

House Bill 3402

Sponsored by Representative OWENS

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**.

Specifies limitations on provisions that state agency may include in contract or agreement with county.

Becomes operative on January 1, 2022.

Takes effect on 91st day after adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to agreements between agencies of the state and counties of this state; creating new provisions; amending ORS 190.110; and prescribing an effective date.

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

5 **SECTION 1.** ORS 190.110 is amended to read:

6 190.110. (1) **A local government or state agency**, in performing a duty [*imposed upon it*], in
7 exercising a power [*conferred upon it*] or in administering a policy or program, [*delegated to it, a unit*
8 *of local government or a state agency of this state*] may cooperate for any lawful purpose, by agree-
9 ment or otherwise, with a unit of local government or a state agency of this or another state, [*or*]
10 with the United States[,] or [*with*] a United States governmental agency[,] or with an American In-
11 dian tribe or an agency of an American Indian tribe. This power includes power to provide jointly
12 for administrative officers.

13 (2) The power conferred by subsection (1) of this section to enter into an agreement with an
14 American Indian tribe or an agency of an American Indian tribe extends to any unit of local gov-
15 ernment or state agency that is not otherwise expressly authorized to enter into an agreement with
16 an American Indian tribe or an agency of an American Indian tribe.

17 (3) With regard to an American Indian tribe, the power described in subsections (1) and (2) of
18 this section includes the power of the Governor or the designee of the Governor to enter into
19 agreements to ensure that the state, a state agency or unit of local government does not interfere
20 with or infringe on the exercise of any right or privilege of an American Indian tribe or members
21 of a tribe held or granted under any federal treaty, executive order, agreement, statute, policy or
22 any other authority. [*Nothing in this subsection shall be construed to*] **This subsection does not**
23 modify the obligations of the United States to an American Indian tribe or [*its*] members **of the**
24 **American Indian tribe** concerning real or personal property, title to which [*is held in trust by*] the
25 United States **holds in trust**.

26 (4) A unit of local government or state agency of this state may exclude any clause or condition
27 required by ORS 279B.220, 279B.225, 279B.230, 279B.235, 279B.270 or 279C.500 to 279C.530 from an
28 agreement under subsection (1) of this section if the agreement is with:

29 (a) A unit of local government of another state.

30 (b) A state agency of another state.

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 (c) The United States.

2 (d) A United States governmental agency.

3 (e) An American Indian tribe.

4 (f) An agency of an American Indian tribe.

5 **(5) Unless a provision of federal law or regulations or a provision of a grant agreement**
6 **with a federal agency provides otherwise, a state agency may not enter into a contract or**
7 **an agreement with a county under this section if the contract or agreement:**

8 (a) **Permits the state agency to withhold or recover payments without a dispute resolu-**
9 **tion process before a neutral party;**

10 (b) **Requires a county that is self-insured to obtain insurance;**

11 (c) **Requires a county with insurance to maintain insurance coverage in amounts higher**
12 **than the liability limits for public bodies set forth in ORS 30.260 to 30.300;**

13 (d) **Requires a county to release the county's rights in intellectual property to the state**
14 **agency;**

15 (e) **Limits a county's power to terminate the contract or agreement for the county's**
16 **convenience;**

17 (f) **Specifies that venue for any action or proceeding lies only in Marion County, unless**
18 **Marion County is the only other party to the contract or agreement;**

19 (g) **Represents and warrants that the state agency may declare a breach for a default**
20 **that is not material and does not impair the substance of the contract or agreement;**

21 (h) **Provides that a county must contribute to a third-party claim if the state agency is**
22 **not also subject to the same requirement;**

23 (i) **Specifies conditions of default or breach and remedies for default or breach if the state**
24 **agency is not also subject to the same conditions;**

25 (j) **Specifies limitations on liability to which the state agency is not also subject;**

26 (k) **Specifies indemnification provisions to which the state agency is not also subject or**
27 **that seek to bind other parties that are not parties to the contract or agreement;**

28 (L) **Awards attorney fees, costs or disbursements for a default or breach on terms and**
29 **conditions to which the state agency is not also subject;**

30 (m) **Permits amendments without the affirmative written assent of all parties to the**
31 **contract or agreement; or**

32 (n) **Otherwise seeks to impose terms and conditions on a county without the state agency**
33 **first having negotiated with the county in good faith.**

34 **SECTION 2. (1) A term or condition in an intergovernmental agreement or contract be-**
35 **tween the Oregon Health Authority and a county is not effective unless both the authority**
36 **and the county affirmatively assent to the term or condition. A term or condition in an**
37 **intergovernmental agreement or contract that does not have the affirmative assent of the**
38 **authority and the county is voidable at the election of the party that has not given assent.**

39 **(2) A county that is a party to an intergovernmental agreement or contract described in**
40 **subsection (1) of this section may bring an action to enjoin enforcement of a term or condi-**
41 **tion in the intergovernmental agreement or contract to which the county has not given**
42 **assent. In rendering a decision on the merits of the action, the court may:**

43 (a) **Admit, and determine the probative weight of, extrinsic evidence of a party's assent;**
44 **and**

45 (b) **Award costs and reasonable attorney fees to the county if the county prevails in the**

1 **action.**

2 **SECTION 3. The amendments to ORS 190.110 by section 1 of this 2021 Act apply to con-**
3 **tracts and agreements that a state agency enters into with a county on or after the opera-**
4 **tive date specified in section 4 of this 2021 Act.**

5 **SECTION 4. (1) The amendments to ORS 190.110 by section 1 of this 2021 Act become**
6 **operative on January 1, 2022.**

7 **(2) The Attorney General, the Director of the Oregon Department of Administrative**
8 **Services or a county government or agency may adopt rules, ordinances or resolutions and**
9 **take any other action before the operative date specified in subsection (1) of this section that**
10 **is necessary to enable the Attorney General, the director or the county government or**
11 **agency to exercise, on and after the operative date specified in subsection (1) of this section,**
12 **all of the duties, functions and powers conferred on the Attorney General, the director or**
13 **the county government or agency by the amendments to ORS 190.110 by section 1 of this 2021**
14 **Act.**

15 **SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021**
16 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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