
SENATE BILL 5404

State of Washington 59th Legislature 2005 Regular Session

By Senators Kline, Oke, Fairley, Swecker, Pridemore, Esser and Delvin

Read first time 01/24/2005. Referred to Committee on Judiciary.

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))
15 29A.56.140 shall be paid by the local governmental entity if the
16 officer requests such defense and approval is granted by both the
17 legislative authority of the local governmental entity and the attorney
18 representing the local governmental entity. The expenses paid by the
19 local governmental entity may include costs associated with an appeal
20 of the decision rendered by the superior court concerning the
21 sufficiency of the recall 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

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

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

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

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