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House Committee on Judiciary  
Oregon State Capitol  
900 Court St., HR 343  
Salem, OR 97301

Multnomah County opposes HB 2612 and changes to the Oregon Tort Claims Act (OTCA) and Small Claims Court Procedures.

As a large public body offering a myriad of services to the community, Multnomah County is a target of tort lawsuits every year. The County is concerned that the proposed changes to the tort claim notice provisions of ORS § 30.275 and the small claims court procedures set out in ORS § 46.455 will negatively impact the County's ability to adequately investigate claims, manage risk, and preserve the public purse.

Changing the tort claim notice requirement of ORS § 30.275 from 180 days to 365 days is antithetical to the original purposes underlying the OTCA's notice provisions. Expansion of the notice requirement timeline would allow for an increase in the number of claims in which the evidence has grown stale, memories have faded, and/or key witnesses and participants have become unavailable through no fault of the public body. In addition, the 180 day notice provisions currently in place helps public bodies and claimants alike by allowing for the prompt investigation and the early settlement of meritorious claims before the commencement of litigation, and long before the expiration of the OTCA's two year statute of limitations.

The amendments to ORS § 30.275 contemplated by HB 2612 would increase the number of claims against public bodies in deference to the least motivated claimants who have been dilatory or otherwise unmotivated to promptly explore their options and assert their rights. The concern is even greater when coupled with the proposed changes to the small claims procedures of ORS § 46.445.

The amount of money claimed as damages in a lawsuit can at times belie the significance or complexity of the issues involved in the litigation. Therefore, categorically prohibiting public bodies from requesting a jury trial when faced with a claim of less than \$5,000 deprives public bodies of the ability to strategically remove cases that may warrant the heightened procedural and evidentiary standards available in circuit court. In addition, a public body's request for a jury trial also allows for the public body to have its conduct or its policies assessed and subsequently vindicated or rejected by a cross section of members of its own community.

As a result of existing statutes and current judicial practice, the categorical prohibition on the request for jury trials in cases under \$5,000 could subject public bodies to an increased number of claims by virtue of the fact that plaintiffs know they often won't have to contend with the public body's attorneys. Oregon Revised Statute § 46.415(3) prohibits attorneys from appearing in small claims court on behalf of any party absent consent of the small claims court judge. In practice this means that Multnomah County is at times barred from being represented by County counsel<sup>1</sup> as is required under its own charter. Accordingly, any increase in the number of cases that remain in the small claims department would also increase the number of cases in which the County and its employees must be represented by a non-attorney. Such a result not only potentially increases a public body's exposure to liability, but is inconsistent with the defense obligation imposed on public bodies by ORS § 30.287, which requires the appointment of "counsel" to defend the public body and its employees in all claims subject to the OTCA.

Furthermore, any increase in the number of claims subject to small claims court jurisdiction could require public bodies to expend resources to develop personnel capable of handling claims when the public body's attorneys are barred from the representation under ORS § 46.415(3). Such expenditure does little to protect the public purse or allow public bodies to adequately and efficiently manage risk.

Multnomah County opposes passage of HB 2612.

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<sup>1</sup> In some circumstances, even student law clerks working for or volunteering for the County Attorney's office have been prohibited from representing the County in small claims court litigation.