

Requested by Representative MORGAN

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 295**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert  
2 “30.285.”

3 On page 18, after line 22, insert:  
4

5 **“OREGON TORT CLAIMS ACT**

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7 **“SECTION 9. ORS 30.285 is amended to read:**

8 “30.285. (1) The governing body of any public body shall defend, save  
9 harmless and indemnify any of its officers, employees and agents, whether  
10 elective or appointive, against any tort claim or demand, whether groundless  
11 or otherwise, arising out of an alleged act or omission occurring in the per-  
12 formance of duty.

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

15 “(3) If any civil action, suit or proceeding is brought against any state  
16 officer, employee or agent which on its face falls within the provisions of  
17 subsection (1) of this section, or which the state officer, employee or agent  
18 asserts to be based in fact upon an alleged act or omission in the perform-  
19 ance of duty, the state officer, employee or agent may, after consulting with  
20 the Oregon Department of Administrative Services file a written request for  
21 counsel with the Attorney General. The Attorney General shall thereupon

1 appear and defend the officer, employee or agent unless after investigation  
2 the Attorney General finds that the claim or demand does not arise out of  
3 an alleged act or omission occurring in the performance of duty, or that the  
4 act or omission complained of amounted to malfeasance in office or willful  
5 or wanton neglect of duty, in which case the Attorney General shall reject  
6 defense of the claim.

7 “(4) Any officer, employee or agent of the state against whom a claim  
8 within the scope of this section is made shall cooperate fully with the At-  
9 torney General and the department in the defense of such claim. If the At-  
10 torney General after consulting with the department determines that such  
11 officer, employee or agent has not so cooperated or has otherwise acted to  
12 prejudice defense of the claim, the Attorney General may at any time reject  
13 the defense of the claim.

14 “(5) If the Attorney General rejects defense of a claim under subsection  
15 (3) of this section or this subsection, no public funds shall be paid in settle-  
16 ment of said claim or in payment of any judgment against such officer, em-  
17 ployee or agent. Such action by the Attorney General shall not prejudice the  
18 right of the officer, employee or agent to assert and establish an appropriate  
19 proceedings that the claim or demand in fact arose out of an alleged act or  
20 omission occurring in the performance of duty, or that the act or omission  
21 complained of did not amount to malfeasance in office or willful or wanton  
22 neglect of duty, in which case the officer, employee or agent shall be  
23 indemnified against liability and reasonable costs of defending the claim,  
24 cost of such indemnification to be a charge against the Insurance Fund es-  
25 tablished by ORS 278.425.

26 “(6) Nothing in subsection (3), (4) or (5) of this section shall be deemed  
27 to increase the limits of liability of any public officer, agent or employee  
28 under ORS 30.260 to 30.300, or obviate the necessity of compliance with ORS  
29 30.275 by any claimant, nor to affect the liability of the state itself or of any  
30 other public officer, agent or employee on any claim arising out of the same

1 accident or occurrence.

2 “(7) As used in this section, ‘state officer, employee or agent’ includes:

3 “(a) District attorneys and deputy district attorneys, special prosecutors  
4 and law clerks of the office of district attorney who act in a prosecutorial  
5 capacity, but does not include any other employee of the office of district  
6 attorney or any employee of the justice or circuit courts whose salary is paid  
7 wholly or in part by the county.

8 “(b) **Any individual or public or private entity that contracts with**  
9 **a public body to provide community restoration services pursuant to**  
10 **ORS 161.365 or 161.370 for the purposes of restoring fitness to**  
11 **proceed.”.**

12 In line 26, delete “9” and insert “10”.

13 In line 42, delete “10” and insert “11”.

14 On page 19, line 20, delete “11” and insert “12”.

15 In line 29, delete “12” and insert “13”.

16 On page 20, line 21, delete “13” and insert “14”.

17 In line 36, delete “14” and insert “15”.

18 In line 42, delete “15” and insert “16”.

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