

SENATE BILL REPORT

SB 5896

As of March 21, 2017

Title: An act relating to claims against public entities.

Brief Description: Concerning claims against public entities.

Sponsors: Senators Rossi, Brown, Braun, Becker, Fortunato, Bailey, Angel, Schoesler, Sheldon, Warnick, Honeyford, Wilson, Walsh, Hawkins and Short.

Brief History:

Committee Activity: Law & Justice: 3/21/17.

Brief Summary of Bill

- Caps the liability of state and local governments for tort claims at \$1 million for any one person, or at \$2 million or for all claims or judgments arising out of the same incident.
- Allows payment of claims or judgment in excess of these amounts upon appropriation by the state Legislature or by an act of the local legislative authority.
- Makes interest on judgments accrue starting at the time of the appropriation for claims in excess of these amounts.
- Allows settlement of claims within limits of insurance coverage without waiving sovereign immunity and without requiring further action by the state Legislature or local legislative authority.
- Caps attorney fees at 25 percent of the judgment or settlement.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Governmental Activities. At common law, governments are immune from all lawsuits. Article II, section 26 of the state Constitution allows the Legislature to waive its immunity and specify by statute in what manner, and in what courts, suit may be brought against the state. Sovereign immunity was waived by Washington State by statute in 1961.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The state is liable for damages for its tortious conduct to the same extent as if it were a private person or corporation. A tort is a civil action to recover damages for personal injuries or property damage resulting from a wrongful, intentional, or negligent act. Tort judgments and settlements against the state are paid from a non-appropriated Liability Account that is funded by premiums assessed against state agencies.

Joint and Several Liability. In a tort action where the plaintiff did not share in the fault, the plaintiff may recover all of the damages from any of the defendants regardless of the defendants' individual proportionate share of the liability.

Post-judgment Interest Rate. Tort judgments against the state or local governments bear interest from the date the verdict was entered at a rate of two percentage points above the equivalent coupon issue yield of the average bill rate for 26-week treasury bills, as published by the Federal Reserve System.

Summary of Bill: Governmental Liability. The state and local governments are not liable to pay a claim or judgment for damages by any one person to the extent that the claim or judgment exceeds \$1 million or any claim or judgment that when totaled with all other claims or judgments arising out of the same incident exceeds \$2 million. That portion of the judgment claimed against the state or local government that exceeds these amounts may be reported to the state or local government and paid in whole or in part by appropriation by the state or local legislative authority. When a claim is submitted to the Legislature for payment, the Legislature must consider any percentage of fault attributed to every entity as determined by the trier of fact.

Post-judgment Interest Rate. Interest does not accrue on that portion of a judgment that is subject to appropriation by the state or local legislative authority until the appropriation has been made.

Attorneys' Fees. The attorneys' fees on tort judgments and settlements against state and local governments cannot exceed 25 percent of the judgment or settlement.

Applicability. The act applies to all claims that have not been reduced to judgment on the effective date of the act.

Appropriation: None.

Fiscal Note: Requested on March 20, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: In the 60s, it became popular for states to waive sovereign immunity in order to be sued. Many states later re-imposed some form of sovereign immunity. Washington is one of six states left that has remained naked to lawsuits. Washington has put over \$150 million into budget for lawsuits. Florida has some of these lawsuits go through their Legislature for approval of the judgments. This bill re-imposes

limited sovereign immunity but still leaves discretion for the Legislature to approve a judgment for an award exceeding \$1 million. What the bill will also do is to shine a light on what needs to improve in government. The goal of tort liability law is to balance the variety of interests that are affected by tort liability. On the one hand, victims of negligence deserve to be compensated for their injuries. At the same time, it is unfair to impose liability upon parties who are innocent of any wrongdoing. This bill is an appropriate effort to strike a reasonable balance between these competing interests.

CON: The bill seems to create a hard cap on all damages, economic and non-economic. It would dramatically reduce and restrict legal accountability for governments and put them in a unique position of being able to ignore jury verdicts. It would allow state and local governments to pick the winners and losers after juries have spent weeks of their time hearing all the facts of a case. The Washington State Constitution says that the right to a trial by jury is inviolate. This bill turns that concept on its head. People with the most extreme injuries would be most vulnerable under this bill. It violates the separation of powers and would usurp the judiciary's authority to determine court rules. It is a major shift away from government accountability and the Legislature should reject this bill.

Persons Testifying: PRO: Senator Dino Rossi, Prime Sponsor; Juliana Roe, WA State Assoc. of Counties; Edna Fund, Lewis County Commissioner; Jill Anderson, City of Chehalis; Candace Bock, Assoc. of WA Cities; Cliff Webster, WA Liability Reform Coalition; David DeWolf, citizen.

CON: Larry Shannon & Tom Vertetis, WA State Assoc. of Justice.

Persons Signed In To Testify But Not Testifying: None.