

UNFUNDED MANDATE LITIGATION AGREEMENT

SB 454 (2015)

This Unfunded Mandate Litigation Agreement (this “**Agreement**”) is made as of May 1, 2016 (the “**Effective Date**”), by and between the undersigned Oregon counties, each of whom is referred to herein as a “**Party**” and collectively referred to herein as the “**Parties.**”

RECITALS

- A. ORS 190.010 allows a unit of local government to enter into a written agreement with any other unit of local government for the performance of any activity that a party to the agreement has authority to perform.
- B. The Parties intend to jointly seek a declaratory judgment against the State of Oregon in Oregon State Circuit Court to determine their rights, status, and other legal relations under Article XI Section 15 of the Oregon Constitution and the Oregon paid sick leave law, SB 454 (2015), Oregon Laws 2015, Chapter 537 (the “**Litigation**”).
- C. Linn County has retained Nathan Rietmann, Rietmann & Rietmann, LLP to represent its interests in the Litigation.
- D. The Parties intend to participate in the Litigation as co-plaintiffs. Nathan Rietmann will represent the Parties to this Agreement in the Litigation and will enter into a client agreement with each party.

AGREEMENT

In consideration of the mutual covenants below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that Linn County shall act as lead plaintiff in the Litigation, and shall coordinate the Litigation effort directly with Nathan Rietmann. The Parties shall make best efforts to periodically consult on the progress of the Litigation with each other and with Nathan Rietmann through their regular county counsels or other designated counsel.
2. Linn County will pay Nathan Rietmann’s billed hourly rate for representation of the Parties in the Litigation, through final judgment in Oregon State Circuit Court. The hourly rates include all phone charges, legal research database costs, postage, mileage, office copying, and other customary overhead expenses.
3. Each Party shall be responsible for any other of its own costs related to the Litigation, including but not limited to costs necessary for or associated with response to any discovery requests made by the State of Oregon or for the production of any evidence used by the Parties pursuant to the Litigation, but not including any costs covered under Section 1 above.

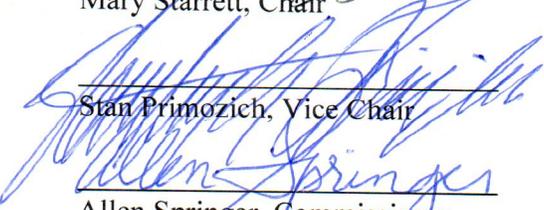
4. Any Party, except Linn County, may withdraw from this Agreement, but may only do so upon thirty days written notice to all Parties. In the event of withdrawal of any Party, Linn County will be obligated to make payments pursuant to Section 1 related to the withdrawing Party only up to the date written notice is sent.
5. In the event that Nathan Rietmann is required to withdraw from representation of the Parties in the Litigation, Linn County shall have no further obligation to pay for the costs of representation of the Parties in the Litigation after the date of such withdrawal. However, the Parties shall negotiate in good faith how to proceed in the event of such withdrawal.
6. This Agreement may not be modified, altered, or amended, except pursuant to an instrument in writing signed by all Parties that have not withdrawn from the Agreement.
7. In the event that any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void, or unenforceable, such provision shall have no force or effect, but the illegality or unenforceability of such provision shall neither affect nor impair the enforceability of any other provision of this Agreement.
8. This Agreement shall be governed by the laws of Oregon.
9. Failure of any of the Parties at any time to require performance of any provision of this Agreement shall not limit any right of any of the Parties to enforce the provision, nor shall waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision.
10. Each Party's execution of this Agreement must be countersigned by the Chair of the Linn County Board of Commissioners. Upon such counter-signature Linn County's and that Party's obligations under this Agreement shall begin as of the Effective Date.
11. This Agreement may be executed in counterparts, a signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement, and the assembled electronically scanned signatures shall comprise the final fully executed agreement.

[SIGNATURE PAGES FOLLOW]

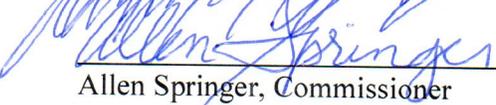
BOARD OF COUNTY COMMISSIONERS
FOR YAMHILL COUNTY



Mary Starrett, Chair



Stan Primozych, Vice Chair

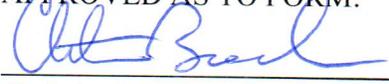


Allen Springer, Commissioner

5-26-16

Date

APPROVED AS TO FORM:



Christian Boenisch

County Counsel for Yamhill County

LINN COUNTY, Counter-Signature

Roger Nyquist, Chairman
Linn County Board of Commissioners

Date Countersigned: _____

Accepted by Yamhill County
Board of Commissioners on
5-26-16 by Board Order
16-210

BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

Roger Nyquist, Chairman

John K. Lindsey, Commissioner

William C. Tucker, Commissioner

Date

APPROVED AS TO FORM:

Eugene J. Karandy II
County Attorney for Linn County

Lucy Flores Mendez

From: Christian Boenisch
Sent: Friday, May 20, 2016 10:40 AM
To: Mary Starrett; Stan Primozych; Allen Springer
Cc: Laura Tschabold; Chuck Vesper; Ken Huffer; Lucy Flores Mendez; Keri Hinton
Subject: Unfunded Mandate Litigation Agreement
Attachments: LITIGATION AGREEMENT (Final) 051916.pdf

Attached should be a copy of the litigation agreement with Linn County to join as a co-plaintiff the Unfunded Mandate litigation challenging the Oregon paid sick leave law, SB 454. If you recall, Linn County intends to challenge SB 454 first and, if a positive result is obtained, then turn attention to the minimum wage increase. They have hired Nathan Rietmann of the Rietmann & Rietmann firm in Salem.

One point of clarification, when I mentioned this agreement to Allen and Mary earlier this week I misspoke when I said that Linn County was prepared to cover the hourly charges of the Rietmann firm all the way through the appellate process to the Oregon Supreme Court. In fact, this agreement covers their commitment to cover hourly charges (although they would gladly accept any donations) through final judgment in circuit court; any agreement for appeals cost would be dealt with at a later time. And, each party would also remain responsible for any other of its own costs related to the litigation (discovery, document preparation, etc.).

As of this morning, below is a list of the counties that have indicated their intent to participate as co-plaintiffs or not or still remain undecided:

<u>Intending to Participate as Co-plaintiffs</u>	<u>Not participating as Co-plaintiffs</u>	<u>Still</u>
<u>Undecided</u>		
Malheur	Clackamas	
Jefferson		
Polk	Coos (may participate as	
amicus)	Morrow	
Douglas	Lake	
Wallowa	Lane	
Yamhill County	Lincoln	
	Washington	
	Klamath	

Please let me know if you have any questions or comments, otherwise this will be in your agenda folder for discussion at next Tuesday's informal session and, if you decide to move forward, I would recommend this appear as a non-consent item for your consideration at Thursday's formal session.

Thanks,

Christian

Christian F. Boenisch
Yamhill County
County Counsel
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boenischc@co.yamhill.or.us