S-2261.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5896**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Rossi, Brown, Braun, Becker, Fortunato, Bailey, Angel, Schoesler, Sheldon, Warnick, Honeyford, Wilson, Walsh, Hawkins, and Short)

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

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

NEW SECTION. **Sec.**  While the common law doctrine of sovereign immunity declares that the state is immune from liability for the tortious conduct of its employees and officers, 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." In the granting or withholding of sovereign immunity, there are limitations, gradations, and competing interests to be balanced by the legislature, including fairness to the citizens of the state, the preservation of proper and essential functions of government, and the conservation of scarce public resources.

In balancing these competing interests, the legislature must also balance the traditional role of the jury in determining damages in civil cases and the legislature's constitutional mandate under Article VIII, section 4 of the state Constitution to protect the state treasury through the appropriation process.

The legislature finds that these constitutional principles are not adequately served by either complete sovereign immunity or the complete waiver of sovereign immunity. Pursuant to the express authority of Article II, section 26 of the state Constitution, the purpose of this act is to reinstate limited sovereign immunity for the purpose of reviewing claims against the state in excess of one million five hundred thousand dollars for noneconomic damages.

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

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

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

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the ((~~claimants [claimant's]~~)) claimant's total damages, except as provided in RCW 4.92.090 and 4.96.010.

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

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

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

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

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

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

Interest does not accrue on that portion of a judgment for noneconomic damages, as defined in RCW 4.56.250, that is subject to appropriation by the legislature under RCW 4.92.090 or by a local legislative authority under RCW 4.96.010 until the appropriation has been made by the legislature or local legislative authority or until no action has been taken to approve a judgment within one year after the judgment has been submitted to the legislature or local legislative authority, whichever occurs earlier.

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

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

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

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

(2)(a) Local government entities, officers, employees, and volunteers are not liable to pay a claim or a judgment for noneconomic damages, as defined in RCW 4.56.250, for each claimant that exceeds the sum of one million five hundred thousand dollars. However, a judgment may be claimed and rendered in excess of this amount and may be settled and paid under this section up to one million five hundred thousand dollars, and that portion of the judgment that exceeds this amount shall be reported to the local legislative authority, but may be paid in part or in whole only by further act of the local legislative authority. A local legislative authority receiving a report of a judgment in excess of one million five hundred thousand dollars must consider the judgment within one year of receipt. Notwithstanding the limited waiver of sovereign immunity provided in this section, the local government entities, officers, employees, or volunteers may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the local legislative authority, but the local government entities, officers, employees, or volunteers have not waived any defense of sovereign immunity or increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the waiver provided in this section.

(b) No attorney may charge, demand, receive, or collect fees in excess of thirty-three percent of any judgment or settlement under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Whenever a final judgment against the state is obtained in excess of the limitations provided in RCW 4.92.090(1), the clerk of the court shall make and furnish to the office of risk management a duly certified copy of such judgment; the office of risk management shall thereupon audit the amount of damages and costs therein awarded, and transmit the judgment to the senate and house of representatives in the manner described in subsection (4) of this section. During each regular session of the legislature, the appropriate committees of the senate and house of representatives shall consider all judgments transmitted to the senate and house of representatives under this subsection in the calendar year immediately preceding the start of the legislative session, and for each judgment may provide a recommendation to the legislature.

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

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

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

(1)(a) The state and its agencies, institutions, officers, employees, and volunteers are not liable to pay a claim or a judgment for noneconomic damages, as defined in RCW 4.56.250, for each claimant that exceeds the sum of one million five hundred thousand dollars. However, a judgment may be claimed and rendered in excess of this amount and may be settled and paid under this section up to one million five hundred thousand dollars, and that portion of the judgment that exceeds this amount shall be reported to the legislature as described in RCW 4.92.040(7), but may be paid in part or in whole only by further act of the legislature. Notwithstanding the limited waiver of sovereign immunity provided in this section, the state or an agency, institution, or any officer, employee, or volunteer may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the legislature, but the state or agency has not waived any defense of sovereign immunity or increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the waiver provided in this section.

(b) 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.

(2) No attorney may charge, demand, receive, or collect fees in excess of thirty-three percent of any judgment or settlement under this section.

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

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

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

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

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

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

(b) The claim has been approved for payment.

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

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

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

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

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

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

NEW SECTION. **Sec.**  This act applies to all claims that have not been reduced to final judgment after all appeals on the effective date of this act.

**--- END ---**