

SENATE BILL REPORT

SB 6252

AS REPORTED BY COMMITTEE ON TRANSPORTATION, FEBRUARY 3, 1994

**Brief Description:** Limiting the liability of state and local governments.

**SPONSORS:** Senators Vognild and Nelson; by request of Department of Transportation

**SENATE COMMITTEE ON TRANSPORTATION**

**Majority Report:** Do pass.

Signed by Senators Vognild, Chairman; Loveland, Vice Chairman; Haugen, Nelson, Oke, Prentice, Prince, Sheldon and Winsley.

**Minority Report:** Do not pass.

Signed by Senators Skratek, Vice Chairman; Drew, Morton, M. Rasmussen and Schow.

**Staff:** Jeff Doyle (786-7322)

**Hearing Dates:** January 25, 1994

**BACKGROUND:**

The Department of General Administration issued a report in December, 1990 that proposed statutory changes to limit liability of the state and local governments for personal injury or property damage related to the design of public facilities which conform to design standards at the time the facility or roadway was approved for construction.

**SUMMARY:**

The state and all of its political subdivisions are granted immunity from civil liability for damages caused by or related to the planning or design for construction or improvement of a highway, road, street or other public facility if the plan or design was prepared in substantial conformance with the engineering or design standards in effect at the time of construction.

If deficient maintenance is the principal cause of the accident and the public agency had actual notice of the defect and failed to respond in a reasonable time, the public agency may be liable.

Public facility includes state highways, city and county roads and streets, state and local buildings, bridges, off-highway and primitive roads, public use facilities, enterprise operations, infrastructures, and marine/aircraft facilities.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested

**TESTIMONY FOR:**

State and local governments can be held liable for damages in lawsuits where the plaintiff alleges, among other things, that the highway facility was not up to current design standards. Given the enormous cost of roadway construction, it is unreasonable to require every roadway to be updated every time a better design is discovered. This bill prevents these types of lawsuits against public entities if they can show that the facility was constructed in substantial conformance to those standards in effect at the time the project was built.

Also, this bill would allow the state and local governments (if applicable) to offer proof to the court for purposes of establishing an absolute defense that they lacked sufficient funding to reconstruct a roadway or other facility. If the public entity can show that it had planned to upgrade the facility, but because of a priority funding program or similar mechanism lacked the necessary funds to do so, it will be immune from civil suit.

**TESTIMONY AGAINST:**

Except in very limited circumstances, the bill would have the effect of reinstating sovereign immunity in the state of Washington. In a tort action against the state, the plaintiff must prove much more than just the fact that the design used by the state to construct a highway is no longer current. This provision would, in effect, provide immunity to the public entity for almost all suits alleging a poorly designed facility.

Furthermore, the bill would provide a nearly absolute sovereign immunity for public entities, no matter how deficient their facility was, if the public entity merely has a "plan" to upgrade the facility. The plan can provide that the facility be updated 50 years from now, and this would be sufficient to absolve the state from liability.

Finally, the requirement that the state have "actual knowledge" of any deficiency is a vast departure from the current common law standard, which requires that the public entity knew, or had reason to know, of any deficiency. Proving the state had "actual knowledge" is so high a legal standard that it will effectively shield the state from lawsuits.

**TESTIFIED:** PRO: Sid Morrison, Bill Henselman, WSDOT; Craig Olson, Assn. of WA Cities; Bill Haro, City of Bellevue; Bill Larkin, City of Tacoma; CON: Charles Wiggins, Dennis Martin, WA State Trial Lawyers Assn.