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SENATE BILL 5803

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Schoesler and Hargrove

Read first time 02/15/13. Referred to Committee on Ways & Means.

1 AN ACT Relating to claims against public entities; amending RCW  
2 4.22.070, 4.56.115, 4.92.005, 4.96.010, 4.92.040, 4.92.090, and  
3 4.92.130; creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** While the common law doctrine of sovereign  
6 immunity declares that the state is immune from liability for the  
7 tortious conduct of its employees and officers, Article II, section 26  
8 of the state Constitution allows the legislature to waive its immunity  
9 and specify by statute "in what manner, and in what courts, suit may be  
10 brought against the state." In the granting or withholding of  
11 sovereign immunity, there are limitations, gradations, and competing  
12 interests to be balanced by the legislature, including fairness to the  
13 citizens of the state, the preservation of proper and essential  
14 functions of government, and the conservation of scarce public  
15 resources.

16 In balancing these competing interests, the legislature must also  
17 balance the traditional role of the jury in determining damages in  
18 civil cases and the legislature's constitutional mandate under Article

1 VIII, section 4 of the state Constitution to protect the state treasury  
2 through the appropriation process.

3 The legislature finds that these constitutional principles are not  
4 adequately served by either complete sovereign immunity or the complete  
5 waiver of sovereign immunity. Pursuant to the express authority of  
6 Article II, section 26 of the state Constitution, the purpose of this  
7 act is to recognize and implement these fundamental constitutional  
8 principles while providing a fair and equitable means of recovery  
9 against governmental entities for the negligent acts of their employees  
10 and officers.

11 **Sec. 2.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
12 as follows:

13 (1) In all actions involving fault of more than one entity, the  
14 trier of fact shall determine the percentage of the total fault which  
15 is attributable to every entity which caused the claimant's damages  
16 except entities immune from liability to the claimant under Title 51  
17 RCW. The sum of the percentages of the total fault attributed to at-  
18 fault entities shall equal one hundred percent. The entities whose  
19 fault shall be determined include the claimant or person suffering  
20 personal injury or incurring property damage, defendants, third-party  
21 defendants, entities released by the claimant, entities with any other  
22 individual defense against the claimant, and entities immune from  
23 liability to the claimant, but shall not include those entities immune  
24 from liability to the claimant under Title 51 RCW. Judgment shall be  
25 entered against each defendant except those who have been released by  
26 the claimant or are immune from liability to the claimant or have  
27 prevailed on any other individual defense against the claimant in an  
28 amount which represents that party's proportionate share of the  
29 claimant's total damages. The liability of each defendant shall be  
30 several only and shall not be joint except:

31 (a) A party shall be responsible for the fault of another person or  
32 for payment of the proportionate share of another party where both were  
33 acting in concert or when a person was acting as an agent or servant of  
34 the party.

35 (b) If the trier of fact determines that the claimant or party  
36 suffering bodily injury or incurring property damages was not at fault,  
37 the defendants against whom judgment is entered shall be jointly and

1 severally liable for the sum of their proportionate shares of the  
2 (~~claimants [claimant's]~~) claimant's total damages, except as provided  
3 in RCW 4.92.090(2) and 4.96.010(2).

4 (2) If a defendant is jointly and severally liable under one of the  
5 exceptions listed in subsections (1)(a) or (1)(b) of this section, such  
6 defendant's rights to contribution against another jointly and  
7 severally liable defendant, and the effect of settlement by either such  
8 defendant, shall be determined under RCW 4.22.040, 4.22.050, and  
9 4.22.060.

10 (3)(a) Nothing in this section affects any cause of action relating  
11 to hazardous wastes or substances or solid waste disposal sites.

12 (b) Nothing in this section shall affect a cause of action arising  
13 from the tortious interference with contracts or business relations.

14 (c) Nothing in this section shall affect any cause of action  
15 arising from the manufacture or marketing of a fungible product in a  
16 generic form which contains no clearly identifiable shape, color, or  
17 marking.

18 **Sec. 3.** RCW 4.56.115 and 2004 c 185 s 1 are each amended to read  
19 as follows:

20 Judgments founded on the tortious conduct of the state of  
21 Washington or of the political subdivisions, municipal corporations,  
22 and quasi municipal corporations of the state, whether acting in their  
23 governmental or proprietary capacities, shall bear interest from the  
24 date of entry at two percentage points above the equivalent coupon  
25 issue yield (as published by the board of governors of the federal  
26 reserve system) of the average bill rate for twenty-six week treasury  
27 bills as determined at the first bill market auction conducted during  
28 the calendar month immediately preceding the date of entry thereof. In  
29 any case where a court is directed on review to enter judgment on a  
30 verdict or in any case where a judgment entered on a verdict is wholly  
31 or partly affirmed on review, interest on the judgment or on that  
32 portion of the judgment affirmed shall date back to and shall accrue  
33 from the date the verdict was rendered.

34 Interest does not accrue on that portion of a judgment that is  
35 subject to appropriation by the legislature under RCW 4.92.090 or by a  
36 local legislative authority under RCW 4.96.010 until the appropriation  
37 has been made by the legislature or local legislative authority.

1       **Sec. 4.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read  
2 as follows:

3       For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,  
4 (~~4.92.140~~) and 4.92.150, volunteer is defined in RCW 51.12.035.

5       **Sec. 5.** RCW 4.96.010 and 2011 c 258 s 10 are each amended to read  
6 as follows:

7       (1) All local governmental entities, whether acting in a  
8 governmental or proprietary capacity, shall be liable for damages  
9 arising out of their tortious conduct, or the tortious conduct of their  
10 past or present officers, employees, or volunteers while performing or  
11 in good faith purporting to perform their official duties, to the same  
12 extent as if they were a private person or corporation, subject to the  
13 limitations provided in subsection (2) of this section. Filing a claim  
14 for damages within the time allowed by law shall be a condition  
15 precedent to the commencement of any action claiming damages. The laws  
16 specifying the content for such claims shall be liberally construed so  
17 that substantial compliance therewith will be deemed satisfactory.

18       (2)(a) Local government entities, officers, employees, and  
19 volunteers are not liable to pay a claim or a judgment by any one  
20 person that exceeds the sum of one million dollars or any claim or  
21 judgment, or portions thereof, that, when totaled with all other claims  
22 or judgments paid by the local government entities, officers,  
23 employees, or volunteers arising out of the same incident or  
24 occurrence, exceeds the sum of two million dollars. However, a  
25 judgment or judgments may be claimed and rendered in excess of these  
26 amounts and may be settled and paid under this section up to one  
27 million dollars or two million dollars, as the case may be, and that  
28 portion of the judgment that exceeds these amounts may be reported to  
29 the local legislative authority, but may be paid in part or in whole  
30 only by further act of the local legislative authority.  
31 Notwithstanding the limited waiver of sovereign immunity provided in  
32 this section, the local government entities, officers, employees, or  
33 volunteers may agree, within the limits of insurance coverage provided,  
34 to settle a claim made or a judgment rendered against it without  
35 further action by the local legislative authority, but the local  
36 government entities, officers, employees, or volunteers have not waived

1 any defense of sovereign immunity or increased the limits of its  
2 liability as a result of its obtaining insurance coverage for tortious  
3 acts in excess of the waiver provided in this section.

4 (b) The liability of the local government entities, officers,  
5 employees, or volunteers is several only and is not joint.

6 (c) No attorney may charge, demand, receive, or collect, for  
7 services rendered, fees in excess of twenty-five percent of any  
8 judgment or settlement under this section.

9 (3) Unless the context clearly requires otherwise, for the purposes  
10 of this chapter, "local governmental entity" means a county, city,  
11 town, special district, municipal corporation as defined in RCW  
12 39.50.010, quasi-municipal corporation, any joint municipal utility  
13 services authority, any entity created by public agencies under RCW  
14 39.34.030, or public hospital.

15 ((+3)) (4) For the purposes of this chapter, "volunteer" is  
16 defined according to RCW 51.12.035.

17 **Sec. 6.** RCW 4.92.040 and 2011 1st sp.s. c 43 s 512 are each  
18 amended to read as follows:

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

20 (2) Whenever a final judgment against the state is obtained in an  
21 action on a claim arising out of tortious conduct, the claim shall be  
22 paid from the liability account, subject to the limitations of RCW  
23 4.92.090.

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

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

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

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

4 (5) All claims, other than judgments, made to the legislature  
5 against the state of Washington for money or property, shall be  
6 accompanied by a statement of the facts on which such claim is based  
7 and such evidence as the claimant intends to offer in support of the  
8 claim and shall be filed with the office of risk management, which  
9 shall retain the same as a record. All claims of two thousand dollars  
10 or less shall be approved or rejected by the office of risk management,  
11 and if approved shall be paid from appropriations specifically provided  
12 for such purpose by law. Such decision, if adverse to the claimant in  
13 whole or part, shall not preclude the claimant from seeking relief from  
14 the legislature. If the claimant accepts any part of his or her claim  
15 which is approved for payment by the office of risk management, such  
16 acceptance shall constitute a waiver and release of the state from any  
17 further claims relating to the damage or injury asserted in the claim  
18 so accepted. The office of risk management shall submit to the house  
19 and senate committees on ways and means, at the beginning of each  
20 regular session, a comprehensive list of all claims paid pursuant to  
21 this subsection during the preceding year. For all claims not approved  
22 by the office of risk management, the office of risk management shall  
23 recommend to the legislature whether such claims should be approved or  
24 rejected. Recommendations shall be submitted to the senate and house  
25 of representatives committees on ways and means not later than the  
26 thirtieth day of each regular session of the legislature. Claims which  
27 cannot be processed for timely submission of recommendations shall be  
28 held for submission during the following regular session of the  
29 legislature. The recommendations shall include, but not be limited to:

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

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

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

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

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

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

9 **Sec. 7.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read  
10 as follows:

11 The state of Washington, whether acting in its governmental or  
12 proprietary capacity, shall be liable for damages arising out of its  
13 tortious conduct to the same extent as if it were a private person or  
14 corporation, subject to the limitations provided in this section.

15 (1) The state and its agencies, institutions, officers, employees,  
16 and volunteers are not liable to pay a claim or a judgment by any one  
17 person that exceeds the sum of one million dollars or any claim or  
18 judgment, or portions thereof, that, when totaled with all other claims  
19 or judgments paid by the state or its agencies, institutions, officers,  
20 employees, or volunteers arising out of the same incident or  
21 occurrence, exceeds the sum of two million dollars. However, a  
22 judgment or judgments may be claimed and rendered in excess of these  
23 amounts and may be settled and paid under this section up to one  
24 million dollars or two million dollars, as the case may be, and that  
25 portion of the judgment that exceeds these amounts may be reported to  
26 the legislature, but may be paid in part or in whole only by further  
27 act of the legislature. Notwithstanding the limited waiver of  
28 sovereign immunity provided in this section, the state or an agency,  
29 institution, or any officer, employee, or volunteer may agree, within  
30 the limits of insurance coverage provided, to settle a claim made or a  
31 judgment rendered against it without further action by the legislature,  
32 but the state or agency has not waived any defense of sovereign  
33 immunity or increased the limits of its liability as a result of its  
34 obtaining insurance coverage for tortious acts in excess of the waiver  
35 provided in this section.

36 (2) The liability of the state, its agencies, and institutions is  
37 several only and is not joint.

1       (3) No attorney may charge, demand, receive, or collect, for  
2 services rendered, fees in excess of twenty-five percent of any  
3 judgment or settlement under this section.

4       **Sec. 8.** RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each  
5 amended to read as follows:

6       A liability account in the custody of the treasurer is hereby  
7 created as a nonappropriated account to be used solely and exclusively  
8 for the payment of liability settlements and judgments against the  
9 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of  
10 its officers, employees, and volunteers and all related legal defense  
11 costs. Legislative appropriation is required for expenditures from the  
12 liability account to the extent specified in RCW 4.92.090.

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

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

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

26       (a) The claim shall have been reduced to final judgment in a court  
27 of competent jurisdiction and legislative appropriation has been made  
28 to the extent required by RCW 4.92.090; or

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

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

34       (5) Annual premium levels shall be determined by the risk manager.  
35 An actuarial study shall be conducted to assist in determining the  
36 appropriate level of funding.



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

4 (7) The director may direct agencies to transfer moneys from other  
5 funds and accounts to the liability account if premiums are delinquent.

6 (8) The liability account shall not exceed fifty percent of the  
7 actuarial value of the outstanding liability as determined annually by  
8 the office of risk management. If the account exceeds the maximum  
9 amount specified in this section, premiums may be adjusted by the  
10 office of risk management in order to maintain the account balance at  
11 the maximum limits. If, after adjustment of premiums, the account  
12 balance remains above the limits specified, the excess amount shall be  
13 prorated back to the appropriate funds.

14 NEW SECTION. **Sec. 9.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 10.** This act applies to all claims that have  
19 not been reduced to judgment on the effective date of this act.

20 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 immediately.

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