

Testimony on HB 4138

Submitted to: Oregon Legislative Assembly

Bill: HB 4138 (2026 Regular Session)

Submitted by: Brian Schimmel, City Councilor, Forest Grove

Capacity: Individual / Local Government Perspective

Introduction

Judiciary Committee Context

Chair and Members of the Judiciary Committee, thank you for the opportunity to provide testimony on HB 4138.

I serve as a City Councilor for the City of Forest Grove and offer this testimony in my individual capacity, informed by my responsibilities related to public safety oversight, risk management, and intergovernmental coordination. In that role, I routinely evaluate how well-intended statutes translate into enforceable policy, officer safety, municipal liability, and real-world outcomes on the ground.

I share the sponsors' stated goals of protecting community members, safeguarding civil rights, and ensuring accountability in law enforcement activities. My concern is not with those values, but with whether HB 4138, as drafted, advances them in a manner that is legally durable, operationally sound, and consistent with constitutional limits on state and local authority.

My testimony focuses on three questions directly relevant to the Judiciary Committee's jurisdiction: 1. How HB 4138 reallocates legal risk and liability across public actors; 2. Whether the bill creates enforceable accountability mechanisms within Oregon's authority; and 3. Why existing state emergency and civil defense powers are not incorporated as implementation tools.

Executive Summary (One Page)

HB 4138 raises serious legal and operational concerns that warrant careful scrutiny by the Judiciary Committee. While the bill is framed around community protection and accountability, its primary mechanisms rely on litigation, injunctions, and expanded civil liability—rather than enforceable state authority or preventive coordination.

Key Points for Consideration:

1. Liability Without Authority

HB 4138 places new legal duties and exposure on municipalities and individual officers for conduct they do not control. Cities cannot direct federal enforcement actions, discipline federal officers, or compel compliance with Oregon policy, yet they bear the risk of civil suits, injunctions, and attorney-fee awards.

2. Expansion of Civil Causes of Action

The bill creates broad private rights of action, including punitive damages and mandatory attorney fees, while limiting traditional immunities. This shifts accountability from institutions to individuals and local governments, increasing litigation risk without establishing clearer standards of conduct.

3. Jurisdictional Limits on Federal Accountability

HB 4138 aspires to regulate federal enforcement behavior within Oregon but lacks a viable mechanism to enforce compliance against federal agencies. The result is a legal asymmetry: federal actors remain largely insulated while local governments face increased exposure.

4. Incentivized Confrontation and Escalation Risk

By encouraging real-time challenges to officer identification and compliance, the bill increases the likelihood of civilian–law enforcement confrontation at enforcement scenes. Accountability enforced through confrontation raises constitutional, safety, and due process concerns.

5. Omission of Existing State Emergency and Civil Defense Tools

Oregon law already authorizes the Governor, Oregon State Police, and county sheriffs to activate emergency management systems, civil defense forces, and National Guard resources under state control. HB 4138 does not reference or integrate these tools, instead placing responsibility on municipalities ill-equipped to manage extraordinary conditions.

Judiciary Committee Question:

If HB 4138 responds to conditions serious enough to justify emergency legislation, why does it rely on post-hoc litigation and local liability rather than state activation of existing emergency and civil defense authorities?

I. Impact on Municipalities: Responsibility Without Authority

HB 4138 imposes extensive new requirements on cities, counties, special districts, and public institutions, including:

- Mandatory adoption and public posting of multiple new policies within 120 days;
- Review, revision, and public disclosure of all federal and out-of-state task force agreements;
- Ongoing compliance monitoring and legal exposure tied to those policies.

These requirements are not accompanied by funding, technical assistance, or liability protections. For small and mid-sized cities—many without in-house counsel or policy staff—this constitutes a significant unfunded mandate.

More importantly, the bill assigns municipalities responsibility for managing the impacts of federal enforcement activity without granting them authority over federal operations. Cities cannot compel federal officers to comply with Oregon policy, discipline federal personnel, or control the timing and location of federal actions.

This creates a structural mismatch: municipalities carry the risk, while decision-making authority remains elsewhere.

II. Law Enforcement Operations and Officer Safety

HB 4138 significantly expands identification and facial covering requirements and applies them to all law enforcement officers operating within Oregon, including federal and out-of-state officers.

While transparency is essential, the bill restricts officer discretion even in volatile environments and explicitly states that generalized safety concerns are insufficient to justify protective measures.

For local officers, this presents real-world risks: - Increased likelihood of being personally targeted, doxxed, or harassed off duty; - Reduced tactical flexibility during protests or emotionally charged enforcement events; - Greater hesitation to engage in de-escalation roles due to personal liability exposure.

These risks are borne primarily by local law enforcement, even when federal activity is the catalyst for community unrest.

III. Increased Risk of Civilian–Federal Confrontation

HB 4138 relies heavily on post-incident remedies: civil causes of action, injunctions, and private enforcement.

This structure encourages residents to challenge officer identity and compliance in real time. In practice, this increases the likelihood of confrontation at enforcement scenes, crowd formation, and escalation—particularly when federal officers are involved and local police have limited authority to intervene.

Accountability that depends on confrontation is not de-escalation. It places residents, officers, and bystanders in harm's way.

IV. Federal Enforcement Accountability: A Jurisdictional Gap

The bill is described as advancing federal enforcement accountability, yet it does not create a mechanism to hold federal agencies institutionally accountable.

Local governments cannot: - Discipline federal officers; - Direct federal operations; - Enforce Oregon policy against federal agencies.

Instead, HB 4138 exposes municipalities and individual officers to litigation and injunctions, while federal entities remain largely insulated.

True accountability requires authority. HB 4138 creates exposure without control.

V. Existing State Authorities Not Utilized

Perhaps the most significant omission in HB 4138 is the absence of any role for existing state emergency and civil defense tools that are specifically designed for extraordinary public safety conditions.

Oregon law already authorizes: - Declaration of a State of Emergency and activation of the Oregon Emergency Management System; - Deployment of specialized Oregon State Police units under state command; - Activation of the Oregon State Police Civil Defense Force; - Formation and deployment of County Civil Defense Forces; - State Active Duty deployment of the Oregon National Guard, under gubernatorial control.

These tools allow the state to: - Centralize command and coordination; - Provide surge capacity without burdening municipalities; - Maintain clear accountability under state authority; - Manage civil disturbance, large-scale demonstrations, and internal security concerns proactively.

HB 4138 does not reference these tools, establish activation thresholds, or assume state-level operational responsibility. Instead, it constrains local governments and relies on litigation after harm has occurred.

VI. A Question of Policy Design

If the conditions motivating HB 4138 are serious enough to justify emergency legislation, then they warrant a state-led response.

The Legislature should consider: - When should state emergency authorities be activated? - Why are municipalities being restricted rather than supported? - Why is liability expanded instead of coordination capacity?

These are design questions, not ideological ones.

Conclusion

I support the values of civil rights, transparency, and accountability. My concern is that HB 4138, as written, substitutes restriction for leadership and liability for coordination.

Oregon already possesses lawful, scalable tools to protect communities and manage high-risk public safety conditions under state control. Before imposing new mandates and risks on cities and officers, the Legislature should explain why those tools are not being used—and whether this bill inadvertently increases the very dangers it seeks to prevent.

Thank you for your time and consideration.