reject the defense of the claim.

24 (3) If the governing body rejects defense of a claim under subsection (1) of this section, no public
25 funds shall be paid in settlement of the claim or in payment of any judgment against such officer,
26 employee or agent. Such action by the governing body shall not prejudice the right of the officer,
27 employee or agent to assert and establish in an appropriate proceedings that the claim or demand
28 in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act
29 or omission complained of did not amount to malfeasance in office or willful or wanton neglect of
30 duty, in which case the officer, employee or agent shall be indemnified by the public body against
31 liability and reasonable costs of defending the claim.

32 (4) Nothing in subsection (1), (2) or (3) of this section shall be deemed to increase the limits of
33 liability of any public officer, agent or employee under ORS 30.260 to 30.300, or relieve any claimant
34 of the necessity of compliance with ORS 30.275, nor to affect the liability of the local public body
35 itself or of any other public officer, agent or employee on any claim arising out of the same accident
36 or occurrence.

37 (5) The provisions of this section may be superseded to the extent that the claim against the
38 public officer, employee or agent may be defended by any insurer, or may be subject under ORS
39 30.282 to agreement with the Oregon Department of Administrative Services, in which case the
40 provisions of the policy of insurance or other agreement are applicable.

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