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**SUBSTITUTE SENATE BILL 5791**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Kline, Sheahan, Patterson, McCaslin, Constantine, Johnson, Costa, Kohl-Welles, Deccio, Roach and Winsley)

READ FIRST TIME 02/27/01.

1 AN ACT Relating to actions and proceedings for damages brought  
2 against law enforcement officers; and amending RCW 4.96.041.

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

4 **Sec. 1.** RCW 4.96.041 and 1993 c 449 s 4 are each amended to read  
5 as follows:

6 (1) Whenever an action or proceeding for damages is brought against  
7 any past or present officer, employee, or volunteer of a local  
8 governmental entity of this state, arising from acts or omissions while  
9 performing or in good faith purporting to perform his or her official  
10 duties, such officer, employee, or volunteer may request the local  
11 governmental entity to authorize the defense of the action or  
12 proceeding at the expense of the local governmental entity.

13 (2)(a) If the legislative authority of the local governmental  
14 entity, or the local governmental entity using a procedure created by  
15 ordinance or resolution, finds that the acts or omissions of the  
16 officer, employee, or volunteer were, or in good faith purported to be,  
17 within the scope of his or her official duties, the request shall be  
18 granted. If the request is granted, the necessary expenses of

1 defending the action or proceeding shall be paid by the local  
2 governmental entity.

3 However, the legislative authority may revoke or rescind the  
4 granting of the request, and decline to pay further expenses if it  
5 finds, following the same procedure, that the acts or omissions of the  
6 officer, employee, or volunteer were not, or in good faith did not  
7 purport to be, within the scope of his or her official duties.

8 (b) Any monetary judgment against the officer, employee, or  
9 volunteer shall be paid on approval of the legislative authority of the  
10 local governmental entity or by a procedure for approval created by  
11 ordinance or resolution.

12 (3) The necessary expenses of defending an elective officer of the  
13 local governmental entity in a judicial hearing to determine the  
14 sufficiency of a recall charge as provided in RCW 29.82.023 shall be  
15 paid by the local governmental entity if the officer requests such  
16 defense and approval is granted by both the legislative authority of  
17 the local governmental entity and the attorney representing the local  
18 governmental entity. The expenses paid by the local governmental  
19 entity may include costs associated with an appeal of the decision  
20 rendered by the superior court concerning the sufficiency of the recall  
21 charge.

22 (4) When an officer, employee, or volunteer of the local  
23 governmental entity has been represented at the expense of the local  
24 governmental entity under subsection (1) of this section and the court  
25 hearing the action has found that the officer, employee, or volunteer  
26 was acting within the scope of his or her official duties, and a  
27 judgment has been entered against the officer, employee, or volunteer  
28 under chapter 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the  
29 judgment creditor shall seek satisfaction for nonpunitive damages only  
30 from the local governmental entity, and judgment for nonpunitive  
31 damages shall not become a lien upon any property of such officer,  
32 employee, or volunteer. The legislative authority of a local  
33 governmental entity may, pursuant to a procedure created by ordinance  
34 or resolution, agree to pay an award for punitive damages.

35 (5)(a) When a law enforcement officer makes a request for defense  
36 under subsection (1) of this section, the determination under  
37 subsection (2) of this section as to whether or not the acts or  
38 omissions of the law enforcement officer were, or in good faith  
39 purported to be, within the scope of his or her official duties shall

1 be made within sixty days. If the request is granted, the necessary  
2 expenses of defending the action or proceeding shall be paid by the  
3 local governmental entity. The proceedings conducted under subsection  
4 (2) of this section may be conducted in executive session in accordance  
5 with chapter 42.30 RCW and all meetings, proceedings, and deliberations  
6 of the legislative authority of the local governmental entity with  
7 regard to the request of the officer, law enforcement officer,  
8 employee, or volunteer is confidential. However, the final action of  
9 the legislative authority as to the acceptance or denial of the  
10 request, or revocation or revision of a previous decision, must be done  
11 in public session. The proceedings, reports, or written records of the  
12 legislative authority, or of a member, employee, staff person, or  
13 investigator of the legislative authority, are not subject to the  
14 public disclosure act, chapter 42.17 RCW.

15 (b) When a law enforcement officer of the local governmental entity  
16 has been represented at the expense of the local governmental entity  
17 under subsection (1) of this section and the court hearing the action  
18 has found that the law enforcement officer was acting within the scope  
19 of his or her official duties, and a judgment has been entered against  
20 the law enforcement officer under this chapter or 42 U.S.C. Sec. 1981  
21 et seq., any monetary judgment against the law enforcement officer  
22 shall be paid by the legislative authority of the local governmental  
23 entity, and thereafter the judgment creditor shall seek satisfaction  
24 for damages only from the local governmental entity, and judgment for  
25 damages shall not become a lien upon any property of such law  
26 enforcement officer.

27 (c) For the purposes of this section, "law enforcement officer" has  
28 the meaning provided in RCW 9.41.010.

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