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**SUBSTITUTE HOUSE BILL 2111**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** House Committee on Appropriations (originally sponsored by Representatives Alexander, Benson, Wolfe, Constantine, Hatfield, Grant and H. Sommers; by request of Attorney General and Department of General Administration)

Read first time 02/25/1999.

1 AN ACT Relating to the elimination of the tort claims revolving  
2 fund; amending RCW 4.92.130, 4.92.040, 4.92.160, 4.92.070, 10.01.150,  
3 and 28B.10.842; creating new sections; repealing RCW 4.92.135;  
4 providing an effective date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 4.92.130 and 1991 sp.s. c 13 s 92 are each amended to  
7 read as follows:

8 A liability account in the custody of the treasurer is hereby  
9 created as a nonappropriated account to be used solely and exclusively  
10 for the payment of liability settlements and judgments against the  
11 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of  
12 its officers, employees, and volunteers and all related legal defense  
13 costs.

14 (1) The purpose of the liability account is to: (a) Expeditiously  
15 pay legal liabilities and defense costs of the state resulting from  
16 tortious conduct; (b) promote risk control through a cost allocation  
17 system which recognizes agency loss experience, levels of self-  
18 retention, and levels of risk exposure; and (c) establish an  
19 actuarially sound system to pay incurred losses, within defined limits.

1 (2) The liability account shall be used to pay claims for injury  
2 and property damages (~~(exclusive of)~~) and legal defense costs (~~(and)~~)  
3 exclusive of agency-retained expenses otherwise budgeted.

4 (3) No money shall be paid from the liability account, except for  
5 defense costs, unless all proceeds available to the claimant from any  
6 valid and collectible liability insurance shall have been exhausted and  
7 unless:

8 (a) The claim shall have been reduced to final judgment in a court  
9 of competent jurisdiction; or

10 (b) The claim has been approved for payment.

11 (4) The liability account shall be financed through annual premiums  
12 assessed to state agencies, based on sound actuarial principles, and  
13 shall be for liability coverage in excess of agency-budgeted self-  
14 retention levels.

15 (5) Annual premium levels shall be determined by the risk manager,  
16 with the consultation and advice of the risk management advisory  
17 committee and concurrence from the office of financial management. An  
18 actuarial study shall be conducted to assist in determining the  
19 appropriate level of funding.

20 (6) Disbursements for claims from the liability account shall be  
21 made to the claimant, or to the clerk of the court for judgments, upon  
22 written request to the state treasurer from the risk manager.

23 (7) The director of the office of financial management may direct  
24 agencies to transfer moneys from other funds and accounts to the  
25 liability account if premiums are delinquent.

26 (8) The liability account shall not exceed fifty percent of the  
27 actuarial value of the outstanding liability as determined annually by  
28 the office of risk management. If the account exceeds the maximum  
29 amount specified in this section, premiums may be adjusted by the  
30 office of risk management in order to maintain the account balance at  
31 the maximum limits. If, after adjustment of premiums, the account  
32 balance remains above the limits specified, the excess amount will be  
33 prorated back to the appropriate funds.

34 NEW SECTION. **Sec. 2.** Moneys in the tort claims revolving fund  
35 shall be deposited in the liability account on July 1, 1999, to be used  
36 for payment of settlements, judgments, and legal defense costs as  
37 provided in RCW 4.92.130.

1       **Sec. 3.** RCW 4.92.040 and 1986 c 126 s 4 are each amended to read  
2 as follows:

3       (1) No execution shall issue against the state on any judgment.

4       (2) Whenever a final judgment against the state is obtained in an  
5 action on a claim arising out of tortious conduct, the claim shall be  
6 paid from the (~~tort claims revolving fund~~) liability account.

7       (3) Whenever a final judgment against the state shall have been  
8 obtained in any other action, the clerk of the court shall make and  
9 furnish to the risk management office a duly certified copy of such  
10 judgment; the risk management office shall thereupon audit the amount  
11 of damages and costs therein awarded, and the same shall be paid from  
12 appropriations specifically provided for such purposes by law.

13       (4) Final judgments for which there are no provisions in state law  
14 for payment shall be transmitted by the risk management office to the  
15 senate and house of representatives committees on ways and means as  
16 follows:

17       (a) On the first day of each session of the legislature, the risk  
18 management office shall transmit judgments received and audited since  
19 the adjournment of the previous session of the legislature.

20       (b) During each session of legislature, the risk management office  
21 shall transmit judgments immediately upon completion of audit.

22       (5) All claims, other than judgments, made to the legislature  
23 against the state of Washington for money or property, shall be  
24 accompanied by a statement of the facts on which such claim is based  
25 and such evidence as the claimant intends to offer in support of the  
26 claim and shall be filed with the risk management office, which shall  
27 retain the same as a record. All claims of two thousand dollars or  
28 less shall be approved or rejected by the risk management office, and  
29 if approved shall be paid from appropriations specifically provided for  
30 such purpose by law. Such decision, if adverse to the claimant in  
31 whole or part, shall not preclude the claimant from seeking relief from  
32 the legislature. If the claimant accepts any part of his or her claim  
33 which is approved for payment by the risk management office, such  
34 acceptance shall constitute a waiver and release of the state from any  
35 further claims relating to the damage or injury asserted in the claim  
36 so accepted. The risk management office shall submit to the house and  
37 senate committees on ways and means, at the beginning of each regular  
38 session, a comprehensive list of all claims paid pursuant to this  
39 subsection during the preceding year. For all claims not approved by

1 the risk management office, the risk management office shall recommend  
2 to the legislature whether such claims should be approved or rejected.  
3 Recommendations shall be submitted to the senate and house of  
4 representatives committees on ways and means not later than the  
5 thirtieth day of each regular session of the legislature. Claims which  
6 cannot be processed for timely submission of recommendations shall be  
7 held for submission during the following regular session of the  
8 legislature. The recommendations shall include, but not be limited to:

9 (a) A summary of the facts alleged in the claim, and a statement as  
10 to whether these facts can be verified by the risk management office;

11 (b) An estimate by the risk management office of the value of the  
12 loss or damage which was alleged to have occurred;

13 (c) An analysis of the legal liability, if any, of the state for  
14 the alleged loss or damage; and

15 (d) A summary of equitable or public policy arguments which might  
16 be helpful in resolving the claim.

17 (5) The legislative committees to whom such claims are referred  
18 shall make a transcript, recording, or statement of the substance of  
19 the evidence given in support of such a claim. If the legislature  
20 approves a claim the same shall be paid from appropriations  
21 specifically provided for such purpose by law.

22 (6) Subsections (3) through (5) of this section do not apply to  
23 judgments or claims against the state housing finance commission  
24 created under chapter 43.180 RCW.

25 **Sec. 4.** RCW 4.92.160 and 1991 c 187 s 3 are each amended to read  
26 as follows:

27 Payment of claims and judgments arising out of tortious conduct or  
28 pursuant to 42 U.S.C. Sec. 1981 et seq. shall not be made by any agency  
29 or department of state government with the exception of the risk  
30 management office, and that office shall authorize and direct the  
31 payment of moneys only from the (~~tort claims revolving fund~~)  
32 liability account whenever:

33 (1) The head or governing body of any agency or department of state  
34 or the designee of any such agency certifies to the risk management  
35 office that a claim has been settled; or

36 (2) The clerk of court has made and forwarded a certified copy of  
37 a final judgment in a court of competent jurisdiction and the attorney  
38 general certifies that the judgment is final and was entered in an

1 action on a claim arising out of tortious conduct or under and pursuant  
2 to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to  
3 the clerk of the court for the benefit of the judgment creditors. Upon  
4 receipt of payment, the clerk shall satisfy the judgment against the  
5 state.

6 **Sec. 5.** RCW 4.92.070 and 1989 c 403 s 3 are each amended to read  
7 as follows:

8 If the attorney general shall find that said officer, employee, or  
9 volunteer's acts or omissions were, or were purported to be in good  
10 faith, within the scope of that person's official duties, or, in the  
11 case of a foster parent, that the occurrence arose from the good faith  
12 provision of foster care services, said request shall be granted, in  
13 which event the necessary expenses of the defense of said action or  
14 proceeding relating to a state officer, employee, or volunteer shall be  
15 paid as provided in RCW 4.92.130. In the case of a foster parent,  
16 necessary expenses of the defense shall be paid from the appropriations  
17 made for the support of the department to which such ((~~officer,~~  
18 ~~employee, volunteer, or~~)) foster parent is attached. In such cases the  
19 attorney general shall appear and defend such officer, employee,  
20 volunteer, or foster parent, who shall assist and cooperate in the  
21 defense of such suit. However, the attorney general may not represent  
22 or provide private representation for a foster parent in an action or  
23 proceeding brought by the department of social and health services  
24 against that foster parent.

25 **Sec. 6.** RCW 10.01.150 and 1975 1st ex.s. c 144 s 1 are each  
26 amended to read as follows:

27 Whenever a state officer or employee is charged with a criminal  
28 offense arising out of the performance of an official act which was  
29 fully in conformity with established written rules, policies, and  
30 guidelines of the state or state agency, the employing agency may  
31 request the attorney general to defend the officer or employee. If the  
32 agency finds, and the attorney general concurs, that the officer's or  
33 employee's conduct was fully in accordance with established written  
34 rules, policies, and guidelines of the state or a state agency and the  
35 act performed was within the scope of employment, then the request  
36 shall be granted and the costs of defense shall be paid by the  
37 requesting agency: PROVIDED, HOWEVER, If the agency head is the person

1 charged, then approval must be obtained from both the attorney general  
2 and the state auditor. If the court finds that the officer or employee  
3 was performing an official act, or was within the scope of employment,  
4 and that his actions were in conformity with the established rules,  
5 regulations, policies, and guidelines of the state and the state  
6 agency, the cost of any monetary fine assessed shall be paid from the  
7 (~~tort claims revolving fund~~) liability account.

8 **Sec. 7.** RCW 28B.10.842 and 1975 c 40 s 4 are each amended to read  
9 as follows:

10 Whenever any action, claim, or proceeding is instituted against any  
11 regent, trustee, officer, employee, or agent of an institution of  
12 higher education or member of the governing body, officer, employee, or  
13 agent of an educational board arising out of the performance or failure  
14 of performance of duties for, or employment with such institution or  
15 educational board, the board of regents or board of trustees of the  
16 institution or governing body of the educational board may grant a  
17 request by such person that the attorney general be authorized to  
18 defend said claim, suit, or proceeding, and the costs of defense of  
19 such action shall be paid (~~from the appropriation made for the support~~  
20 ~~of the institution or educational board to which said person is~~  
21 ~~attached~~) as provided in RCW 4.92.130. If a majority of the members  
22 of a board of regents or trustees or educational board is or would be  
23 personally affected by such findings and determination, or is otherwise  
24 unable to reach any decision on the matter, the attorney general is  
25 authorized to grant a request. When a request for defense has been  
26 authorized, then any obligation for payment arising from such action,  
27 claim, or proceedings shall be paid from the (~~tort claims revolving~~  
28 ~~fund~~) liability account, notwithstanding the nature of the claim,  
29 pursuant to the provisions of RCW 4.92.130 through 4.92.170, as now or  
30 hereafter amended: PROVIDED, That this section shall not apply unless  
31 the authorizing body has made a finding and determination by resolution  
32 that such regent, trustee, member of the educational board, officer,  
33 employee, or agent was acting in good faith.

34 NEW SECTION. **Sec. 8.** No later than ninety days after the close of  
35 the 1999-2001 fiscal biennium, the director of the department of  
36 general administration shall submit to the governor and the appropriate  
37 fiscal committees of the legislature a report describing activities in

1 the liability account. The report shall describe by agency: Liability  
2 account expenditures, categories of claims paid, defense costs paid,  
3 and funding of the liability account on an actuarial basis.

4 NEW SECTION. **Sec. 9.** RCW 4.92.135 (Tort claims revolving fund)  
5 and 1991 c 187 s 1 are each repealed.

6 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and takes effect  
9 July 1, 1999.

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