HB 4138 A STAFF MEASURE SUMMARY

Carrier: Rep. Chaichi

House Committee On Judiciary

Action Date:	02/16/26
Action:	Do pass with amendments. (Printed A-Eng.)
Vote:	5-3-0-0
Yeas:	5 - Andersen, Chaichi, Chotzen, Kropf, Tran
Nays:	3 - Lewis, Mannix, Wallan
Fiscal:	Fiscal impact issued
Revenue:	Has minimal revenue impact
Prepared By:	Jules Dellinger, LPRO Analyst
Meeting Dates:	2/4, 2/16

WHAT THE MEASURE DOES:

The measure establishes identifiability requirements for officers of law enforcement agencies operating in Oregon, regardless of whether the agency is federal, out-of-state, or within Oregon. It requires these law enforcement agencies to have a public policy generally restricting the use of facial coverings by their on-duty officers, and prohibits law enforcement officers from wearing facial coverings while on duty except in specific circumstances. The measure limits when a public body or a state or local law enforcement agency may cooperate with federal or out-of-state law enforcement agencies. The measure creates a cause of action to seek an injunction against a law enforcement agency or public body for violating the provisions on facial coverings, identifiability, and cooperation with federal or out-of-state law enforcement. The measure declares an emergency, effective on its passage.

Detailed Summary:

Law Enforcement Identifiability Requirements (Sections 1–6)

Requires "law enforcement agencies" to ensure that its on-duty officers wear a uniform clearly displaying the officer's last name or ID number, the agency's name, and an official badge. Makes exceptions for specific activities, such as undercover operations. Defines "law enforcement agency" to include federal, out-of-state, state, and local law enforcement agencies and defines other terms.

Requires law enforcement agencies to maintain a public policy on the use of facial coverings by on-duty officers. Requires the policy to restrict facial covering use by on-duty officers to limited circumstances and to contain a list of exceptions as described in Section 4(2) of the measure. Requires law enforcement agencies operating in Oregon to have the policy in place no later than 180 days after the measure takes effect. Creates a process for challenging a policy issued by an agency for not meeting the requirements.

Defines a "facial covering" to be an opaque item that conceals or obscures the facial identity of an individual, and states that it does not include specified medical, underwater, emergency, or safety masks. Prohibits the use of facial coverings by law enforcement officers while performing official duties. Makes exceptions for undercover officers to protect an officer's face while performing "tactical duties," as defined, or during extreme weather. Disallows the use of the exceptions for officers performing duties within 250 feet of a ballot deposit location, voting booth, or area for marking ballots at a time when votes are being collected or counted for a federal or state election.

Assistance With Federal or Out-of-State Law Enforcement Operations (Sections 7–11)

Prohibits employees of a "state or local law enforcement agency" or "public body," as those terms are defined in section 7, from intentionally assisting a federal or out-of-state law enforcement agency in investigating, apprehending, or arresting people if any of the following activities are being done:

- On the basis of a person's exercise of constitutional rights related to speech, expression, association, or assembly
- On the basis of a person's membership in a protected class
- As part of an unlawful search or seizure or other unconstitutional surveillance activity

Makes exceptions for actions required by law, by judicial subpoena, or regarding the provision of public information. Requires state and local law enforcement agencies and public bodies to establish public policies within 180 days of the measure taking effect prohibiting their employees from intentionally providing assistance in operations executed in whole or in part by a federal or out-of-state law enforcement agency if the employee is aware that the operation is intended to impose civil or criminal liability on individuals or groups for engaging in certain constitutionally protected activities, for belonging to a protected class, or for having certain political, religious, or social views, associations, or activities.

Allows for an exception if the federal or out-of-state agency requesting assistance or cooperation provides a sworn attestation that the request does not violate these prohibitions.

Status of Volunteers in the Civil Defense Force (Section 12)
Adds volunteers in the Oregon State Police or County Civil Defense Force to "agents" who are subject to the Oregon Tort Claims Act for the purpose of acts and omissions of the volunteer within the course and scope of their duties.

Cause of Action (Section 13)
Establishes a cause of action to enjoin a law enforcement agency or public body that violates the identifiability requirements (including those relating to facial coverings) or that violates the new prohibitions and policy requirements for cooperation with out-of-state and federal law enforcement. Provides for a defense if the agency or public body was compelled to provide prohibited information or assistance by a compulsory court-issued legal process.

ISSUES DISCUSSED:
- Public safety effect of trust in law enforcement
- Potential interaction with Article VI of the U.S. Constitution (Supremacy Clause)

EFFECT OF AMENDMENT:
The amendment replaces the measure.

BACKGROUND:
As U.S. Immigration and Customs Enforcement (ICE) agents have increased immigration enforcement operations nationwide since 2025, wearing face masks and failing, in some situations, to identify themselves to the people they arrest, several jurisdictions have proposed laws to regulate the masking and identification of law enforcement officers. This includes California (Senate Bill 627, the "No Secret Police Act," passed; and Senate Bill 805, passed), New York (S08462), Tennessee (SB2011), and the U.S. Congress (H. R. 4004; and S. 2212).

The federal government challenged the California laws in federal court in November 2025. The court granted a preliminary injunction, preventing the facial covering prohibition from going into effect and holding that the federal government was likely to succeed on its claim that the facial covering prohibition violates the Supremacy Clause of the U.S. Constitution because, by applying to federal but not state law enforcement officers, it impermissibly discriminates against the federal government. The decision granted a preliminary injunction on the facial covering prohibition but allowed the other enacted provisions of California's law to go into effect while the case is pending.