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HOUSE BILL 1218

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By Representatives Ludwig, Edmondson, Mastin, Reams, Scott, Bray, Riley, R. Fisher, Grant, Rayburn, Dellwo, Van Luven, Chandler, Zellinsky, Appelwick, Roland, Fuhrman, Kremen and Johanson

Read first time 01/20/93. Referred to Committee on Local Government.

1 AN ACT Relating to claims against local governmental entities;  
2 amending RCW 4.96.010, 4.96.020, 36.16.134, 6.17.080, 35.31.020,  
3 35.31.040, 35A.31.030, 36.45.010, 54.16.110, and 87.03.440; adding new  
4 sections to chapter 4.96 RCW; creating a new section; recodifying RCW  
5 36.16.134; and repealing RCW 35.31.010, 35.31.030, 36.45.020,  
6 36.45.030, and 53.34.210.

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

8 NEW SECTION. **Sec. 1.** This act is designed to provide a single,  
9 uniform procedure for bringing a claim for damages against a local  
10 governmental entity. The existing procedures, contained in chapter  
11 36.45 RCW, counties, chapter 35.31 RCW, cities and towns, chapter  
12 35A.31 RCW, optional municipal code, and chapter 4.96 RCW, other  
13 political subdivisions, municipal corporations, and quasi-municipal  
14 corporations, are revised and consolidated into chapter 4.96 RCW.

15 **Sec. 2.** RCW 4.96.010 and 1967 c 164 s 1 are each amended to read  
16 as follows:

17 (1) All (~~political subdivisions, municipal corporations, and quasi~~  
18 ~~municipal corporations of the state~~) local governmental entities,

1 whether acting in a governmental or proprietary capacity, shall be  
2 liable for damages arising out of their tortious conduct, or the  
3 tortious conduct of their past or present officers, ((agents or))  
4 employees, or volunteers while performing or in good faith purporting  
5 to perform their official duties, to the same extent as if they were a  
6 private person or corporation(~~(: PROVIDED, That the)~~). Filing a claim  
7 for damages within the time allowed by law (~~(of any claim required)~~)  
8 shall be a condition precedent to the (~~(maintaining)~~) commencement of  
9 any action claiming damages. The laws specifying the content for such  
10 claims shall be liberally construed so that substantial compliance  
11 therewith will be deemed satisfactory.

12 (2) Unless the context clearly requires otherwise, for the purposes  
13 of this chapter, "local governmental entity" means a county, city,  
14 town, special district, municipal corporation, or quasi-municipal  
15 corporation.

16 (3) For the purposes of this chapter, "volunteer" is defined  
17 according to RCW 51.12.035.

18 **Sec. 3.** RCW 4.96.020 and 1967 c 164 s 4 are each amended to read  
19 as follows:

20 ~~((Chapter 35.31 RCW shall apply to claims against cities and~~  
21 ~~towns, and chapter 36.45 RCW shall apply to claims against counties.~~

22 ~~(2))~~ The provisions of this (~~(subsection shall not)~~) section  
23 apply to claims for damages against (~~(cities and towns or counties but~~  
24 ~~shall apply to claims against all other political subdivisions,~~  
25 ~~municipal corporations, and quasi municipal corporations))~~ all local  
26 governmental entities.

27 (2) All claims for damages against any such ((entities)) entity for  
28 damages (~~(arising out of tortious conduct)~~) shall be presented to and  
29 filed with the governing body thereof within (~~(one hundred twenty days~~  
30 ~~from the date that the claim arose))~~ the applicable period of  
31 limitations within which an action must be commenced.

32 (3) All ((such)) claims ((shall be verified and shall accurately))  
33 for damages arising out of tortious conduct must locate and describe  
34 the conduct and circumstances which brought about the injury or damage,  
35 describe the injury or damage, state the time and place the injury or  
36 damage occurred, state the names of all persons involved, if known, and  
37 shall contain the amount of damages claimed, together with a statement  
38 of the actual residence of the claimant at the time of presenting and

1 filing the claim and for a period of six months immediately prior to  
2 the time the claim arose. If the claimant is incapacitated from  
3 verifying, presenting, and filing ~~((his))~~ the claim in the time  
4 prescribed or if the claimant is a minor, or is a nonresident of the  
5 state absent therefrom during the time within which ~~((his))~~ the claim  
6 is required to be filed, the claim may be verified, presented, and  
7 filed on behalf of the claimant by any relative, attorney, or agent  
8 representing ~~((him))~~ the claimant.

9 (4) No action shall be commenced against any ~~((such))~~ local  
10 governmental entity for damages arising out of tortious conduct until  
11 ~~((a))~~ sixty days have elapsed after the claim has first been presented  
12 to and filed with the governing body thereof. ~~((The requirements of~~  
13 ~~this subsection shall not affect the applicable period of limitations~~  
14 ~~within which an action must be commenced, but such period shall begin~~  
15 ~~and shall continue to run as if no claim were required))~~ The  
16 applicable period of limitations within which an action must be  
17 commenced shall be tolled during the sixty-day period.

18 **Sec. 4.** RCW 36.16.134 and 1989 c 250 s 1 are each amended to read  
19 as follows:

20 (1) Whenever an action or proceeding for damages is brought against  
21 any past or present officer ~~((or))~~, employee, or volunteer of a  
22 ~~((county))~~ local governmental entity of this state, arising from acts  
23 or omissions while performing or in good faith purporting to perform  
24 his or her official duties, such officer ~~((or))~~, employee, or volunteer  
25 may request the ~~((county))~~ local governmental entity to authorize the  
26 defense of the action or proceeding at the expense of the ~~((county))~~  
27 local governmental entity.

28 (2) If the ~~((county))~~ legislative authority of the local  
29 governmental entity, or the local governmental entity using a procedure  
30 created by ordinance or resolution, finds that the acts or omissions of  
31 the officer ~~((or))~~, employee, or volunteer were, or in good faith  
32 purported to be, within the scope of his or her official duties, the  
33 request ~~((may))~~ shall be granted. If the request is granted, the  
34 necessary expenses of defending the action or proceeding shall be paid  
35 by the ~~((county))~~ local governmental entity. Any monetary judgment  
36 against the officer ~~((or))~~, employee ~~((may))~~, or volunteer shall be  
37 paid on approval of the ~~((county))~~ legislative authority of the local

1 governmental entity or by a procedure for approval created by ordinance  
2 or resolution.

3 (3) The necessary expenses of defending an elective ((county))  
4 officer of the local governmental entity in a judicial hearing to  
5 determine the sufficiency of a recall charge as provided in RCW  
6 29.82.023 shall be paid by the ((county)) local governmental entity if  
7 the officer requests such defense and approval is granted by both the  
8 ((county)) legislative authority of the local governmental entity and  
9 the ((~~prosecuting~~)) attorney representing the local governmental  
10 entity. The expenses paid by the ((county)) local governmental entity  
11 may include costs associated with an appeal of the decision rendered by  
12 the superior court concerning the sufficiency of the recall charge.

13 (4) When an officer, employee, or volunteer of the local  
14 governmental entity has been represented at the expense of the local  
15 governmental entity under subsection (1) of this section and the court  
16 hearing the action has found that the officer, employee, or volunteer  
17 was acting within the scope of his or her official duties, and a  
18 judgment has been entered against the officer, employee, or volunteer  
19 under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the  
20 judgment creditor shall seek satisfaction for nonpunitive damages only  
21 from the local governmental entity, and judgment for nonpunitive  
22 damages shall not become a lien upon any property of such officer,  
23 employee, or volunteer. The legislative authority of a local  
24 governmental entity may, pursuant to a procedure created by ordinance  
25 or resolution, agree to pay an award for punitive damages.

26 NEW SECTION. Sec. 5. A new section is added to chapter 4.96 RCW  
27 to read as follows:

28 No bond is required of any local governmental entity for any  
29 purpose in any case in any of the courts of the state of Washington and  
30 all local governmental entities shall be, on proper showing, entitled  
31 to any orders, injunctions, and writs of whatever nature without bond,  
32 notwithstanding the provisions of any existing statute requiring that  
33 bonds be furnished by private parties.

34 Sec. 6. RCW 6.17.080 and 1987 c 442 s 408 are each amended to read  
35 as follows:

36 No execution may issue for collection of a judgment for the  
37 recovery of money or damages against a ~~((county or other public~~

1 ~~corporation))~~ local governmental entity. Any such judgment may be  
2 enforced as follows:

3 (1) The judgment creditor may at any time when execution might  
4 issue on a like judgment against a private person, and after  
5 acknowledging satisfaction of the judgment as in ordinary cases, obtain  
6 from the clerk a certified transcript of the judgment. The clerk shall  
7 include in the transcript a copy of the memorandum of acknowledgment of  
8 satisfaction and the entry thereof as the basis for an order on the  
9 treasurer for payment. Unless the transcript contains such memorandum,  
10 no order upon the treasurer shall issue thereon.

11 (2) The judgment creditor shall present the certified transcript  
12 showing satisfaction of the judgment to the officer of the (~~county or~~  
13 ~~other public corporation)) local governmental entity who is authorized  
14 to draw orders on its treasury.~~

15 (3) The officer shall draw an order on the treasurer for the amount  
16 of the judgment, in favor of the judgment creditor. The order shall be  
17 presented for payment and paid with like effect and in like manner as  
18 other orders upon the treasurer. If the proper officer of the (~~county~~  
19 ~~or other public corporation)) local governmental entity fails or  
20 refuses to draw the order for payment of the judgment as provided in  
21 this section, a writ of mandamus may be issued in the original case to  
22 compel performance of the duty.~~

23 (4) As used in this section, the term "local governmental entity"  
24 means a county, city, town, special district, municipal corporation, or  
25 quasi-municipal corporation.

26 **Sec. 7.** RCW 35.31.020 and 1967 c 164 s 12 are each amended to read  
27 as follows:

28 The provisions of chapter 35.31 RCW shall be applied  
29 notwithstanding any provisions to the contrary in any charter of any  
30 city permitted by law to have a charter; however, charter provisions  
31 not inconsistent herewith shall continue to apply. All claims for  
32 damages against a charter city shall be filed (~~within one hundred and~~  
33 ~~twenty days from the date that the damage occurred or the injury was~~  
34 ~~sustained:—~~ PROVIDED, That if the claimant is incapacitated from  
35 verifying and filing his claim for damages within the time prescribed,  
36 or if the claimant is a minor, or in case the claim is for damages to  
37 real or personal property, and if the owner of such property is a  
38 nonresident of such city or is absent therefrom during the time within

1 ~~which a claim for damages to said property is required to be filed,~~  
2 ~~then the claim may be verified and presented on behalf of the claimant~~  
3 ~~by any relative or attorney or agency representing the injured person,~~  
4 ~~or in case of damages to property, representing the owner thereof)) in  
5 the manner set forth in chapter 4.96 RCW.~~

6 **Sec. 8.** RCW 35.31.040 and 1989 c 74 s 1 are each amended to read  
7 as follows:

8 All claims for damages against noncharter cities and towns ((~~must~~  
9 ~~be presented to the city or town council and filed with the city or~~  
10 ~~town clerk within the period specified in the appropriate statute of~~  
11 ~~limitations)) shall be filed in the manner set forth in chapter 4.96  
12 RCW.~~

13 No ordinance or resolution shall be passed allowing such claim or  
14 any part thereof, or appropriating any money or other property to pay  
15 or satisfy the same or any part thereof, until the claim has first been  
16 referred to the proper department or committee, nor until such  
17 department or committee has made its report to the council thereon  
18 pursuant to such reference.

19 ((~~All such claims for damages must accurately locate and describe~~  
20 ~~the defect that caused the injury, reasonably describe the injury and~~  
21 ~~state the time when it occurred, give the residence for six months last~~  
22 ~~past of claimant, contain the item of damages claimed and be sworn to~~  
23 ~~by the claimant or a relative, attorney or agent of the claimant.~~

24 No action shall be maintained against any such city or town for any  
25 claim for damages until the same has been presented to the council and  
26 sixty days have elapsed after such presentation.))

27 **Sec. 9.** RCW 35A.31.030 and 1967 ex.s. c 119 s 35A.31.030 are each  
28 amended to read as follows:

29 No ordinance or resolution shall be passed allowing such claim or  
30 any part thereof, or appropriating any money or other property to pay  
31 or satisfy the same or any part thereof, until the claim has first been  
32 referred to the proper department or committee, nor until such  
33 department or committee has made its report thereon to the legislative  
34 body of the code city pursuant to such reference. ((~~All such claims~~  
35 ~~for damages must accurately locate and describe the defect that caused~~  
36 ~~the injury, reasonably describe the injury and state the time when it~~

1 occurred, contain the item of damages claimed and be verified by the  
2 claimant or a relative, attorney, or agent of the claimant.))

3 No action shall be maintained against any code city for any claim  
4 for damages until the ((same)) claim has been ((presented to the  
5 legislative body of the city by filing with the clerk and sixty days  
6 have elapsed after such presentation)) filed in the manner set forth in  
7 chapter 4.96 RCW.

8 **Sec. 10.** RCW 36.45.010 and 1967 c 164 s 14 are each amended to  
9 read as follows:

10 All claims for damages against any county ((must)) shall be  
11 ((presented before the board of county commissioners and filed with the  
12 clerk thereof within one hundred and twenty days from the date that the  
13 damage occurred or the injury was sustained)) filed in the manner set  
14 forth in chapter 4.96 RCW.

15 **Sec. 11.** RCW 54.16.110 and 1979 ex.s. c 240 s 3 are each amended  
16 to read as follows:

17 A district may sue in any court of competent jurisdiction, and may  
18 be sued in the county in which its principal office is located or in  
19 which it owns or operates facilities. No suit for damages shall be  
20 maintained against a district except on a claim filed with the  
21 ((commission)) district complying in all respects with the terms and  
22 requirements for claims for damages ((filed against cities of the  
23 second class)) set forth in chapter 4.96 RCW.

24 **Sec. 12.** RCW 87.03.440 and 1983 c 167 s 218 are each amended to  
25 read as follows:

26 The treasurer of the county in which is located the office of the  
27 district shall be ex officio treasurer of the district, and any county  
28 treasurer handling district funds shall be liable upon his or her  
29 official bond and to criminal prosecution for malfeasance and  
30 misfeasance, or failure to perform any duty as county or district  
31 treasurer. The treasurer of each county in which lands of the district  
32 are located shall collect and receipt for all assessments levied on  
33 lands within his or her county. There shall be deposited with the  
34 district treasurer all funds of the district. ((He)) The district  
35 treasurer shall pay out such funds upon warrants issued by the county  
36 auditor against the proper funds of the district, except the sums to be

1 paid out of the bond fund for interest and principal payments on bonds:  
2 PROVIDED, That in those districts which designate their own treasurer,  
3 the treasurer may issue the warrants or any checks when the district is  
4 authorized to issue checks. All warrants shall be paid in the order of  
5 their issuance. The district treasurer shall report, in writing, on  
6 the first Monday in each month to the directors, the amount in each  
7 fund, the receipts for the month preceding in each fund, and file the  
8 report with the secretary of the board. The secretary shall report to  
9 the board, in writing, at the regular meeting in each month, the amount  
10 of receipts and expenditures during the preceding month, and file the  
11 report in the office of the board.

12 The preceding paragraph of this section notwithstanding, the board  
13 of directors or board of control of an irrigation district which lies  
14 in more than one county and which had assessments in each of two of the  
15 preceding three years equal to at least five hundred thousand dollars  
16 may designate some other person having experience in financial or  
17 fiscal matters as treasurer of the district. In addition, the board of  
18 directors of an irrigation district which lies entirely within one  
19 county may designate some other person having experience in financial  
20 or fiscal matters as treasurer of the district if the board has the  
21 approval of the county treasurer to designate some other person. If  
22 the board designates a treasurer, it shall require a bond with a surety  
23 company authorized to do business in the state of Washington in an  
24 amount and under the terms and conditions which it finds from time to  
25 time will protect the district against loss. The premium on the bond  
26 shall be paid by the district. The designated treasurer shall collect  
27 and receipt for all irrigation district assessments on lands within the  
28 district and shall act with the same powers and duties and be under the  
29 same restrictions as provided by law for county treasurers acting in  
30 matters pertaining to irrigation districts, except the powers, duties,  
31 and restrictions in RCW 87.56.110 and 87.56.210 which shall continue to  
32 be those of county treasurers.

33 In those districts which have designated their own treasurers, the  
34 provisions of law pertaining to irrigation districts which require  
35 certain acts to be done and which refer to and involve a county  
36 treasurer or the office of a county treasurer or the county officers  
37 charged with the collection of irrigation district assessments, except  
38 RCW 87.56.110 and 87.56.210 shall be construed to refer to and involve

1 the designated district treasurer or the office of the designated  
2 district treasurer.

3 Any claim against the district for which it is liable under  
4 existing laws shall be presented to the board as provided in RCW  
5 4.96.020 and upon allowance it shall be attached to a voucher and  
6 approved by the chairman and signed by the secretary and directed to  
7 the proper official for payment: PROVIDED, That in the event  
8 claimant's claim is for crop damage, the claimant in addition to filing  
9 his or her claim within the ((one hundred twenty day limit)) applicable  
10 period of limitations within which an action must be commenced and in  
11 the manner specified in RCW 4.96.020 must file with the secretary of  
12 the district, or in ((his)) the secretary's absence one of the  
13 directors, not less than three days prior to the severance of the crop  
14 alleged to be damaged, a written preliminary notice pertaining to the  
15 crop alleged to be damaged. Such preliminary notice, so far as  
16 claimant is able, shall advise the district; that the claimant has  
17 filed a claim or intends to file a claim against the district for  
18 alleged crop damage; shall give the name and present residence of the  
19 claimant; shall state the cause of the damage to the crop alleged to be  
20 damaged and the estimated amount of damage; and shall accurately locate  
21 and describe where the crop alleged to be damaged is located. Such  
22 preliminary notice may be given by claimant or by anyone acting in his  
23 or her behalf and need not be verified. No action may be commenced  
24 against an irrigation district for crop damages unless claimant has  
25 complied with the provisions of RCW 4.96.020 and also with the  
26 preliminary notice requirements of this section.

27 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
28 each repealed:

- 29 (1) RCW 35.31.010 and 1967 c 164 s 11 & 1965 c 7 s 35.31.010;
- 30 (2) RCW 35.31.030 and 1965 c 7 s 35.31.030;
- 31 (3) RCW 36.45.020 and 1963 c 4 s 36.45.020;
- 32 (4) RCW 36.45.030 and 1973 c 36 s 1 & 1963 c 4 s 36.45.030; and
- 33 (5) RCW 53.34.210 and 1959 c 236 s 21.

34 NEW SECTION. **Sec. 14.** RCW 36.16.134 is recodified as a section in  
35 chapter 4.96 RCW.

1        NEW SECTION.    **Sec. 15.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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