

SENATE BILL REPORT

SB 6215

As of January 25, 2006

Title: An act relating to the liability of public entities for tortious conduct.

Brief Description: Defining the liability of public entities for tortious conduct.

Sponsors: Senators Kline and Johnson; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 1/26/06.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: At common law, governments are immune from all lawsuits. Most governments have enacted statutes that waive some or all immunity from suit and Washington waived sovereign immunity in 1961. RCW 4.92.090 provides "the state of Washington...shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person."

On a case-by-case basis, courts have been gradually reducing immunities previously recognized by the courts. Cases involving high-speed police chases, highway design decisions, child welfare programs, vulnerable adults, and crimes by parolees represent some of the legal actions in which state immunities have been judicially reduced. Tort judgments, settlements, and legal defense costs are paid from a nonappropriated liability account which is funded by premiums assessed against state agencies. The State also purchases limited insurance coverage.

Proponents of this legislation believe there should be statutory protection from liability for governmental functions which is a major source of the rising claim and legal defense costs of state and local government. Governmental functions are those that are for the benefit of the public generally and include regulatory programs, police and fire protection, correctional programs, and social welfare programs.

Summary of Bill: The tort liability of the state, and its local and special purpose governments, extends to conduct that is comparable to private activities for which private persons may be liable.

A government, a public officer, or a government employee, agent, or volunteer is not liable for decisions made in implementing policy in areas of governmental functions where discretionary judgment must be exercised.

Tort liability does not extend to a government, a public officer, or a government employee, agent, or volunteer's actions or inactions related to licensing or regulation, failure to enforce laws, failure to apprehend people violating laws and its assessments of eligibility for

beneficiaries of government assistance programs, except in the following circumstances: (1) the Legislature has provided that specific agencies or employees are obligated to enforce a statute for the benefit of a narrow group of persons and that tort liability may arise from failure to do so; or (2) there was direct contact between a public employee and an injured person and the employee gave assurances of protection or action upon which the injured person relied; or (3) a public employee, responsible for enforcing statutory requirements, has actual knowledge of a violation that presents an imminent risk of harm, fails to take corrective action, and the injured person is within the class protected by the statute.

A government, public officer, employee, agent, or volunteer is not liable for injury caused by a person released from criminal or mental health confinement or a person under community based custody or supervision, except in the three above described circumstances.

Immunity from liability applies to injuries arising out of a design for construction or improvement of public facilities if the design is in substantial conformity with design standards at the time of construction or improvement.

A government, or public officer, employee, agent, or volunteer is not liable for an administrative decision that has been or may be reviewed in an administrative or judicial proceeding to determine the correctness of the decision.

The Attorney General determines whether an employee was acting within the scope of his or her official duties and will, therefore, receive state representation if sued in a tort action.

Appropriation: None.

Fiscal Note: Requested on (date).

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.