

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	5 - 0 - 0
Yeas:	Bonamici, Dingfelder, Kruse, Whitsett, Prozanski
Nays:	0
Exc.:	0
Prepared By:	Cheyenne Ross, Counsel
Meeting Dates:	3/3, 3/31

WHAT THE MEASURE DOES: Allows action based on tort to be brought against officer, employee or agent of public body if complaint alleges that plaintiff entitled to damages in excess of Oregon Tort Claims Act (OTCA) limits. Clarifies that total combined recovery is limited to single occurrence.

ISSUES DISCUSSED:

- Measure continues to make OTCA consistent with holding in *Clarke* case
- Measure does not alter public body's duty to indemnify, nor the amount of recovery available, nor the right of appeal direct to Supreme Court on constitutionality of cap
- Amendment clarifies situations involving multiple defendants and makes no substantive change

EFFECT OF COMMITTEE AMENDMENT: Clarifies that total combined recovery is limited to a single occurrence.

BACKGROUND: At common law, a person had the right to sue another individual in tort, but no right to sue a public entity. The Oregon Tort Claims Act (OTCA) provides a limited statutory right of recovery against public entities, and indemnification rights for its officers, employees and agents. Functionally, this means that when a lawsuit is brought naming individual employees of a public body, the public body is substituted as the sole defendant and recovery against the public body is capped.

In 2007, recovery against public entities was capped at \$200,000. A substitution occurred as described above in the case of *Clarke v. OHSU*, 343 Or. 581 (2007), which pleaded combined damages in excess of \$15 million. The Oregon Supreme Court held that the plaintiff was denied an adequate remedy as required by the Remedies Clause of the Oregon Constitution, *as to the individual who caused the harm*, because not only was the amount of the remedy inadequate, given the facts of that case, but under the OTCA the plaintiff could only proceed against the public entity. A claim against a public body is entirely a creature of statute, and may therefore be capped by the legislature, but a tort claim against an individual that was available at common law may not. When the limited recovery against the public body is not adequate, the claim against the individual cannot be entirely foreclosed by statute.

The legislature responded to the Court's concerns about the inadequate amount of recovery, with Senate Bill 311 in 2009. Tort recovery limits were raised to \$1.6 million per individual and \$3.2 million per occurrence, and local government recovery limits were raised to \$533,300 per individual and \$1,066,700 per occurrence.

Senate Bill 397 A is the legislature's further response to the Court's concern about the elimination of the cause of action against the individual. It allows a plaintiff to proceed against a named individual or individuals when the amount of damages alleged exceeds the cap, without relieving the public body of its obligation to indemnify.

4/6/2011 8:48:00 AM

This summary has not been adopted or officially endorsed by action of the committee.