

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2111

56th Legislature
1999 Regular Session

Passed by the House March 5, 1999
Yeas 97 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 14, 1999
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2111** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2111

Passed Legislature - 1999 Regular Session

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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