

---

SENATE BILL 5904

---

State of Washington

56th Legislature

1999 Regular Session

By Senators Loveland, Winsley, Long, Prentice, Kline, Bauer, West and Rasmussen; by request of Attorney General and Department of General Administration

Read first time 02/16/1999. Referred to Committee on Ways & Means.

1 AN ACT Relating to the elimination of the tort claims revolving  
2 fund; amending RCW 4.92.130, 4.92.135, 4.92.160, 4.92.070, and  
3 28B.10.842; providing an effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 4.92.130 and 1991 sp.s. c 13 s 92 are each amended to  
6 read as follows:

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

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.

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 **Sec. 2.** RCW 4.92.135 and 1991 c 187 s 1 are each amended to read  
35 as follows:

36 (~~The tort claims revolving fund is created in the custody of the~~  
37 ~~treasurer to be used solely and exclusively for the payment of claims~~  
38 ~~arising out of tortious conduct taking place prior to July 1, 1990 and~~

1 against both the state and its officers, employees, and volunteers for  
2 whom the defense of the claims was authorized under RCW 4.92.070.—

3 Moneys paid from the revolving fund for any claim are limited to  
4 the amount by which the claim exceeds the amount available to the  
5 claimant from any valid and collectible liability insurance. Payment  
6 from the revolving fund shall not be made until the claim has been  
7 approved for payment in accordance with RCW 4.92.210.))

8 Moneys in the tort claims revolving fund shall be deposited in the  
9 liability account on July 1, 1999, to be used for payment of  
10 settlements, judgments, and legal defense costs as provided in RCW  
11 4.92.130.

12 **Sec. 3.** RCW 4.92.160 and 1991 c 187 s 3 are each amended to read  
13 as follows:

14 Payment of claims and judgments arising out of tortious conduct or  
15 pursuant to 42 U.S.C. Sec. 1981 et seq. shall not be made by any agency  
16 or department of state government with the exception of the risk  
17 management office, and that office shall authorize and direct the  
18 payment of moneys only from the ((~~tort claims revolving fund~~))  
19 liability account whenever:

20 (1) The head or governing body of any agency or department of state  
21 or the designee of any such agency certifies to the risk management  
22 office that a claim has been settled; or

23 (2) The clerk of court has made and forwarded a certified copy of  
24 a final judgment in a court of competent jurisdiction and the attorney  
25 general certifies that the judgment is final and was entered in an  
26 action on a claim arising out of tortious conduct or under and pursuant  
27 to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to  
28 the clerk of the court for the benefit of the judgment creditors. Upon  
29 receipt of payment, the clerk shall satisfy the judgment against the  
30 state.

31 **Sec. 4.** RCW 4.92.070 and 1989 c 403 s 3 are each amended to read  
32 as follows:

33 If the attorney general shall find that said officer, employee, or  
34 volunteer's acts or omissions were, or were purported to be in good  
35 faith, within the scope of that person's official duties, or, in the  
36 case of a foster parent, that the occurrence arose from the good faith  
37 provision of foster care services, said request shall be granted, in

1 which event the necessary expenses of the defense of said action or  
2 proceeding relating to a state officer, employee, or volunteer shall be  
3 paid as provided in RCW 4.92.130. In the case of a foster parent,  
4 necessary expenses of the defense shall be paid from the appropriations  
5 made for the support of the department to which such (~~officer,~~  
6 ~~employee, volunteer, or~~) foster parent is attached. In such cases the  
7 attorney general shall appear and defend such officer, employee,  
8 volunteer, or foster parent, who shall assist and cooperate in the  
9 defense of such suit. However, the attorney general may not represent  
10 or provide private representation for a foster parent in an action or  
11 proceeding brought by the department of social and health services  
12 against that foster parent.

13 **Sec. 5.** RCW 28B.10.842 and 1975 c 40 s 4 are each amended to read  
14 as follows:

15 Whenever any action, claim, or proceeding is instituted against any  
16 regent, trustee, officer, employee, or agent of an institution of  
17 higher education or member of the governing body, officer, employee, or  
18 agent of an educational board arising out of the performance or failure  
19 of performance of duties for, or employment with such institution or  
20 educational board, the board of regents or board of trustees of the  
21 institution or governing body of the educational board may grant a  
22 request by such person that the attorney general be authorized to  
23 defend said claim, suit, or proceeding, and the costs of defense of  
24 such action shall be paid (~~from the appropriation made for the support~~  
25 ~~of the institution or educational board to which said person is~~  
26 ~~attached~~) as provided in RCW 4.92.130. If a majority of the members  
27 of a board of regents or trustees or educational board is or would be  
28 personally affected by such findings and determination, or is otherwise  
29 unable to reach any decision on the matter, the attorney general is  
30 authorized to grant a request. When a request for defense has been  
31 authorized, then any obligation for payment arising from such action,  
32 claim, or proceedings shall be paid from the (~~tort claims revolving~~  
33 ~~fund~~) liability account, notwithstanding the nature of the claim,  
34 pursuant to the provisions of RCW 4.92.130 through 4.92.170, as now or  
35 hereafter amended: PROVIDED, That this section shall not apply unless  
36 the authorizing body has made a finding and determination by resolution  
37 that such regent, trustee, member of the educational board, officer,  
38 employee, or agent was acting in good faith.

1        NEW SECTION.    **Sec. 6.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and takes effect  
4    July 1, 1999.

--- END ---