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**SUBSTITUTE SENATE BILL 5896**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Rossi, Brown, Braun, Becker, Fortunato, Bailey, Angel, Schoesler, Sheldon, Warnick, Honeyford, Wilson, Walsh, Hawkins, and Short)

READ FIRST TIME 03/23/17.

1 AN ACT Relating to claims against public entities; amending RCW  
2 4.22.070, 4.56.115, 4.92.005, 4.96.010, 4.92.040, 4.92.090, and  
3 4.92.130; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** While the common law doctrine of sovereign  
6 immunity declares that the state is immune from liability for the  
7 tortious conduct of its employees and officers, Article II, section  
8 26 of the state Constitution allows the legislature to waive its  
9 immunity and specify by statute "in what manner, and in what courts,  
10 suit may be brought against the state." In the granting or  
11 withholding of sovereign immunity, there are limitations, gradations,  
12 and competing interests to be balanced by the legislature, including  
13 fairness to the citizens of the state, the preservation of proper and  
14 essential functions of government, and the conservation of scarce  
15 public resources.

16 In balancing these competing interests, the legislature must also  
17 balance the traditional role of the jury in determining damages in  
18 civil cases and the legislature's constitutional mandate under  
19 Article VIII, section 4 of the state Constitution to protect the  
20 state treasury through the appropriation process.

1 The legislature finds that these constitutional principles are  
2 not adequately served by either complete sovereign immunity or the  
3 complete waiver of sovereign immunity. Pursuant to the express  
4 authority of Article II, section 26 of the state Constitution, the  
5 purpose of this act is to reinstate limited sovereign immunity for  
6 the purpose of reviewing claims against the state in excess of one  
7 million five hundred thousand dollars for noneconomic damages.

8 **Sec. 2.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read  
9 as follows:

10 (1) In all actions involving fault of more than one entity, the  
11 trier of fact shall determine the percentage of the total fault which  
12 is attributable to every entity which caused the claimant's damages  
13 except entities immune from liability to the claimant under Title 51  
14 RCW. The sum of the percentages of the total fault attributed to at-  
15 fault entities shall equal one hundred percent. The entities whose  
16 fault shall be determined include the claimant or person suffering  
17 personal injury or incurring property damage, defendants, third-party  
18 defendants, entities released by the claimant, entities with any  
19 other individual defense against the claimant, and entities immune  
20 from liability to the claimant, but shall not include those entities  
21 immune from liability to the claimant under Title 51 RCW. Judgment  
22 shall be entered against each defendant except those who have been  
23 released by the claimant or are immune from liability to the claimant  
24 or have prevailed on any other individual defense against the  
25 claimant in an amount which represents that party's proportionate  
26 share of the claimant's total damages. The liability of each  
27 defendant shall be several only and shall not be joint except:

28 (a) A party shall be responsible for the fault of another person  
29 or for payment of the proportionate share of another party where both  
30 were acting in concert or when a person was acting as an agent or  
31 servant of the party.

32 (b) If the trier of fact determines that the claimant or party  
33 suffering bodily injury or incurring property damages was not at  
34 fault, the defendants against whom judgment is entered shall be  
35 jointly and severally liable for the sum of their proportionate  
36 shares of the (~~claimants~~~~[claimant's]~~) claimant's total damages,  
37 except as provided in RCW 4.92.090 and 4.96.010.

38 (2) If a defendant is jointly and severally liable under one of  
39 the exceptions listed in subsections (1)(a) or (1)(b) of this

1 section, such defendant's rights to contribution against another  
2 jointly and severally liable defendant, and the effect of settlement  
3 by either such defendant, shall be determined under RCW 4.22.040,  
4 4.22.050, and 4.22.060.

5 (3)(a) Nothing in this section affects any cause of action  
6 relating to hazardous wastes or substances or solid waste disposal  
7 sites.

8 (b) Nothing in this section shall affect a cause of action  
9 arising from the tortious interference with contracts or business  
10 relations.

11 (c) Nothing in this section shall affect any cause of action  
12 arising from the manufacture or marketing of a fungible product in a  
13 generic form which contains no clearly identifiable shape, color, or  
14 marking.

15 **Sec. 3.** RCW 4.56.115 and 2004 c 185 s 1 are each amended to read  
16 as follows:

17 Judgments founded on the tortious conduct of the state of  
18 Washington or of the political subdivisions, municipal corporations,  
19 and quasi municipal corporations of the state, whether acting in  
20 their governmental or proprietary capacities, shall bear interest  
21 from the date of entry at two percentage points above the equivalent  
22 coupon issue yield (as published by the board of governors of the  
23 federal reserve system) of the average bill rate for twenty-six week  
24 treasury bills as determined at the first bill market auction  
25 conducted during the calendar month immediately preceding the date of  
26 entry thereof. In any case where a court is directed on review to  
27 enter judgment on a verdict or in any case where a judgment entered  
28 on a verdict is wholly or partly affirmed on review, interest on the  
29 judgment or on that portion of the judgment affirmed shall date back  
30 to and shall accrue from the date the verdict was rendered.

31 Interest does not accrue on that portion of a judgment for  
32 noneconomic damages, as defined in RCW 4.56.250, that is subject to  
33 appropriation by the legislature under RCW 4.92.090 or by a local  
34 legislative authority under RCW 4.96.010 until the appropriation has  
35 been made by the legislature or local legislative authority or until  
36 no action has been taken to approve a judgment within one year after  
37 the judgment has been submitted to the legislature or local  
38 legislative authority, whichever occurs earlier.

1       **Sec. 4.** RCW 4.92.005 and 1985 c 217 s 6 are each amended to read  
2 as follows:

3       For the purposes of RCW 4.92.060, 4.92.070, 4.92.090, 4.92.130,  
4 (~~4.92.140,~~) and 4.92.150, volunteer is defined in RCW 51.12.035.

5       **Sec. 5.** RCW 4.96.010 and 2011 c 258 s 10 are each amended to  
6 read as follows:

7       (1) All local governmental entities, whether acting in a  
8 governmental or proprietary capacity, shall be liable for damages  
9 arising out of their tortious conduct, or the tortious conduct of  
10 their past or present officers, employees, or volunteers while  
11 performing or in good faith purporting to perform their official  
12 duties, to the same extent as if they were a private person or  
13 corporation, subject to the limitations provided in subsection (2) of  
14 this section. Filing a claim for damages within the time allowed by  
15 law shall be a condition precedent to the commencement of any action  
16 claiming damages. The laws specifying the content for such claims  
17 shall be liberally construed so that substantial compliance therewith  
18 will be deemed satisfactory.

19       (2)(a) Local government entities, officers, employees, and  
20 volunteers are not liable to pay a claim or a judgment for  
21 noneconomic damages, as defined in RCW 4.56.250, for each claimant  
22 that exceeds the sum of one million five hundred thousand dollars.  
23 However, a judgment may be claimed and rendered in excess of this  
24 amount and may be settled and paid under this section up to one  
25 million five hundred thousand dollars, and that portion of the  
26 judgment that exceeds this amount shall be reported to the local  
27 legislative authority, but may be paid in part or in whole only by  
28 further act of the local legislative authority. A local legislative  
29 authority receiving a report of a judgment in excess of one million  
30 five hundred thousand dollars must consider the judgment within one  
31 year of receipt. Notwithstanding the limited waiver of sovereign  
32 immunity provided in this section, the local government entities,  
33 officers, employees, or volunteers may agree, within the limits of  
34 insurance coverage provided, to settle a claim made or a judgment  
35 rendered against it without further action by the local legislative  
36 authority, but the local government entities, officers, employees, or  
37 volunteers have not waived any defense of sovereign immunity or  
38 increased the limits of its liability as a result of its obtaining

1 insurance coverage for tortious acts in excess of the waiver provided  
2 in this section.

3 (b) No attorney may charge, demand, receive, or collect fees in  
4 excess of thirty-three percent of any judgment or settlement under  
5 this section.

6 (3) Unless the context clearly requires otherwise, for the  
7 purposes of this chapter, "local governmental entity" means a county,  
8 city, town, special district, municipal corporation as defined in RCW  
9 39.50.010, quasi-municipal corporation, any joint municipal utility  
10 services authority, any entity created by public agencies under RCW  
11 39.34.030, or public hospital.

12 ~~((3))~~ (4) For the purposes of this chapter, "volunteer" is  
13 defined according to RCW 51.12.035.

14 **Sec. 6.** RCW 4.92.040 and 2011 1st sp.s. c 43 s 512 are each  
15 amended to read as follows:

16 (1) No execution shall issue against the state on any judgment.

17 (2) Whenever a final judgment against the state is obtained in an  
18 action on a claim arising out of tortious conduct, the claim shall be  
19 paid from the liability account, subject to the limitations of RCW  
20 4.92.090.

21 (3) Whenever a final judgment against the state shall have been  
22 obtained in any other action, the clerk of the court shall make and  
23 furnish to the office of risk management a duly certified copy of  
24 such judgment; the office of risk management shall thereupon audit  
25 the amount of damages and costs therein awarded, and the same shall  
26 be paid from appropriations specifically provided for such purposes  
27 by law.

28 (4) Final judgments for which there are no provisions in state  
29 law for payment shall be transmitted by the office of risk management  
30 to the senate and house of representatives committees on ways and  
31 means as follows:

32 (a) On the first day of each session of the legislature, the  
33 office of risk management shall transmit judgments received and  
34 audited since the adjournment of the previous session of the  
35 legislature.

36 (b) During each session of legislature, the office of risk  
37 management shall transmit judgments immediately upon completion of  
38 audit.

1 (5) All claims, other than judgments, made to the legislature  
2 against the state of Washington for money or property, shall be  
3 accompanied by a statement of the facts on which such claim is based  
4 and such evidence as the claimant intends to offer in support of the  
5 claim and shall be filed with the office of risk management, which  
6 shall retain the same as a record. All claims of two thousand dollars  
7 or less shall be approved or rejected by the office of risk  
8 management, and if approved shall be paid from appropriations  
9 specifically provided for such purpose by law. Such decision, if  
10 adverse to the claimant in whole or part, shall not preclude the  
11 claimant from seeking relief from the legislature. If the claimant  
12 accepts any part of his or her claim which is approved for payment by  
13 the office of risk management, such acceptance shall constitute a  
14 waiver and release of the state from any further claims relating to  
15 the damage or injury asserted in the claim so accepted. The office of  
16 risk management shall submit to the house and senate committees on  
17 ways and means, at the beginning of each regular session, a  
18 comprehensive list of all claims paid pursuant to this subsection  
19 during the preceding year. For all claims not approved by the office  
20 of risk management, the office of risk management shall recommend to  
21 the legislature whether such claims should be approved or rejected.  
22 Recommendations shall be submitted to the senate and house of  
23 representatives committees on ways and means not later than the  
24 thirtieth day of each regular session of the legislature. Claims  
25 which cannot be processed for timely submission of recommendations  
26 shall be held for submission during the following regular session of  
27 the legislature. The recommendations shall include, but not be  
28 limited to:

29 (a) A summary of the facts alleged in the claim, and a statement  
30 as to whether these facts can be verified by the office of risk  
31 management;

32 (b) An estimate by the office of risk management of the value of  
33 the loss or damage which was alleged to have occurred;

34 (c) An analysis of the legal liability, if any, of the state for  
35 the alleged loss or damage; and

36 (d) A summary of equitable or public policy arguments which might  
37 be helpful in resolving the claim.

38 (6) The legislative committees to whom such claims are referred  
39 shall make a transcript, recording, or statement of the substance of  
40 the evidence given in support of such a claim. If the legislature

1 approves a claim the same shall be paid from appropriations  
2 specifically provided for such purpose by law.

3 (7) Whenever a final judgment against the state is obtained in  
4 excess of the limitations provided in RCW 4.92.090(1), the clerk of  
5 the court shall make and furnish to the office of risk management a  
6 duly certified copy of such judgment; the office of risk management  
7 shall thereupon audit the amount of damages and costs therein  
8 awarded, and transmit the judgment to the senate and house of  
9 representatives in the manner described in subsection (4) of this  
10 section. During each regular session of the legislature, the  
11 appropriate committees of the senate and house of representatives  
12 shall consider all judgments transmitted to the senate and house of  
13 representatives under this subsection in the calendar year  
14 immediately preceding the start of the legislative session, and for  
15 each judgment may provide a recommendation to the legislature.

16 (8) Subsections (3) through (6) of this section do not apply to  
17 judgments or claims against the state housing finance commission  
18 created under chapter 43.180 RCW.

19 **Sec. 7.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read  
20 as follows:

21 The state of Washington, whether acting in its governmental or  
22 proprietary capacity, shall be liable for damages arising out of its  
23 tortious conduct to the same extent as if it were a private person or  
24 corporation, subject to the limitations provided in this section.

25 (1)(a) The state and its agencies, institutions, officers,  
26 employees, and volunteers are not liable to pay a claim or a judgment  
27 for noneconomic damages, as defined in RCW 4.56.250, for each  
28 claimant that exceeds the sum of one million five hundred thousand  
29 dollars. However, a judgment may be claimed and rendered in excess of  
30 this amount and may be settled and paid under this section up to one  
31 million five hundred thousand dollars, and that portion of the  
32 judgment that exceeds this amount shall be reported to the  
33 legislature as described in RCW 4.92.040(7), but may be paid in part  
34 or in whole only by further act of the legislature. Notwithstanding  
35 the limited waiver of sovereign immunity provided in this section,  
36 the state or an agency, institution, or any officer, employee, or  
37 volunteer may agree, within the limits of insurance coverage  
38 provided, to settle a claim made or a judgment rendered against it  
39 without further action by the legislature, but the state or agency

1 has not waived any defense of sovereign immunity or increased the  
2 limits of its liability as a result of its obtaining insurance  
3 coverage for tortious acts in excess of the waiver provided in this  
4 section.

5 (b) When a claim is submitted to the legislature for payment, the  
6 legislature must consider any percentage of fault attributed to every  
7 entity as determined by the trier of fact.

8 (2) No attorney may charge, demand, receive, or collect fees in  
9 excess of thirty-three percent of any judgment or settlement under  
10 this section.

11 **Sec. 8.** RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each  
12 amended to read as follows:

13 A liability account in the custody of the treasurer is hereby  
14 created as a nonappropriated account to be used solely and  
15 exclusively for the payment of liability settlements and judgments  
16 against the state under 42 U.S.C. Sec. 1981 et seq. or for the  
17 tortious conduct of its officers, employees, and volunteers and all  
18 related legal defense costs. Legislative appropriation is required  
19 for expenditures from the liability account to the extent specified  
20 in RCW 4.92.090.

21 (1) The purpose of the liability account is to: (a) Expeditiously  
22 pay legal liabilities and defense costs of the state resulting from  
23 tortious conduct; (b) promote risk control through a cost allocation  
24 system which recognizes agency loss experience, levels of self-  
25 retention, and levels of risk exposure; and (c) establish an  
26 actuarially sound system to pay incurred losses, within defined  
27 limits.

28 (2) The liability account shall be used to pay claims for injury  
29 and property damages and legal defense costs exclusive of agency-  
30 retained expenses otherwise budgeted.

31 (3) No money shall be paid from the liability account, except for  
32 defense costs, unless all proceeds available to the claimant from any  
33 valid and collectible liability insurance shall have been exhausted  
34 and unless:

35 (a) The claim shall have been reduced to final judgment in a  
36 court of competent jurisdiction and legislative appropriation has  
37 been made to the extent required by RCW 4.92.090; or

38 (b) The claim has been approved for payment.



1 (4) The liability account shall be financed through annual  
2 premiums assessed to state agencies, based on sound actuarial  
3 principles, and shall be for liability coverage in excess of agency-  
4 budgeted self-retention levels.

5 (5) Annual premium levels shall be determined by the risk  
6 manager. An actuarial study shall be conducted to assist in  
7 determining the appropriate level of funding.

8 (6) Disbursements for claims from the liability account shall be  
9 made to the claimant, or to the clerk of the court for judgments,  
10 upon written request to the state treasurer from the risk manager.

11 (7) The director may direct agencies to transfer moneys from  
12 other funds and accounts to the liability account if premiums are  
13 delinquent.

14 (8) The liability account shall not exceed fifty percent of the  
15 actuarial value of the outstanding liability as determined annually  
16 by the office of risk management. If the account exceeds the maximum  
17 amount specified in this section, premiums may be adjusted by the  
18 office of risk management in order to maintain the account balance at  
19 the maximum limits. If, after adjustment of premiums, the account  
20 balance remains above the limits specified, the excess amount shall  
21 be prorated back to the appropriate funds.

22 NEW SECTION. **Sec. 9.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 10.** This act applies to all claims that have  
27 not been reduced to final judgment after all appeals on the effective  
28 date of this act.

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