

Senate Bill 305

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon Tort Claims Task Force)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows public body to enter into agreement with agent that provides that agent waives right to indemnification under Oregon Tort Claims Act if agreement also requires that agent have insurance coverage equal to limitations imposed on recoveries under Oregon Tort Claims Act. Provides that if public body has entered into such agreement, liability of public body for claim arising out of agent's tort is reduced to extent that claim is payable from insurance available to agent.

A BILL FOR AN ACT

1
2 Relating to Oregon Tort Claims Act; amending ORS 30.285.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 30.285 is amended to read:

5 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any
6 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-
7 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the
8 performance of duty.

9 (2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office
10 or willful or wanton neglect of duty.

11 (3) If any civil action, suit or proceeding is brought against any state officer, employee or agent
12 which on its face falls within the provisions of subsection (1) of this section, or which the state of-
13 ficer, employee or agent asserts to be based in fact upon an alleged act or omission in the per-
14 formance of duty, the state officer, employee or agent may, after consulting with the Oregon
15 Department of Administrative Services file a written request for counsel with the Attorney General.
16 The Attorney General shall thereupon appear and defend the officer, employee or agent unless after
17 investigation the Attorney General finds that the claim or demand does not arise out of an alleged
18 act or omission occurring in the performance of duty, or that the act or omission complained of
19 amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney
20 General shall reject defense of the claim.

21 (4) Any officer, employee or agent of the state against whom a claim within the scope of this
22 section is made shall cooperate fully with the Attorney General and the department in the defense
23 of such claim. If the Attorney General after consulting with the department determines that such
24 officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the
25 claim, the Attorney General may at any time reject the defense of the claim.

26 (5) If the Attorney General rejects defense of a claim under [*subsection (3) of*] this section [*or*
27 *this subsection*], no public funds shall be paid in settlement of said claim or in payment of any
28 judgment against such officer, employee or agent. Such action by the Attorney General shall not

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 prejudice the right of the officer, employee or agent to assert and establish an appropriate pro-
2 ceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the
3 performance of duty, or that the act or omission complained of did not amount to malfeasance in
4 office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be
5 indemnified against liability and reasonable costs of defending the claim, cost of such
6 indemnification to be a charge against the Insurance Fund established by ORS 278.425.

7 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of
8 liability of any public officer, agent or employee under ORS 30.270, or obviate the necessity of
9 compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of any
10 other public officer, agent or employee on any claim arising out of the same accident or occurrence.

11 **(7) A public body may enter into an agreement with an agent that provides that the agent**
12 **waives the right to indemnification under this section if the agreement also requires that the**
13 **agent have insurance coverage equal to the limitations imposed on recoveries for the public**
14 **body under ORS 30.260 to 30.300. If a public body has entered into an agreement under this**
15 **subsection with an agent, the liability of the public body for a claim arising out of a tort of**
16 **the agent is reduced to the extent that the claim is payable from insurance available to the**
17 **agent.**

18 **(8) If a person who claims a right to indemnification under this section assigns or oth-**
19 **erwise transfers the indemnification claim to another person:**

20 **(a) The public body against which the indemnification claim is made may require that all**
21 **issues relating to liability and amount of damages in the underlying tort claim be decided**
22 **before entry of a judgment on the indemnification claim; and**

23 **(b) The public body against which the indemnification claim is made is not bound by any**
24 **admission of liability by the assignee of the indemnification claim, or by any agreement as**
25 **to the amount of damages entered into between the assignee and assignor of the**
26 **indemnification claim.**

27 [(7)] **(9) As used in this section, "state officer, employee or agent" includes district attorneys**
28 **and deputy district attorneys, special prosecutors and law clerks of the office of district attorney**
29 **who act in a prosecutorial capacity, but does not include any other employee of the office of district**
30 **attorney or any employee of the justice or circuit courts whose salary is paid wholly or in part by**
31 **the county.**

32