

SENATE BILL REPORT

SB 5896

As Reported by Senate Committee On:
Law & Justice, March 22, 2017

Title: An act relating to claims against public entities.

Brief Description: Concerning claims against public entities.

Sponsors: Senators Rossi, Brown, Braun, Becker, Fortunato, Bailey, Angel, Schoesler, Sheldon, Warnick, Honeyford, Wilson, Walsh, Hawkins and Short.

Brief History:

Committee Activity: Law & Justice: 3/21/17, 3/22/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Caps the liability of state and local governments for non-economic damages exceeding \$1.5 million per claimant.
- Allows payment of claims or judgment in excess of these amounts upon appropriation by the state Legislature or by an act of the local legislative authority.
- Makes interest on judgments accrue starting at the time of the appropriation for claims in excess of these amounts, or within one year after the judgment has been submitted to the Legislature or local legislative authority where there is no approval, whichever is earlier.
- Allows settlement of claims within limits of insurance coverage without waiving sovereign immunity and without requiring further action by the state Legislature or local legislative authority.
- Caps attorney fees at 33 percent of the judgment or settlement, not including other services such as expert testimony.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5896 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

Staff: Tim Ford (786-7423)

Background: Governmental Activities. At common law, governments are immune from all lawsuits. Article II, section 26 of the state Constitution allows the Legislature to waive its immunity and specify by statute in what manner, and in what courts, suit may be brought against the state. Sovereign immunity was waived by Washington State by statute in 1961. The state is liable for damages for its tortious conduct to the same extent as if it were a private person or corporation. A tort is a civil action to recover damages for personal injuries or property damage resulting from a wrongful, intentional, or negligent act. Tort judgments and settlements against the state are paid from a non-appropriated Liability Account that is funded by premiums assessed against state agencies.

Joint and Several Liability. In a tort action where the plaintiff did not share in the fault, the plaintiff may recover all of the damages from any of the defendants regardless of the defendants' individual proportionate share of the liability.

Post-judgment Interest Rate. Tort judgments against the state or local governments bear interest from the date the verdict was entered at a rate of two percentage points above the equivalent coupon issue yield of the average bill rate for 26-week treasury bills, as published by the Federal Reserve System.

Summary of Bill (First Substitute): Governmental Liability. The state and local governments are not liable to pay a claim or judgment for non-economic damages exceeding \$1.5 million per claimant. That portion of the judgment claimed against the state or local government that exceeds these amounts may be reported to the state or local government and paid in whole or in part by appropriation by the state or local legislative authority. When a claim is submitted to the Legislature for payment, the Legislature must consider any percentage of fault attributed to every entity as determined by the trier of fact.

Post-judgment Interest Rate. Interest does not accrue on that portion of a judgment that is subject to appropriation by the state or local legislative authority until the appropriation has been made, or within one year after the judgment has been submitted to the Legislature or local legislative authority where there is no approval, whichever is earlier.

Attorneys' Fees. The attorneys' fees on tort judgments and settlements against state and local governments cannot exceed 33 percent of the judgment or settlement, not including other services such as expert testimony.

Applicability. The act applies to all claims that have not been reduced to final judgment after all appeals by the effective date of the act.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Applies limitations only to non-economic damages exceeding \$1.5 million per claimant.
- Removes limitations for multiple claims arising from the same incident exceeding \$2 million.
- Accrues interest upon an appropriation, or within one year after the judgment has been submitted to the Legislature or local legislative authority where there is no approval, whichever is earlier.
- Changes the cap on attorney fees of 25 percent to 33 percent, which does not apply to other services rendered.
- Requires the Legislature to consider claims or judgments submitted pursuant to the act in the next regular session if submitted prior to January 1st of any year.
- Applies to all claims that have not been reduced to a final judgment after all appeals by the effective date.
- Removes the emergency clause.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: In the 60s, it became popular for states to waive sovereign immunity in order to be sued. Many states later re-imposed some form of sovereign immunity. Washington is one of six states left that has remained naked to lawsuits. Washington has put over \$150 million into budget for lawsuits. Florida has some of these lawsuits go through their Legislature for approval of the judgments. This bill re-imposes limited sovereign immunity but still leaves discretion for the Legislature to approve a judgment for an award exceeding \$1 million. What the bill will also do is to shine a light on what needs to improve in government. The goal of tort liability law is to balance the variety of interests that are affected by tort liability. On the one hand, victims of negligence deserve to be compensated for their injuries. At the same time, it is unfair to impose liability upon parties who are innocent of any wrongdoing. This bill is an appropriate effort to strike a reasonable balance between these competing interests.

CON: The bill seems to create a hard cap on all damages, economic and non-economic. It would dramatically reduce and restrict legal accountability for governments and put them in a unique position of being able to ignore jury verdicts. It would allow state and local governments to pick the winners and losers after juries have spent weeks of their time hearing all the facts of a case. The Washington State Constitution says that the right to a trial by jury is inviolate. This bill turns that concept on its head. People with the most extreme injuries would be most vulnerable under this bill. It violates the separation of powers and would usurp the judiciary's authority to determine court rules. It is a major shift away from government accountability and the Legislature should reject this bill.

Persons Testifying: PRO: Senator Dino Rossi, Prime Sponsor; Juliana Roe, WA State Assoc. of Counties; Edna Fund, Lewis County Commissioner; Jill Anderson, City of Chehalis; Candace Bock, Assoc. of WA Cities; Cliff Webster, WA Liability Reform Coalition; David DeWolf, citizen.

CON: Larry Shannon & Tom Vertetis, WA State Assoc. of Justice.

Persons Signed In To Testify But Not Testifying: None.