

# House Joint Resolution 2

Sponsored by Representative BOSCHART DAVIS (Presession filed.)

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

**Digest:** The measure would change the rules for when state government must pay for local mandates. Requires voter approval. (Flesch Readability Score: 70.8).

Proposes an amendment to the Oregon Constitution to change the requirements governing when the State of Oregon must appropriate or allocate sufficient moneys to pay for new or newly expanded programs that state laws, rules or orders require local governments to provide. Expands the definition of "local government" to include special districts. Eliminates some exceptions to required state funding, including an exception when the Legislative Assembly enacts the mandate by at least a three-fifths majority vote. Establishes new exceptions for programs and expansions that enhance public meeting or public record transparency or that permit new protections, rights, benefits or programs governing the employment status of local government employees, retirees or local government employee organizations to be adopted without corresponding funding.

Refers the proposed amendment to the people for their approval or rejection at the next general election.

## JOINT RESOLUTION

**Be It Resolved by the Legislative Assembly of the State of Oregon:**

**PARAGRAPH 1.** The Constitution of the State of Oregon is amended by creating a new section 15b to be added to and made a part of Article XI, and by amending section 15, Article XI, such sections to read:

**Sec. 15.** (1) Except as provided in subsection (7) of this section, when the Legislative Assembly or any state agency requires any local government to establish a new program or provide an increased level of service for an existing program, the State of Oregon shall appropriate and allocate to the local government moneys sufficient to pay the ongoing, usual and reasonable costs of performing the mandated service or activity.

(2) As used in this section:

(a) "Enterprise activity" means a program under which a local government sells products or services in competition with a nongovernment entity.

(b) "Local government" means a city, county, **special district**, municipal corporation or municipal utility operated by a board or commission.

(c) "Program" means [a]:

**(A)** A program or project imposed by enactment of the Legislative Assembly or by rule or order of a state agency under which a local government must provide administrative, financial, social, health or other specified services to persons, government agencies or to the public generally; **or**

**(B)** A mandated new program or increased level of service that is achieved by the Legislative Assembly's transfer from state government to local government of complete or partial financial responsibility for a required program for which the State of Oregon previously had complete or partial financial responsibility.

(d) "Usual and reasonable costs" means those costs incurred by the affected local governments

**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 for a specific program using generally accepted methods of service delivery and administrative  
2 practice.

3 (3) A local government is not required to comply with any state law or administrative rule or  
4 order enacted or adopted after January 1, [1997,] **2027**, that requires the expenditure of money by  
5 the local government for a new program or increased level of service for an existing program until  
6 the state appropriates and allocates to the local government reimbursement for any costs incurred  
7 to carry out the law, rule or order and unless the Legislative Assembly provides, by appropriation,  
8 reimbursement in each succeeding year for such costs. However, a local government may refuse to  
9 comply with a state law or administrative rule or order under this subsection only if the amount  
10 appropriated and allocated to the local government by the Legislative Assembly for a program in a  
11 fiscal year:

12 (a) Is less than 95 percent of the usual and reasonable costs incurred by the local government  
13 in conducting the program at the same level of service in the preceding fiscal year; or

14 (b) Requires the local government to spend for the program, in addition to the amount appro-  
15 priated and allocated by the Legislative Assembly, an amount that exceeds one-hundredth of one  
16 percent of the annual budget adopted by the governing body of the local government for that fiscal  
17 year.

18 (4) When a local government determines that a program is a program for which moneys are re-  
19 quired to be appropriated and allocated under subsection (1) of this section, if the local government  
20 expended moneys to conduct the program and was not reimbursed under this section for the usual  
21 and reasonable costs of the program, the local government may submit the issue of reimbursement  
22 to nonbinding arbitration by a panel of three arbitrators. The panel shall consist of one represen-  
23 tative from the Oregon Department of Administrative Services, the League of Oregon Cities and the  
24 Association of Oregon Counties. The panel shall determine whether the costs incurred by the local  
25 government are required to be reimbursed under this section and the amount of reimbursement. The  
26 decision of the arbitration panel is not binding upon the parties and may not be enforced by any  
27 court in this state.

28 (5) In any legal proceeding or arbitration proceeding under this section, the local government  
29 shall bear the burden of proving by a preponderance of the evidence that moneys appropriated by  
30 the Legislative Assembly are not sufficient to reimburse the local government for the usual and  
31 reasonable costs of a program.

32 (6) Except upon approval by three-fifths of the membership of each house of the Legislative As-  
33 sembly, the Legislative Assembly shall not enact, amend or repeal any law if the anticipated effect  
34 of the action is to reduce the amount of state revenues derived from a specific state tax and dis-  
35 tributed to local governments as an aggregate during the distribution period for such revenues im-  
36 mediately preceding January 1, 1997.

37 (7) This section [*shall*] **does** not apply to:

38 [*(a) Any law that is approved by three-fifths of the membership of each house of the Legislative*  
39 *Assembly.*]

40 [*(b) (a) Any costs resulting from a law creating or changing the definition of a crime or a law*  
41 *establishing sentences for conviction of a crime.*

42 [*(c) An existing program as enacted by legislation prior to January 1, 1997, except for legislation*  
43 *withdrawing state funds for programs required prior to January 1, 1997, unless the program is made*  
44 *optional.*]

45 [*(d) (b) A new program or an increased level of program services established pursuant to action*

1 of the Federal Government so long as the program or increased level of program services imposes  
2 costs on local governments that are no greater than the usual and reasonable costs to local gov-  
3 ernments resulting from compliance with the minimum program standards required under federal law  
4 or regulations.

5 **(c) Any costs resulting from a law, rule or order that enhances public access to public**  
6 **meetings or enhances the transparency of or access to public records.**

7 **(d) A requirement to provide or recognize any procedural or substantive protection,**  
8 **right, benefit or employment status of any local government employee or retiree, or of any**  
9 **local government employee organization, that arises from, affects, or directly relates to fu-**  
10 **ture, current or past local government employment and that constitutes a new program or**  
11 **an increased level of service for an existing program under this section.**

12 *[(e) Any requirement imposed by the judicial branch of government.]*

13 *[(f) Legislation enacted or approved by electors in this state under the initiative and referendum*  
14 *powers reserved to the people under section 1, Article IV of this Constitution.]*

15 *[(g) Programs that are intended to inform citizens about the activities of local governments.]*

16 (8) When a local government is not required under subsection (3) of this section to comply with  
17 a state law or administrative rule or order relating to an enterprise activity, if a nongovernment  
18 entity competes with the local government by selling products or services that are similar to the  
19 products and services sold under the enterprise activity, the nongovernment entity is not required  
20 to comply with the state law or administrative rule or order relating to that enterprise activity.

21 (9) Nothing in this section shall give rise to a claim by a private person against the State of  
22 Oregon based on the establishment of a new program or an increased level of service for an existing  
23 program without sufficient appropriation and allocation of funds to pay the ongoing, usual and rea-  
24 sonable costs of performing the mandated service or activity.

25 (10) Subsection (4) of this section does not apply to a local government when the local govern-  
26 ment is voluntarily providing a program four years after the effective date of the enactment, rule  
27 or order that imposed the program.

28 (11) In lieu of appropriating and allocating funds under this section, the Legislative Assembly  
29 may identify and direct the imposition of a fee or charge to be used by a local government to re-  
30 cover the actual cost of the program.

31 **SECTION 15b. The amendment to section 15 of this Article by House Joint Resolution 2**  
32 **(2025) applies to state laws or administrative rules or orders enacted or adopted on or after**  
33 **January 1, 2027.**

34  
35 **PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the**  
36 **people for their approval or rejection at the next regular general election held throughout**  
37 **this state.**