

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 4048 - A

Seventy-Seventh Oregon Legislative Assembly – 2014 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

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Measure Description:

Provides that public body and its officers, employees and agents are not immune from liability for wrongful death of person who is covered by workers' compensation law and not employed by that public body under certain circumstances.

Government Unit(s) Affected:

Department of Administrative Services, Department of Justice, Judicial Department, Cities, Counties, Statewide

Summary of Expenditure Impact: See Analysis

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The measure provides that a public body and its officers, employees and agents are not immune from liability for wrongful death of a person who is covered by workers' compensation law where the deceased was not employed by a public body, died in the course and scope of employment, and the death was caused by acts of another person that could be charged as a crime. Currently, all public bodies and their employees are immune from liability for the death or injury of any person covered by workers' compensation. The measure would allow the family of an individual to file a workers' compensation claim and file a separate wrongful death claim against a public body or its officer if certain circumstances are met. Department of Administrative Services (DAS) Risk Management notes that the Workers' Compensation Division received notification of 30 compensable fatalities in 2012 and that the average number of claims since 2000 is 36 per year.

The fiscal impact is indeterminate. While the measure has narrowed the potential claims by requiring certain circumstances, DAS Risk Management Division, is unable to estimate the costs because no historical data exists to determine if the death was a result of acts by another person that could be charged with a crime. DAS originally estimated that there could be up to \$48.5 million in potential claim settlements and defense costs over the next 5 years. Potential claim settlements will have a fiscal impact to the Risk Management Insurance Fund, and any costs will be passed on to all state agencies through allocated risk assessment charges administered by DAS.

Local governments will have similar costs for trial defense, settlement claims, and increased risk insurance costs. While those costs are indeterminate and dependent on the number of potential claims, based on prior data of workplace fatalities in Oregon from the Department of Consumer and Business Services, the Association of Oregon Counties and League of Oregon Cities anticipate 4-5 claims per year. In order to estimate a cost per claim, local governments assumed an average of \$200,000 for legal defense, and that 20% of cases would find the local government at fault, with an average potential settlement claim of \$2 million. Using the 20% estimate, local governments assume the cost per claim to be \$600,000.

Depending on the number and the complexity of cases, the Department of Justice (DOJ) and any state agencies that it defends will have additional costs. Depending on the cumulative workload requirements, the legislature may need to review staffing requirements for DOJ should this legislation pass. Additionally, the Judicial Department will have minimal costs for any lawsuits filed in circuit court.