You may want to consider dealing with that problem also, because once a jury is separated you've obviously got a mistrial, if you don't get all 12 of them back the next day in the absence of a stipulation. Judge BEATTY said he'd like perhaps a week before final action is taken, if that is appropriate, so that he can poll the Executive Committee to see what their reaction it. WYERS said he saw no problem with that.

259 Senator FADELEY asked if it will cost or save money, in the very infrequent case where the jury would be sequestered in a hotel.

261 JUDGE BEATTY replied that in no case would you ever, as a matter of discretion, send the jury home which was being sequestered. The only time we ever spend the county's money on sequestering a jury is usually in a capital case or something in which the publicity is so great that it seems to be the only appropriate way to handle it. I have never sequestered a jury in 10 years on the bench.

272 Senator BROWN said that Astoria is now sequestered if they have not reached a decision by 10:00 or midnight - then how did Judge Beatty handle that?

274 JUDGE BEATTY said that, if you made the decision to let the jury run until they either hang or reach a verdict, if they have been out all afternoon and all evening, then at that point you declare a mistrial if they haven't reached a verdict. Depending on how long you think you can keep all the jurors alive - if you have someone 75 years old, its just inapporpriate to keep someone up for 18 hours or something like that.

283 Senator WYERS thanked Judge Beatty and said the Committee would expect to hear from him before it has a work session. Asked if there were any further witnesses on SB 85. Since none came forward, he closed the hearing and went on to SB 86. WYERS said there was a little housekeeping subject to bring up very briefly. One of the people in the room who knew quite a bit about scheduling of committees, etc, set up the dinner for the Board of Bar Governors for next Wednesday night, which was our regular scheduled evening meeting, and the suggestion that he wanted to make was that we have our regular evening meeting be at an irregular time this coming week, which is Monday night, at 5:00 p.m. And we would have to be a subcommittee for the first half hour because one member overlaps on another committee for a half hour, but we can go into full committee meeting at 5:30 and with the agenda we're planning which are some bills carried over from this week, our Wednesday night hearing this week and some Mental Health bills, we felt the Committee could finish up by 7:00 p.m. or so. Then for those members who come to that Monday night meeting, they would then be able to go to the Wednesday night semi annual Board of Bar Governors legislator's dinner, out at the Primerib Restaurant. He said we would start as a subcommittee at 5:00 and as full committee at 5:30 p.m. And while we are calling roll today, Senator Smith is excused-he had to be in Portland this afternoon, I forgot to mention earlier.

SENATE BILL 86 - Relating to Public Body Tort Liability.

322 Chr. Wyers opened the hearing on SB 86, and called the first witness, but first Senator KULONGOSKI said that the City of Eugene had a representative here but they were unaware that the bill would be up and they had no prepared testimony and they just wanted the record to show that they were going to appear in committee when this bill is up and give some comments at that time.

339 WYERS said that this probably won't be the only hearing the committee will have on this bill.

Dan O'Leary, a lawyer in private practice in Portland, appearing on behalf of the Oregon State Bar at whose request this bill was introduced. He supplied the committee with prepared testimony. SEE EXHIBIT A.

349 O'LEARY said the main thrust of SB 86 was to repeal ORS 30.275, which is the current provision of the Oregon Tort Claims Law which provides that any person claiming damages against public body for injury or death should be required to give a notice in writing within 180 days from the date of the occurrence. So it is the proposal supported by the Bar that that notice requirement be appealed. (SEE WRITTEN TESTIMONY, EXHIBIT A).

Tape 3A

004 KULONGOSKI asked Mr. O'Leary if he could go back one step and tell him the history of 30.275 as to when it was enacted, what was the public policy behind limiting public bodies to the six-month period and what has changed since then? O'LEARY said if he remembered correctly, this statute was probably first passed in 1973 or 1975. It could have been before that, he wasn't certain before that, at least within the time that he had been practicing law, there was a time when there was no tort claims statute in Oregon. He had always felt people who have had potential claims against public bodies were better off in many respects than they have been since the passage of the tort claim act because of these types of things because the limitation, because of discretionary act acceptance, and so forth. But the stated reason and the only reason that he had ever seen put forth is that somehow the public body needs earlier notice that a claim is going to be made against them than does someone else who might have been involved in the same time of occurrence, but is not a public body and that seems to be the argument of public necessity that is made to the courts, who are asked to pass upon the constitutionality of this notice requirement. He said it was a fairly traditional sort of provision and there are a number of states that have it. He didn't know how many. He also said there were probably some states that have repealed it by other means than having it declared unconstitutional. The only thing he knew as to why it was included in the first place was the claim that somehow they needed more advance notice. He stated it may have been dated back to a time when most public bodies were not insured and had to have that as part of the budgeting process, or something like that. He had never heard that argument before.

027 Senator BROWN inquired as to the requirement under the Federal Court Claims Act. O'LEARY said that he currently had a couple of cases where he was trying to figure that out. There is a requirement for notice but as near as he could tell, it is not within a 180 days or any other particular time. In fact you just have to give it before the statute runs but it extends the statute, if you give it on the last day of the two-year period, as he understood it.

BROWN asked if the agency acts on it. O'LEARY said yes, so it is not a 180 day requirement. It can be the same as the statute of limitations, according to Mr. McCune. The final thing and perhaps one of the best arguments for repealing it is that he was starting to see and be believed others were starting to see abuses in connection with this notice and cited a case currently in his office of a lady that was involved riding on a public bus that was involved in an accident and she was injured. He said within 3 or 4 days after the accident she received in the mail a questionnaire of several pages in length asking her all about the accident, and about herself, and about her injury and supplying a medical report that she was to take to her doctor and have filled out and even supplied a return self-addressed envelope that did not indicate it should be mailed by certified mail, return receipt requested. She had supplied all that information within days and certainly within a month after the accident. She had continued to deal with the representative of the public body throughout a period of months following that she had a varying course, she was off work for a while, back to work, she was better and worse, and then about 7 months after the accident she got a letter from the representative of the public agency telling her that the time for presenting her claim had passed under 30.275 and they washed their hands of the entire affair. He said that there are more then one cases of that kind, unfortunately, and this is a very undesirable sort of activity that is being fostered by this particular statute, so for all those reasons we would support passage of SB 86.

059 GARDNER said he supposed on the otherside of the issue someone is going to argue that it will increase our rates & asked if anyone did an analysis on the Bar side about what effect if any it would have on the rates.

062 O'LEARY said no. The only thing he'd been involved in was a number of hearings that discussed the increasing of insurance rates of the last 10 or 15 years. The only thing he would suggest on that is that you should require proof, not rhetoric and statements, but he would ascert that the repeal of this notice requirement will not have any affect on insurance rates whatsoever. No discernible or provable affect.

069 FADELEY stated that his question was sort of a historical one, but before the Tort Claims Act what was the period of time if a person was going to be filing a claim against a municipality of proprietary activity rather than sovereign immunity. O'LEARY said there may be other people here that can speak to this better than he, but as he recalled, before the passage of the Tort Claims Act, you could not file a claim against the public body itself, you had to sue the responsible individual, whether it was the policeman who was driving the car that ran the red light or the clerk that didn't file the papers, or whatever it might have been. You did not sue Multnomah

County, you sued Si Cohen, the Clerk of Multnomah County, or whoever it might be. It was the same statute of limitations for those people as it was for similar occurrences committed by someone in a private capacity.

Senator FADELEY said that Multnomah County would have carried the insurance to cover, in your instance, Si Cohen or the head of the road department. O'LEARY said there used to be discussions if you prevailed in a case against a public employe, there used to be discussions of after the judgment whether the public body would appropriate the money to pay the judgment, and maybe there are other people here who know more about that. He knew a number of public bodies even though they were immune that carried liability insurance at that time.

095 Luther Jensen from the Department of Justice, appearing here in opposition to the Bill and thought these observations might be of help to the committee. He said the present provisions for notice as to its form, as to the person who receives it, and as to the time in which it shall be given, have been discussed by appellate decisions in the state, which have held that it is a valid and appropriate exercise of governmental power for the government to be promptly and efficiently advised as to the existance of a potential claim, this is particularly important in two aspects, not first of all and it is not necessarily the most important, is to be able to investigate that potential claim before the information becomes stale. When you are talking about the case between two private individuals, they usually have personal knowledge. In talking about a claim against the state, for example, we have personnel turnover, people pass on to other affairs, correspondence documents, photographs and other investigative material have a tendency to become lost unless we can get on it right away. Even more important, is remedial action. In connection with claims themselves, it's important that the information be received by the Department of Justice. It isn't going to do us an awful lot of good for Investigation if your claim for notice is that you managed to tell one of the groundskeepers at the State Capitol about it, and therefore the State has notice. We have to make sure it gets to the proper person.

JENSEN said the statute of course also provides for limitation of action approximately 2 years, exactly 2 years that is, to bring your action and this also is important in connection with property claims. We are self-insured and the various agencies are assessed for the exposure, we're paying as we go. The notices coming in give us a vague idea and we have to have at least some idea of what our potential exposures are. He works with Trial Division in the defense of court claim cases and has done so for over approximately 4 years. He said he personally has not had a single case in which they had been involved in raising a failure to have given notice within the 180 days in proper form. There have been some - they have been small cases, he had not had any experience with them himself. Now that is in actual defense of litigation, so what he was saying was from his own experience it would appear that almost all claimants represented by counsel or otherwise who have anything that they consider a serious claim have, in fact, submitted them within the 180 day notice. He said he had no way of knowing of those people who went to a lawyer and the lawyer said they were too late.

151 KULONGOSKI asked if his position is the Department of Justice's position. LUTHER JENSEN said yes, he had discussed this with John McCulloch, who is the Chief Trial Counsel and could only presume that he has also discussed it with the Attorney General, but had no personal knowledge.

KULONGOSKI asked if he was appearing on behalf of the Attorney General. JENSEN answered yes he was. KULONGOSKI said he did not understand the distiction between an individual and a corporation, and an individual and a public body, as to his need for two reasons, one was ability to investigate and secondly, was remedial action. He didn't understand how Jensen distinguished that from a corporation. JENSEN said he didn't, but equated the State with say General Motors or any other large corporation.

167 KULONGOSKI said as far as Mr. O'Leary was saying,in essence, there is no other reason why the state should be treated any differently than one of these large corportations should.

171 JENSEN said he supposed one of the differences is, and as a matter of philosophy, if you expend the state's liability waiving sovereign immunity, there is a certain degree, he felt, of control, fiscal control. It would seem to him, and the court has said it's a legitimate governmental interest, you want to be sure that you hear about these things promptly, that you are fully informed, that they go to the correct State official and that you are not faced with stale claims. If that is a worthwhile governmental purpose then we would do it.

KULONGOSKI said he was just trying to figure out the public policy question - he said that 's what it is more than anything.

JENSEN said he only wanted to give some actual information and that he didn't form policy. He had one request, asked by his bosses, the matter of this bill coming on for debate. He said he came prior to any time that we had within reasonableness to give you any idea what financial matters might be involved, and could we submit a letter at a later time. WYERS said yes, and that the City of Eugene is apparently wanting to have a little more time to be able to present testimony.

200 FADELEY said as he understood it Junction City also wanted time to present testimony. WYERS said for the slower parts of the state we will probably have another hearing and you would be welcome to come back then or send a letter.

204 GARDNER asked if his statement will attempt to assess the financial impact on the state for passage of this bill.

JENSEN said yes. GARDNER asked regarding the state and local municipalities. JENSEN said right and for the state is the only thing I can say. WYERS asked if he would crank in your testimony that to your knowledge there are very few claims that are getting dismissed. JENSEN said insofar as state experience is concerned. Apparently, if it is serious enough to suit the state, they are serious enough to look at the case as to get the claim in on time. But the ones that we don't hear about he couldn't say. Maybe there are a 100,000 of them where they have been sleeping on their claims. If so and they wanted to sleep for 6 months, that's obviously quite a savings. KULONGOSKI said he's talking about anywhere from zero to 100% of the claims.

215 BROWN said his concern was the case that Mr. O'Leary testified about where the woman did effect and supplied good and sufficient notice but she didn't fill the technical requirements, so there was plenty of spirit but apparently no letter and was out. JENSEN replied, well, actually that is, I think, something the committee might think about. Insofar as that particular case is concerned, no one that he knew of had gone to court saying "well there is an obvious estoppel here." Here is a waiver of the statutory requirement. He said they did have a recent case which involved a simple situation of an attorney knowing full well, sending a letter, failing to comply with the statute, and the Appellate Court saying "you can read the bloody statute, your notice is no good." And for that attorney there probably was no excuse for the blatant disregard of the statute. But that concept of saying, for example, that the certified mail be sent to the AG or case of the country or city or someone else, that that becomes pertinent only if the defense is raised that you didn't receive any notice. If the state says, "Hey, we didn't ever hear from you." Then you had better have your certified letter instead of saying "well, here is a copy of something I wrote, of course I can't prove you got it." That is perfectly legitimate but that is an entirely different change - that's changing the statute. What is proposed by this bill is to abolish everything because of this one problem.

251 Clayton Patrick, representing the Oregon Trial Lawyers Association. PATRICK said he had a few brief comments to add in addition to Mr. O'Leary's comments. He said the OTLA is officially supporting this bill as well. OTLA has attorneys in its membership from a wide range of different types of practices but a large number of them handle personal injury cases. We have over 1100 members in the State as of this date. And he had heard contrary to what Mr. Jensen was saying, he had heard numerous situations where the cases were lost because the parties failed to consult with an attorney until after the 6 months period, not dealing with the situation which is also arisen relatively often of an attorney failing to send the proper notice with a client that appeared within the 6 months. But he had heard time and time again from our members of situations where they have people come in the office with claims after the 6 month period has arrived, as Mr. O'Leary described, not aware that there is such a short limit when suing a governmental body and that those cases never go beyond that - there is no record of them because the case is never filed because the attorney properly knows

that the interpretation of this statute is that you have to strictly comply with it. The Brown case that Mr. Jensen mentioned at the end says that the statute has to be strictly complied with and the actual notice is not sufficient.

278 GARDNER said that means that the estimate of fiscal impact is going to be unrealistic with a lot of this. PATRICK said he thought it's going to be difficult, to determine what the fiscal impact would be. GARDNER said whatever he comes up with is going to be too low, based on what he was talking about.

PATRICK said it certainly wouldn't. He didn't see any way of including the numbers of cases - the lost cases - where they come to an attorney for the first time after the six-months is run and the attorney properly and correctly says "you don't have a case any longer because you didn't come to me soon enough." And they walk out the door and are never heard from. But Senator Kulongoski brought up his concern about the policy aspects of this whole thing and I think that really should be the primary focus here. The policy aspects of those injured people who simply because they happen to be run into by a State car don't have a case whereas if it had been a private party, they would be able to bring a case if they didn't consult an attorney until after the 6 months had run well within the time of the statute of limitations, which is provided for all other types of defendants. He said as far as the concern Mr. Jensen raised regarding the need of the state to know these cases, to take remedial action, that seems to me that the penalty for failure to notify the state for those purposes is far greater than the offense, if you will, of failing to file a proper report. If someone has an accident in which more than $200 of damages is done to an automobile and they fail to file the proper accident report with the Department of Motor Vehicles, there is some sort of criminal penalty or somekind of administrative penalty for failure to file that report, as I understand but they certainly don't lose their cause of action for all the injuries that may have been caused to them, and I think this is an analogous situation. He said the penalty of taking the case completely away is just simply too harsh, if its just a question of trying to notify the state so that they can keep proper records and take remedial action. And as far as corporations as Senator Kulongoski pointed out, they have the same problem, and they don't get the benefit of these types of notices. Our position is simply that in fairness to the people injured, the statutes of limitations period should be uniform no matter who the defendant is so that the people with proper, rightful claims should have an opportunity to have those claims determined by a court of law the same as people who are injured by a nonstate defendant.

327 WYERS said thank you. George E. Birnie, Tri-County Water Districts Assoc. GEORGE BIRNIE, a lawyer from Portland, representing on this bill the Association of Water Districts in the Tri-County area, Multnomah, Washington and Clackamas Counties, and it is opposed to the elimination of Sec. ORS 30.275. He said he also represented the American Insurance Association, which is a trade association of about 125 companies writing on national basis, all types of casualty and other insurance in the state and throughout the states, and I have alerted this client with respect to this bill and also the client that I'm incurring for this afternoon. None of them have

really come forth with any information that I can submit to this organization and to this committee. I would like to have a little more time within which to prepare it. Certainly the information from the American Insurance Association is to what affect the passage of this bill might have upon the availability of insurance coverage from the insurance industry. WYERS asked if he wouldn't want more than a 180 days though. BIRNIE said he was just asking for some time.

356 WYERS said, as you may have heard, some other people have asked for more time from the Dept. of Justice.

359 Senator BROWN said he would be interested in finding out whether or not any of his insurance company members had duplicated or continued to write insurance in those states where the Supreme Court had declared these statutes apparently unconstitutional on a protection grounds. He asked if his companies had withdrawn in those states.

BIRNIE said there were a lot of different - all kinds of cats and dogs with respect to the liability of a public corporation and its employes. You have to remember, Senator, that before we had this type law, when the days when those who were engaged in a sovereign activity were immune from liability, on the basis the kind could do no wrong, and those who had a proprietary type activity as Senator Fadeley mentioned - who had no immunity- nevertheless the doctrine of responding to a superior did not apply - the only way you could go to the public body itself was to show that those who hired the person - the culprit who was guilty of the tort, was negligent in the engaging in the service of that particular wrongdoer. So we have a different bunch of rules on these, and states vary with respect to their application of those. All I can say is that we can do the best we can do, but I don't think we are going to test our 124 companies. He said they will have a committee that pumps out this information as we get it and as we need it and we do our best to try to get it to this legislative assembly. He said they had experience here, you might remember that our school districts and Multnomah County and others were required to, if they didn't go as self-insurers, were certainly given a lot of consideration because the cost of insurance was prohibitive to protect their court liability exposure.

400 He also said the insurance was drying up. He thought that its perhaps more available now than it was these four or five years ago. But it was a real problem, especially with this Civil Rights liability stuff that was thrown at us.

412 KULONGOSKI said he had a problem with the argument that, in fact, if you change this two years that there may not be availability of insurance, it also makes me think that Mr. Jensen's statistics are very faulty because I'm assuming why the reason why they would say they couldn't get insurance was it was going to increase the number of claims, and in fact that there are a large number of claims out there that aren't getting filed within that 180 day period and that's why the premiums may go up where there is unavilability of insurance, which would support Mr. O'Leary's position somewhat in that there are a lot of people getting trapped into the notice requirement of 180 who have legitimate claims and maybe should be compensated.

BIRNIE said he thought Senator Kulongoski was right. Mr. Birnie offered a suggestion like this - that the public body; if it has knowledge of having committed a tort or possible any type of tort activity which might bring liability against it, itself go out and find out what happened and then send a notice to these people who claim to be injured asking them to make a report within say 180 days. Because this question of staleness of claim is a problem in public bodies, but most of them are going to have some knowledge and they can notify these people that they know are involved in an injury, or death.

KULONGOSKI said that's true, in any claim of staleness argument can be made for any claim. BIRNIE said that's right. KULONGOSKI said he looked upon this as nothing more than a statue of limitations issue. For others you have two years and for public bodies you have six months, and he was just trying to find a coherent public policy as to why we should continue that. The staleness argument, he thought is true with any corporation, it's not incorporated for individuals, and he was just interested in it to see what the statistical information is on it.

BIRNIE said let's look at the labor this legislative assembly gave with respect to modifying the summons, the simple summons. To make sure that the hapless defendant who already has had notice, was told what he had to do. He just couldn't sit by, he had to put this thing in the hands of a lawyer or himself make an appearance, all this stuff is in the summons telling him what he has to do, now is that progress? Is that what we want to do for our citizens? He said he would say that it would be. He thought that there is an element. He didn't agree with the previous witness. He believed that insofar as certainly large public bodies are concerned, that staleness is an item, that notice doesn't get to those who should receive notice of the fact that there might be a possible claim. They have more reason to be protected than does a public corporation.

482 Senator WYERS said that we're going to have to move along. Frank Bales from the Dept. of General Services was the next witness.

Tape 2-B

544 FRANK BALES, Deputy Directior from the Department of General Services (See TESTIMONY EXHIBIT B) In addition to written testimony he offered the following information regarding SB 86. BALES said an interest in this particular bill by General Services, in that they were the administrators of the State Liability Fund which does the underwriting for the state's self-insurance program for court liability actions. He said Mr. O'Leary states the case very clearly early on that the basic issue here is a matter of whether or not there should be a filing deadline for public bodies. That is the policy issue, the repeal of ORS 30.275. Historically, you raised a question earlier, Chp. 627 Oregon Laws 1967 waived a portion of state sovereignty immunity with rather restricting circumstances. Included in that provision was a requirement that claims against public bodies must be filed within 45 days of the date of loss and that the proceedings must commence with one year of the date of loss. The 1969 session amended that to extend the period to 180 days and the filing period two years.

The policy direction of this action was that the claims against public bodies were to be filed, processed and settled as expeditiously and fairly as possible. Apparently the feeling was that claims are allowed to draw out, there is a factor called tailending in insurance industry, that the cost skyrockets as the end of the claim period draws near. Attached for your convenience is a copy of 30.275 and he thought that this was distributed earlier , but the reason why he attached this was that so you could see the specific issues that do face the public body if 30.275 is repealed. He added that in 1975 whey they were doing a revision to the tort claims act when Lee Johnson was at that time A.G., one of the major problems that was stated was that we in Oregon had claims out there in desk drawers and he felt that it was very important that we bring this under control of the A.G. so that if there was, in fact, one place to file state claims. There are 50,000 employes out there. Of course, as we have been discussing, it eliminates the 180 days filing deadline, eliminates the provision that claims we get be filed within one year including instructions for filing death claims, in subsection 2 of 30.275, and it eliminates the requirement that proceedings must commence within two years excluding the 90 day period in the event of incapacity because of minority, incompetency or other in capacity. The result of removing these special requirements would appear to place public tort cases in the same category as all other civil cases. If this is the case such special immunities as statutory limits and other exclusions might also be challenged directly or subjected to an erosion process. We believe that this counters the State's interest and the public policy which has been followed by prior Legislative Assemblies.

582 GARDNER asked how would he cope with this bill if it were passed, would he have to make adjustments to his loss reserves or anything?
BALES said at the present time the responsibility for administering the State Tort Act is shared between the Dept. of Justice and Dept. of General Services. The Dept. of Justice processes all claims, settles all claims, defends all claims; the Dept. of General Services is the underwriting entity. He said quite frankly, we would not know how to approach this at this point. We have just completed a rather significant study of the State Tort Liability program prepared by a private consulting firm and was noted that the State was underfunded to the extent of about \$1-1/2 million in its present reserves, so we really don't know because of the tail-ending effect we have on claim settlements.
GARDNER asked if that phenomenon developed when the time was extended from 45 to 180 days. BALES said no.

582 GARDNER said did anything happen?

584 BALES said no, sir. Prior to 1975, the state was acquiring commercial insurance, In August or September 1975 we went into a self insurance program, so all of these actions occurred prior to that time.

589 KULONGOSKI asked Mr. Bales to tell the public policy that he explained on the tailending of insurance because that seemed to be the issue that Mr. Bales believed that warrants a public body having a six-month special limitation.

593 BALES said he couldn't give a direct relationship, but said he'd give an example of what happens in a tailending situation. In March 1980, we, had, as a part of the study mentioned a while ago, the accumulated losses of one state agency from the start of the self-insurance program to March 1980, was $850,000. He said they did a hand check, if you will, of the losses through December 1980, and they increased to over 1-1/2 million dollars. In other words, the claims mature through an aging process. The claims that were filed in August 1975 probably wouldn't be fully matured until August 1981 or 82, if we put another two-year spread between that time, we have another two years of inflation, another two years of aging that has to be compensated for.

Senator KULONGOSKI asked him how they handled that in the budgetary process? BALES said that is included in the Dept. of General Services budget as two ways: One, is we include in our budget the transfer of funds from our budget to the Dept. of Justice who handle claims, etc., second, within the general overall state budget process, state agencies are advised to budget certain amounts of monies based upon their loss experience rating up to a certain length of time. Last February we advised the state agencies that they should budget for 1981-83.

KULONGOSKI asked how would you handle it since the statute of limitations were changed two years and were treated like everyone else, how would you come into the Legislature and be able to put that into your budget? BALES said he guessed mechanically. KULONGOSKI said he was trying to get a hold of what the difference is as far as dollars go. BALES said one of our objects would be to enhance our underwriting process during the next two years. He would expect that we would probably obtain some underwriting assistance to give us a better handle on it.

KULONGOSKI said it appears the tort claim notice has got more and more complicated, everytime the Legislature changes it, in other words, it has got to a point that a layman, it appears today, could never meet the statutory requirement unless he had the statute there and actually read it and then understood it because when it says, "claims against any public body or officer"...should be presented to a person upon whom process could be served upon a public body in accordance with ORCP 7 D. (3)(d). That unless an individual consults an attorney you're never going to make the tort claims, are you?

BALES said he didn't know what that meant - the ORCP.

643 WYERS said you don't know what that means? BALES said ORPC. KULONGOSKI said "Oregon Rules and Civil Procedures." That was one of the arguments, he thought Mr. O'Leary was talking about. WYERS said these figures you gave, were they amounts paid out? BALES said the $850,000? WYERS said yes. BALES said this is paid out reserves and actual costs relating to the claims that have been filed relating to that one agency. WYERS asked what about the amounts actually paid out?

648 BALES said for the period from August 1975 through March 1980, they had paid out some $4-1/2 million in claims. But again, bear in mind, that that compares to the $800,000 instance he used as an example in this last six months period. That $4-1/2 million may have matured to something substantially more than that.

659 FADELEY asked if he had any comparison as to what it might have cost those covered by the Act or insurance at the same time. Did they just sit and say to themselves "how much are we saving by having our own insurance?", so to speak, compared to what the premiums might have been?

666 BALES said the state entered the self-insurance because the commercial insurance was not available. In 1975 when we obtained quotes for the commercial insurance, it was well over 2-1/2 to 3 times higher than we paid the prior year, but we were cancelled out from the prior year, so whether this was a good business decision in 1981 we are not absolutely sure at this point.

674 WYERS said thank you very much and called witness Bill Blair.

678 BILL BLAIR, assistant to the attorney for the City of Salem, speaking here both for the city and on behalf of the League of Oregon Cities, and he probably should explain that about half of his time for the City of Salem is spent in handling, defending and trying tort claims that are brought against the city. The City of Salem is and has been since 1977 effectively self-insured. He said they now have a policy that has has $100,000 deductible, so for all intents and purposes, we are self-insured. He said he was here to express what he thought is rather extreme concern of the City and the League about SB 86. It is extremely important to him because it is going to have a very substantial negative impact on self-insured entities: cities, counties, districts, and the State of Oregon. In 1977 he appeared before this committee and House Judiciary and on behalf of the League and the City in support of amendments to Tort Claims Act and the Insurance Code, and the basis of our concern at that time which the Legislature was kind enough to recognize, was the cost to the taxpayer of tort liability under the Act as it existed then. We were at that time in a very damaging insurance market. Municipal tort liability insurance was impossible to obtain at any price for many cities. Other cities couldn't get certain very

critical coverages, like false arrest, and everyone that could get coverage was paying very high premiums on a geometrically escalating progression. So faced with this very tight market we had no choice but to explore self-insurance and the City of Salem hired a consultant to study the ramifications of self-insurance; the League of Oregon Cities hired a similar study of the possibility of the State-wide rule, and several other cities and counties also explored possibilities.

BLAIR said one of the key factors that all of us independently arrived at through our studies was the necessity for clarifying the provision of the Tort Claims Act which related to immunities, notice of claims, limits of liability and the payment of judgments. As has been mentioned before, the original Tort Claims Act which waived sovereign immunity was passed in 1967. Prior to that time the State and cities were generally immune for anything that they did in a governmental capacity, they were not immune, they were like anybody else for things that they did in a corporate capacity. The distinction was somewhat arcane and courts wrestled with it for many years. It was largely a distinction without a difference and based upon some rather stinging criticism of the law at that time that was contained in some Supreme Court decisions, and Legislature in 1967 waived sovereign immunity and abolished the distinction between governmental and corporate acts. They said to cities and State "you are liable for your acts up to certain limits and under certain conditions". So although it was a waiver for sovereign immunity it was only a partial waiver because certain conditions were placed on that waiver. One of those conditions was contained in ORS 30.275 which then provided for a 45-day notice of claims, the governmental unit only was named as somebody that had to be given to a notice of, and a notice had to be given to the governing body.

720 BLAIR said in 1969 the notice requirement changed to 180 days notice, had to be given to the A.G. or, as it says now, the person on whom summons could be served in the case of cities, counties and districts. It was in fact more complicated at that time because there was only one individual in, for example, the whole City of Salem upon whom notice could be served, and that was the City Recorder. And so if someone sent a notice to the mayor or to the city counsel or to the city manager or to the city attorney it did not comply with the statute as it then existed. It took again a reference back to other statutes to find out who it was that you could serve. And in those days they had many lawyers that were calling and trying to find out who can I serve my notice of claim on, or who can I serve summons on. WYERS asked him, what did you tell them?

BLAIR said send it to us. During 1969 and 1977 there were court decisions that waffled back and forth between a very strict adherence to the notice requirement and then a sort of relation of the statute saying that substantial compliance was all that was necessary. So in 1977 we proposed amendments to ORS 30.275, among other statutes in Tort Claims Act, we did, he thought, four very important things: Number one was to add a requirement that notice be given of claims against local officers and employes as well as claims against the city, county or state. In 1975 there was legislation that required local government to indemnify and defend it's employes and so we felt that it was fair that if we had to indemnify and defend our employes that notice be given claims against them as well. Number two, the amendments required that the notice name the claimant and his/her attorney, if there was one. Number three, it required the notice to go in writing by certified mail or personal service, and Number Four, it stated very clearly the legislative intent to require that a notice requirement be strictly observed. Other than housekeeping amendments in 1979, the statute is basically in the same form as it was in 1977. There is one aspect of SB 86 that has not yet been discussed and he thought it was as important as the 180 day notice of claim report. Also contained in ORS 30.275 is the statute of limitations for claims against public bodies, which under ORS 30.275 is two years. A goodly number of other states have similar limitations and notice requirements - our present statute is by no means uncommon. The repeal of ORS 30.275 would have the effect of keeping a two-year statute of limitations for personal injury claims, because you go back to the general statute 12.110, he thought. But it would give a six-year statute of limitations on property damage claims, which is significant.

750 WYERS inquiring if he was saying the bill SB 86 would do that. BLAIR said yes, yes. It would also give full three years for a wrongful death. WYERS asked if he meant instead of the 2 years under the present law? BLAIR said yes.

752 KULONGOSKI said when you are talking about self-insured, if, in fact, you have a private corporation and an individual sues them, they recover a judgment, corporation basically passes that cost on through its product to the broad spectrum of people. And what he understood Mr. Blair as saying is that because of public entities, because they are basically paying claims out of tax dollars. That is, actually the policy, it should be the policy of this state to limit that exposure because if we allow them to be treated as all other tort claims, we are going to have greater liability on the part of the public entity, which means in the end result you're going to increase tax dollars to pay for those claims. Especially among those who are self-insured. And what we are basically getting down to is if we get hurt by a private corporation we say that's worth more to you than it is if you get hurt by a public entity. But with the policy reason behind it, is that you are paying for the claims out of tax dollars.

765 BLAIR said with a slight amendment to that rationale. As far as the limits of liability are concerned, what it affects is the process and the mechanism by which government can respond with tax dollars to a claim. KULONGOSKI inquired - and we want to limit that process? BLAIR said he thought there is that valid distinction between the private corporation and the public body.

KULONGOSKI asked if that's basically the fundamental distinction that we draw between public entity and private corporations as far as that goes?

BLAIR said that in as well as the fact that a private corporation is in business to do something that it has control over. It's manufacturing cars, it can decide I'm not going to manufacture cars anymore, we're going to manufacture trucks. The public body has no choice, it's got to provide consumer service, police protection, fire department. And these are kind of very high risk and largely uncontrollable type operations. Which makes the remedial action idea that Mr. Jensen discussed very important and much more important than it is for the telephone company or manufacturing companies, something like that. Mr. Blair gave some examples out of Salem's experience because they've been in self-insurance since '77. He said well over 80% of their claims involve property damage. And of course SB 86 would have the effect of extending the statute of limitations from 2 to 6 years for most property damage claims. There is 12.135 that talks about property damage claims arising out of improvements to real property and that is a 2 year statute of limitations, but generally speaking, it would be 6 years. Also, about 90%, probably more than 90% of our claims are adjusted and they're settled within 6 months. The remainder of those claims are fully investigated and the information for their defense is gathered within that period of time. In other words, the key to our self-insurance program is quick reaction and response to try first to get the claims settled equitably and if they can't get settled equitably, get what we need to defend the case in court. If we don't know that a personal injury claim is going to be brought for as much as 2 years or property damage claims for as long as 6 years, we can't react quickly. Employes turn over rather highly, they lose memories after a period of time, reports and records are difficult to locate, physical evidence long since vanished.

875 BLAIR said the spectre of thousands unmade claims lying around in a pool out there has sort of been raised, and in the 3 years that we've been self-insured we have processed about 100 claims a year on an average. Our process requires me to personally evaluate every claim that is going to be denied on the basis of 180 day notice. In excess of 300 claims he had written denial letters on less than 3%.

WYERS said well now which way do you want it, do you want it that you're not denying hardly any claims on the 180 days or do you want it that there are a lot of them out there that will come pouring in?

BLAIR said he didn't think there are a lot of them out there that will be pouring in and the ones that are out that are pouring in, it's not a frequency problem, it's a severity problem. It's been his experience that the longer a claim lays around the more the claimant is motivated by greed rather than need. If you can talk to that claimant right away, as soon as the incident happens, and get the adjuster out to work with him, find out the damage, get a fair compensation negotiated and agreed upon, both sides will be happy. The longer it lays around the higher the amount of that claimant's desire is going to be. The ones laying out there are
898 going to be high and they are going to be difficult to respond to, and that's the problem.

907 WYERS said he guessed by its nature that kind of data isn't available to either prove or disprove what you're saying unless you could do a bar graph on claims that come in within the 180 days.

914 FADELEY asked why he thought that those who wait longer are motivated by greed than by need. He said in his experiences, it seemed just the reverse of Blair's analogy.

921 BLAIR referred to the case mentioned about the person who fell on a bus and said speaking as defense attorney for a public body, he would have to say that was rather ill-advised response to that claim - to deny it on the basis of the 180 day notice. In one case a claimant came in and orally informed us that he had a claim. We investigated it, he was uncooperative and finally obtained an attorney, still no notice of claim was filed. A law suit was finally filed but after the 180 days and finally on the day of the trial the attorney's attention was directed to the case and it was settled for less than he thought it was worth, more than he thought it was worth and it was probably a fair settlement. But the technical defense of the 180 day notice he didn't think was appropriate to press in that case, we didn't carry through with it. And in that case, the longer that individual sat and thought about his claim, even though the doctors were not convinced that there was anything particular wrong with him, the more aggravated his injuries became in his mind and the amount that we could have settled for increased geometrically. He said in closing that he learned of this bill only yesterday, and on behalf of the League and the City, he would concur in the suggestions that have been made of continuing these proceedings until we have a chance to more thoroughly respond. He mentioned one other aspect, and that is that the committee should probably be aware of and that is SB 79.

Tape 3-B

513 WYERS said it is next on our agenda. If you stay, you are welcome to testify. BLAIR said he'd simply mention that the effect of that bill on this, particularly for property damage for example, would be to let interest run for 6 years plus however long it takes to litigate the claim. If the claimant waited around for the full statute of limitations before filing he would be filing with the committee a cleaned up version of this testimony as well as copies of the two 1980 cases that he thought testified the amendments.

FADELEY said it seemed his last point suggested the possibility that you use the notice of claims simply for an interest starting date on the judgment.

531 LESTER RAWLS, Administrator of the Professional Liability Fund for the Oregon State Bar. SEE WRITTEN TESTIMONY EXHIBIT C. By way of background as to the information he intends to impart to the committee in respect to SB 86, he said that he spent about 30 years connected with the insurance industry. He was in it as an adjuster, as a special agent,

as a regional manager, as a defense lawyer, insurance commissioner and now with the Professional Liability Fund. He said he was particularly interested as a individual and also probably honestly with respect to what's happening with the 180 day notice with certified mail. All the preceding testimony meritorious as it may sound, really boils down to a case of settlement by ambush in the last few years by the insurance industry and the self-insured political subdivisions. The history of the law as one pointed out was to get notice of a potentially dangerous instrumentality. And he said he supposed in the public interest that has some validity. It also was to say if testimony was that they would not be blindsighted, the political subdivision at the end of the period of time to come in and have a lawsuit filed on them the last day and no opportunity to investigate, etc. But what's happened to that now is the insurance industry, the adjusters and the political subdivisions who are self-insured, who hire adjusters, have turned that around and are ambushing the public. For instance, one testimony by the Attorney General was that they didn't have any notice of this being used. Let me give you a quick rundown of some facts. (SEE EXHIBIT C for cases discussed).

570 WYERS asked if these cases were something he partly gathered through his present job? RAWLS said yes, that's right. He added that these are not necessarily claims, facts that have come to our knowledge because of this particular law. The Brown case happens to be the case we were involved in which the attorney did everything according to the statute except that when he gave the letter to the secretary and said "send this by certified mail", she merely sent it by regular mail. They had been negotiating, the other side knew all about it and so forth, and of course they waited until the 181st day and then said "aha, sorry fella, but you got it here by regular mail, not be certified mail." Now there used to be the rule of substantial compliance but the court of appeals did not follow that but said the Supreme Court has accepted jurisdiction of that case and will hear it in the near future.

588 GARDNER asked if that case presented the issue of substantial compliance with the notice.

590 RAWLS said what bothers him about this whole thing and he spoke of a Filipino woman who was injured by Tri-Met. She was advised to come to the Tri-Met offices. She came with an interpreter and she filled out the forms presented to her by Tri-Met. They told her that she need not worry about anything, that they would take care of everything and, in fact, did repair her automobile, and then paid some of her medical bills. Constantly assuring her that everything was alright, and so forth. And then on the 181st day the adjuster said "you didn't give us notice by certified mail and therefore you have no claim". That case did go to court, a summary judgment was filed against it because of the lack of certified mail and the court held that that was outrageous and that case went the opposite of the Brown case and is going up on appeal probably on that basis. The court just felt that was totally outrageous and couldn't accept it. That is not on here (on the written testimony). He asked the committee to notice case number 4 in the written testimony.

GARDNER asked what was the name of the case where review was granted
and RAWLS said the Brown case, yes. GARDNER asked if the decision was
pending and RAWLS said they had petitioned for the review by the Supreme
613 Court and just got notice that it had been accepted. It's Jeff Brown
vs. The Portland School District No. 1, and in that case, everything was
done right except that unfortunately notice was given not by certified
mail, but the adjuster and everybody involved had notice of the injury.
In all of these cases the public body has notice, it's just that it
was not by certified mail or it hadn't been given to the proper person.
RAWLS said one of his last cases before he became commissioner was an
action brought against the State of Oregon and they thought it was snowing down here. He said he just mailed everything to everybody and he still almost missed the proper person because by statute who is the person to be filed against and get the proper services is very very difficult to go through. A number of people are also not aware what a public body is. Many people that he talked to were not aware that Tri-Met was a public body. The case that extended the 180 days from the 45 days before was a very unfortunate case in St. Helens. He said he believed a young boy was hurt on school grounds or something and the adjuster was a very gregarious guy, very nice guy, and he went out and held these people's hand until the day went by and then said "sorry you passed the time to give proper notice". The court said that is what Legislature said you have to do, so the Legislature amended it to 180 days, but then somehow this certified mail got in and of course now they are doing the same thing, time and time again which he said he personally found reprehensible and couldn't justify it. He said his contemporaries in the insurance business doing this, the adjusters who kind of laugh it off and say that is the game we play. There has been talk of increase of rates because this may run their insurance premium up, he said he calls it "the chicken little syndrome".

637 RAWLS said that is the horror story that always frightens everybody out. He said he was commissioner at the time it was referred to in 1975 when there was a failure of cities to be able to get business. In all insurance history there are ups and downs, you will recall the medical malpractice crisis we went through, right now there are five or six companies writing medical malpractice in this state. Probably two years from now there will probably only be one or none. -It is just an up and down business, it goes that way, it has for the 30 years that he had been in it. He said he recalled one year they had gotten to the point in bidding on business, it got so cutthroat that finally they had to give up because they couldn't even get enough money out of the premium to justify a commission to the agent - and then it goes the other direction it gets so high that cities and counties, etc. They claim that they cannot afford it. He said he felt safe in saying that in his 30 years experience in the business that this particular section that he's interested in, as far as the notice requirement, whether you give notice by certified mail or whether you have actual notice of the claim, the actual notice having by the political subdivision or city, county, etc, isn't going to have a wits effect on the rate that comes up on the thing.

671 WYERS said he didn't see the one about the Oregon woman who was injured in Reno, Nevada - her Oregon lawyer got advice from a Nevada lawyer about the statute of limitations down there. RAWLS said that that was a statute of limitation case rather than a notice case. WYERS said that in Nevada it was a question of how soon the notice had to be given and how soon after the notice was given the woman went round and around, finally didn't get anything. He said it's a case he was very familiar with.

682 GARDNER asked the witness what would he think of a compromise, where he had an exception for actual notice - within the 180 day period.

693 RAWLS said he wouldn't be satisfied with the 180 day period, he thought that many people, well actual notice in any form probably would take care of 99% of the cases. Because somebody within that political subdivision knows that loss, for the most part. He said he spent a lot of time when he was in the insurance business with cities, counties business, and usually the only time you find a case where somebody is really injured - physically or property is injured, almost always somebody knows about that and report is made by somebody. You may have a case in which a policeman pulls somebody out of a car and pushes around a little bit - policeman doesn't report that he did it and they don't report it for a while, or something like that. But when there is an accident or somebody's property has been damaged, for the most part you know that immediately. But the notice requirement by certified mail, he said he just couldn't understand why. He said re time contraints, in 1975 he was commissioner at that time and the reason they went to a self-insurance deal was because he would not approve a $250,000 increase by the insurance company insuring the State of Oregon at the time and they couldn't substantiate their increase, they just came in and said "we want $250,000 more" and he asked "why" and they couldn't come back with any reason. He said he went over to Lee Johnson and said "this ripoff has gone on long enough, why don't you get smart and go into the self-insurance program and that's where it came from.

713 Peter Mersereau, Deputy City Attorney in Portland and David Fleming, the Risk Manager for the City of Portland. MERSEREAU said he had presented a written statement to the committee (SEE EXHIBIT D). Most of what he had to say has been discussed by the previous speakers. He said he would like to just address a few points. The principal purpose for coming here was to show statistically what the experience in Portland has been during the 5 years of the self-insurance program. By way of introduction, he couldn't help but notice the tenor of the example cited to the committee today as he sat in the back of the room and listened. It seemed to be exclusively devoted to the manner in which the tort claims notice had been complied with rather than whether or not the notice itself was a good idea, and he would ask the committee to focus on the principal reason or purpose as stated frequently by the courts for the Tort Claims Act in the first place, and that is to provide a remedy for inter parties that did not exist before. And the fact that there may have been a noncompliance with

a notice provision does not mean there will not be a remedy, in fact it probably means there will be a remedy because a lawyer is going to end up paying one way or another. In addition, the two 1980 cases that witness Blair referred to, he thought were particularly significant.

744 WYERS said on that last point that perhaps we ought to ask Mr. Rawls a few more questions. He had the impression that the Bar Liability Fund rather vigorously defends - it's not a sure thing when a lawyer makes a mistake that the injured party will then recover against the Bar Liability Fund. The lawyer misses a deadline then the injured party can sue the lawyer, and then if the lawyer represents the lawyer who missed the deadline makes a mistake, then they can sue that lawyer. It keeps revolving but the injured party doesn't always get some money.

754 MERSEREAU said he thought that was correct. The point he is trying to make is the emphasis then should be on not whether or not the deadline should be there in the first place but rather what type of compliance is necessary. Speaking as a government lawyer, and he saw these tort claims every day they come in, the principal reason for the tort claim notices is to allow the public body a chance to investigate the accident, and frankly some of these strict compliance problems have caused us a great deal of difficulty in handling the tort claims. But it seems the proper bill to address that problem is not one that eliminates the tort claim notice but rather one that addresses the type of compliance that is necessary. He then discussed the statistics included in EXHIBIT D for the City of Portland and suggested to the committee that these statistics show that the claims adjustment system is working - they show a steady increase in claims during the 5 years and they show a total for 1976-81 claims filed both general liability and fleet liability total 3,244. Out of that total 3,000 were settled outside of court, and he suggested to the committee that in light of that very high percentage of settlements, the benefits are twofold: one, to the injured party because its eliminated the cost of litigation and , two, to the City of Portland because they adjusted and settled the claims expeditiously.

777 WYERS said the 3,000 figure was a rather bold figure - it doesn't tell the committee how many were settled before a complaint was filed, how many were settled before depositions were taken, how many were settled within a month of trial and those kinds of things.

781 MERSEREAU said that's correct but you notice the bottom figure of the statistics. Out of the 3,244 total claims, we had a total of 337 lawsuits over that 5 years. So the vast majority of claims do not result in litigation.

785 WYERS asked if - there were only 337 complaints? MERSEREAU said that was correct - against the City of Portland both in state and federal court. That includes all the police liability. He also pointed out that these statistics show a fairly concerted high proportion of fleet liability cases which, as Mr. Blair indicated, are most commonly property damage cases

joined with a personal injury claim. The effect of the passage of SB 86 would be, of course, to provide for a six years statute of limitations for those property damage claims. Just very briefly, these two 1980 cases, he thought, should be considered by the committee. This is the Dowers Farms case and the Adams vs. Oregon State Police case. The significance of those is that they applied the discovery doctrine to the statute of limitations under the Tort Claims Act. So now the statute of limitations be it two years or for that matter the 180 day notice period, will not begin to run until the injured party knew or should have known of the injury. This protects what before that was a substantial number of individuals who may have been injured but not known and he thought the committee can consider the impact of those cases insofar as it bears these phantom claimants who supposedly are not getting into court.

810 GARDNER asked what he thought would be the impact of carving out an actual notice exception.

811 MERSEREAU said he frankly thought it would be advisable in many respects. In light of the state of purpose of the notice to allow investigation, assuming the body gets notice, he thought frankly he'd have a hard time standing up in court and arguing over prejudiced.

821 GARDNER asked if that was the issue that was presented by the case that's going on. MERSEREAU said that is exactly the issue in the Brown case - whether or not strict compliance is required by the section here - There is an old axiom that bad facts make bad law and that is about as rough a case as far as hardship goes that you are going to see. GARDNER asked if he would see any real problems from risk management perspective on an actual notice.

822 MERSEREAU said no, as a matter of fact, he thought Mr. Fleming will confirm this. The policy of risk management in Portland is similar in other public bodies, we encourage people or we assist them in filing their claims. If somebody calls him and asks what they should do - he tells them, and provides a written claim form for people. They fill it out and send it in and we don't force claimants around on this. There has been reference to that in prior testimony and he said he would take issue with that. He thought the idea is to get notice to investigate the claim - whether it comes in maybe it could be made in a firm to defense, for example. Let the public body raise it affirmatively if they did not know about it.

835 KULONGOSKI asked witness if he was testifying just on the issue of the notice and was he saying he took no position on whether we should repeal the notice requirement. MERSEREAU said that he took a strong position for the City of Portland that it should not be repealed.

845 KULONGOSKI said the question is - what the effect would be of carving out an actual notice exception to the register by certified mail. He asked what the public policy was again and why you should treat a public entity different than a private corporation.

847 MERSEREAU said Senator, as far as public policy goes, he would cite the same reasons that witness Bill Blair cited and that was simply, that comparing public bodies in terms of tort liability to individuals or corporations is comparing apples and oranges in terms of their exposure. One of the commentators often cited with respect to the Oregon Tort Claims Act addressed that very issue, and he said as follows: "The exposures of a government of claims for injuries or damages differ from the exposures of a private business in several important ways. First governments are confronted with difficulty in controlling risks of harm from such geographically dispersed systems as streets, sewers, parks and schools. Further, public bodies must engage in many high risk activities, such as police and fire protection for which there is no counterpart in private business." He said that's all he could offer by way of difference in policy. WYERS asked how a city is different from a telephone company or electric utility in those regards.

869 DAVID FLEMING, Risk Manager, City of Portland - said he thought it was pointed out earlier by Senator Kulongoski who gave the example that if there is any increase by virtue of risk related losses, it is passed through to the customer. However, in the governmental entity we have x number of tax dollars with which we have to do business, if our losses escalate, for whatever reasons, - the only reaction we can have to that is to raise taxes if the public permits us to and if not, we do services. So we are locked into that very clearly. WYERS said it was similar, however, to a public utility or telephone company or electric utility that goes to the utility commissioner.

890 MERSEREAU said in summation, he would recommend to the committee that rather than scrap the entire section, just what SB 86 asks for, to address where the problem is in the section and most of the testimony here today has been with compliance with the section. It has been with individuals who had notice but somehow not communicated that to the public body, this section has been finely tuned by the Legislature in it seems every other session and maybe it needs more fine tuning. But he would strongly urge the court not to scrap the system altogether because as far as we're concerned, in Portland, it's resulting in expeditious claim handling.

903 WYERS asked witness if he would resist Senator Gardner's suggested possible compromise on the notice, about the raising from 2 years to 3 years the statute of limitations for wrongful death claims. Everybody has been talking about property damage but no one had addressed the wrongful death question.

911 MERSEREAU said if he had to prioritize our concerns today he would put that 3 year statute of limitations at the bottom of our list. It's the claims system that we see close to protect - and it is because that is resulting in less litigation and that more litigation increases costs across the board not only to the claimant but to the city. He said he would not want to take a position on that one way or another but in prioritizing that he'd put it on the bottom of the list. He said that there is a one year notice provision for wrongful death claims right now. Of course the 180 days does not apply to death claims.

934 FADELEY asked about the figures on his back sheet. He said he read this to say you have never turned down a claim against the City of Portland on the grounds that the 180 day notice provision was not met. He said he didn't see in these statistics anyway to gather whether you have turned down any on the basis of the 180 days to try to tell how frequently that happens out of the 3,244 claims.

Tape 4-A

003 MERSEREAU said he could not answer that question. That frankly he didn't know how many, if any, there have been. He did know that prior to the Brown case, the City of Portland did not take the position as a matter of law everytime. That whenever we got a registered letter notice we would turn it back. Frankly that case caught a lot of people by surprise, not the least of which was the attorney in the case. But he didn't know the answer to your question. He said he was responsible for the litigation once its filed. Mr. Fleming may have a better idea as to that. FLEMING said he could only speak of the last 2 and a half years, to his knowledge.

009 Senator FADELEY said that regarding the discussion of the public policy - perhaps he was the only one that was interested in it - as government becomes bigger and is more involved on expanding the idea of the public policy and more involved in our daily lives and activities and does all sorts of other things. The courts working with common law ideas and the Legislatures are going to continue to treat the government, the citizen has to have his abilities augmented or he'll lose that battle just over and over with the government and there is much more government vs. citizen interaction than there used to be. There are a number, for instance, estoppel, that run against the government. And there are cases that certainly hold that and that he expects now cases to come down which will make different categories. Estoppel doesn't run against the government if for proprietary function, that's not the government that's something else of proprietary function so estoppel will work. So the policy question is whether we should in the course of time pay attention to the fact that the government is more apt to damage a citizen than it used to because it is into more things, and adjust for balance the citizens rights. Your attitude in Portland apparently is different than Tri-Met's attitude and that may gain you most of your support as a city. Government, after all has to get along with all its citizens.

034 MERSEREAU said one of the problems we will face if the Supreme Court affirms Brown is whether or not as a jurisdictional matter we're going to be able to take that position. The courts have been holding that those requirements be jurisdictional, which can't be waived, and our leeway to be lenient in those situations may be taken right from under us. We have to represent our client in court and if you have one public body with one position, another taking divergent position, it becomes more difficult so that case is scheduled for hearing in the Supreme Court, and estoppel was raised below in that case, was expressely addressed and refused.

FADELEY said if its a governmental function that the present Oregon law is estoppel and not against the government.

044 WYERS asked witness Mike Montgomery from Clackamas County if he would rather have more time. Others have asked for it and we'd like to get on with the next bill since we are going to break up here in a half hour, but if you want to testify now you can go ahead.

MONTGOMERY said it was not at all inconvenient for him and he could come down next time.

052 WYERS closed the hearing on SB 86, and he opened the hearing on SB 79.

SENATE BILL 79 - Relating to Interest Rates

060 Witness Jim Walton, Corvallis attorney, appearing purely as an individual and not as a representative of any particular group. WALTON said the practice of his firm is largely that of representing plaintiffs and to a very major degree against insurance companies. The purpose of this particular bill would be to correct a long-standing injustice that is no more than a historical accident. There is no point in going into the common law and the reason that torts developed different set of rules as far as interest is concerned than did contracts. The point is that under the rules today interest only accrues from the date of judgment. Now in practical terms the people whom we see are injured, their property is damaged, the law assumes that they have the money to go out and replace to survive until their case is finally settled. Many of them will not come to trial and judgment from two to four years, depending on the county you are in. There is becoming a more prevelent practice of racing cases to get them filed so they can get on the docket in certain counties, otherwise your client may be waiting for a long period of time. He said there is no particular logic in the proposition that a person should not be compensated for injuries that are done to that person from the time they are done. The loss begins then. The loss should not begin at the time a person finally gets to the courthouse or what have you, now the real problem with this is that there isn't any quality of economic position fundamentally between the companies that pay on liability claims and the claimant. The whole idea of the contingent fee system which we live with is to permit claimants to go into court and be represented by competent counsel, when they cannot affort to pay fees, and so the lawyers gamble. In the meantime, what happens to this client? Now it's true you've made some inroads legislatively, steps have been of assistance, there is no questions about it and it has helped. But at the same time in terms of the economic laws if his property was destroyed (just to stay away from the personal injury for a moment), and he had to litigate to determine the value of his loss against the tort feasor, he has lost the use of his property and as he understood the rules if it's something of personal use he had simply lost the use of it.

There was some discussion about cases spuriously paid and KULONGOSKI said they were referred to as nuisance cases. BURT said he was not referring about nuisance value cases and said they settled about 85% of the cases they filed. Chair called next witness.

597 BILL BLAIR, Assistant City Attorney, City of Salem, Oregon. He said although he thought it was important that the committee consider this bill to some degree in the context of SB 86 as well, he wanted to respond to Mr. Marsh as to the general problems of pre-judgment interest. He said he personally felt very strongly about the question of fairness involved in pre-judgment interest - it was a question of public policy. It was his experience from the standpoint of defending claims made against the City of Salem that of those cases where litigation is actually filed, there is a very real question as to liability or amount of damages, but where there is a real question of liability, as attorneys we know that the law in those cases is never really black and white. That it ultimately boils down to what the jury does in the jury room. What, in effect, pre-judgment interest does in cases where there is a valid defense, that the jury may ultimately say they favor the plaintiff rather than the defense, is to penalize the defendant for bringing what is in his judgment a valid defense rather than making a settlement. He referred procedurally to Les Rawls testimony at last hearing on SB 86 where he characterized the current notice of claim requirements as creating a settlement "by ambush" situation, and said almost the reverse holds true in the case of pre-judgment interest. the leverage of the procedural statute is heavily weighted to the plaintiff's side, and in those extreme cases where there is fault on behalf of the defense - in delay or just sitting on what is a valid claim, yes.

638 WYERS asked him if he would agree with Mr. Burt's estimate that 85 to 90% of claims are settled before trial. BLAIR said in the City of Salem 80% of all claims made against the city, including both claims made as well as litigation, are settled within 6 months. WYERS asked him what percentage of those that eventually go to trial do you win and BLAIR said we have not lost one that has gone to verdict, but those that litigation has been filed again, he did agree with Mr. Burt - the majority of them they did settle. In some cases liability was not so much the issue as was the amount of damages, and it sometimes took the formal process of litigation to ascertain what the damages are. WYERS said that in deciding what the settlement should be you need to do some pre-trial discovery.WYERS said that if you won all of them, you wouldn't under this bill be required to pay any pre-judgment interest. BLAIR said that was correct. The effect that it has on our decisions as to how much we settle for, because most of those cases that we settle are, in fact, what are the supportable damages that we can settle for rather than leave it to the jury. And in those cases if we're facing pre-judgment interest, the leverage is for higher settlement. WYERS said that the facts witness is giving are more favorable for committee's argument than they had hoped, but said he didn't see how there was any leverage if you know that you have not lost a case recently - you are not exposed to very much pre-judgment interest when you predict what's finally going to happen when you get to trial. BLAIR gave an example of a wrongful death case filed on the last day of statute of limitations (3 years), and said that the case resulted in a judgment of $25,000, which resulted in the area of $7,500 pre-judgment interest. BLAIR said if he sees the case as soon as it is filed and it appears to be a supportable claim for $25,000 in damages, that he would automatically advise his client that they face the probability of a judgment of $32,500 because of the pre-judgment interest.

691 KULONGOSKI said the last time the bill was heard the committee expressed concern about the phrase "accrual of the cause of action". Counsel was going to draft the amendments as committee saw a number of problems in the way the printed bill was written. He said if witnesses had an opportunity to look at the amendments, which appeared to have covered some of the issues that Mr. Marsh discussed plus what Mr. Burt said, that maybe they could come back after reviewing the amendments and it could be approached as a potential bill rather than talking about the philosophical nature of the printed bill itself. He said the committee knew what the problems of the bill were and could get down to the specific language. Chair said he did not intend to get into a work session on this bill today.

717 SMITH said that if the amendments are substantially different from the printed bill, he said we ought to hold another public hearing, possibly on the amended version of the bill. The Chair agreed. Chair said there had not been a work session yet to really discuss these amendments to see if they would want to put into a A-Engrossed bill. He said the committee was not planning to try and run this bill out of the committee before anyone could see what is happening. BLAIR asked then if the committee planned on another public hearing and Chair said it certainly would be on the agenda again at a future time and agenda would be published in advance so there would be opportunity for written comments. BLAIR said they would appreciate the opportunity to at least submit written comments on it. Chair said any suggestions about amendment would be appreciated. Hearing was closed on SB 79, and opened the hearing on Senate Bill 86.

SENATE BILL 86 - RELATING TO PUBLIC BODY TORT LIABILITY

747 WYERS said 10 people signed up against the bill, and one for the bill. He called first witness, Jeffrey K. McCollum who testified for the bill.

760 JEFFREY K. MC COLLUM, attorney from Medford, Jackson County Bar Association of OTLA. He said he was here representing himself primarily but he also was representing members of Jackson County Bar Association who share his view on this bill. He was also representing OTLA from Jackson County. Witness spoke in support of the passage of the bill, or in the alternative, a modification of the notice provision contained in ORS 30.275. He said the statute as it is written has an unfortunate effect on the manner in which plaintiff's cases are being handled. He cited the Court of Appeals case of Brown vs. Portland School Board. Witness relayed one of his cases which was a standard negligence action, medical bills had been accepted and paid - he said the insurance filed a motion to dismiss alleging that they had failed to strictly comply with the language of notice provision of ORS 30.275. He then cited the Brown (1980) court of appeals decision that held absolute strict compliance of the statute was required, and that the fault cited in Brown was they hadn't sent notice by certified mail, but rather by first-class mail. Court of appeals held that the Legislature could not have intended that to be sufficient or they would not have included that language in the statute.

He said the Public Tort Claims Act was created to allow plaintiff's to precede against public bodies. There were certain restrictions placed in the Public Tort Claims Act, and one was limited liability. But he questioned the usefulness of the notice of claim at this point. He said the legislative purpose of the 180 day notice was to give the public body an early opportunity to investigate the claim while the evidence was fresh and to settle the case without going to trial. Those were the only 2 purposes enunciated for the passage of the claim. He said the Court of Appeals in the Brown decision said that the Legislature's adding of the language that if it was not done this way or that, then the notice of claim is invalid. The Court of Appeals interpreted that to be a new statement of purpose by the Legislature.

024 CHAIR at this point asked the Dept. of Justice if they brought in the Proposed Amendment to SB 86 and read from it (See EXHIBIT B.) - it had to do with eliminating the 180-day notice and receiving written notice from the Attorney General or local public body saying they have complied with a timely notice. He then asked witness how he would react to that amendment. McCOLLUM said it was preferable to the current statute - substantial compliance would overcome the motion to dismiss. He felt the usefulness of the 180-day notice was questionable and that there was little reason to have a distinction between a defendant public body and a defendant driver of a car. He further discussed limited liability and the 180-day notice.

051 JOHN J. HIGGINS, Attorney from Portland for Tri-Met. He said he had defended Tri-Met on their bodily injury claims and said they experience about 2,000 incidences a year from which claims arise. He testified against the bill. (See written testimony, EXHIBIT C). He said the 180-day notice works to the benefit of about 25% of Tri-Met's claimants, and certainly works to Tri-Met's benefit in the sense of prompt investigation and corroboration of claims. They usually receive a first notice of claims from claimants even before they receive a report of accident from their driver. They immediately send to claimant a claim form (attached in Exhibit C) which sets out the requirements of 30.275 verbatim and calls the attention of the claimants of the necessity of giving notice. He said he differed with the previous witness - he felt that the benefits of the 180-day notice to municipalities were 2-fold - not only to permit prompt investigation, but to permit correction of the defect before someone else is injured. He felt that a government body would have to be accorded different treatment than a private motorist, in an accident, as they would have no way of knowing a claim was made against them until a claim was filed promptly. WYERS asked him how he felt about the Justice Department's proposed amendment and HIGGINS said in their experience the 180-day notice provision does not work against a claimant - in even a half of 1% of the situations. He said in about 10 instances a year is there a lack of compliance with ORS 30.275 asserted against a claimant or his lawyer. WYERS said if it was hardly ever used would be an argument to do away with it all together. HIGGINS said no that it is hardly ever used as a defense because 80% of the people comply with it.He said the notice is used all the time and he felt it was a very important facet of the legislation.

106 Senator Fadeley and Mr. Higgins discussed the claim form, and witness said they had a good experience in obtaining reports. WYERS questioned the witness as to why the 180-day notice was not put on reverse side of their form for claimants to see. HIGGINS said that people tend to think if they continue to deal with Tri-Met, they don't have to comply with the statute. There was additional discussion as to the goal to get compliance, who in Tri-Met receives the filing. HIGGINS said The Secretary of the Board of Tri-Met is the person who receives the claim (Paul Cook, Vice President of First State Bank) and claim is sent to his business address or his home.

196 GARDNER asked witness if he had read the Department of Justice proposed amendments. HIGGINS said he had not and reviewed them briefly - he said they were almost exactly in accord with their practices. CHAIR called witness from Justice Department.

220 JACK L. SOLLIS, Assistant Attorney General and Chief Counsel, Department of Transportation. He said the amendments were proposed by the Department of Justice to try to deal with the problem. Many accidents occur in buildings or on the road, and the agency is not aware of them until it receives a notice of claim. That is one of the reasons the notice of claim is felt to be necessary, not only for the agency to investigate it quickly but also to correct a defect to prevent another injury. He discussed the problem of serving notice of claim to public bodies. He said in last Legislature there was a proviso in one of their bills (Dept. of Transportation) that any service on any division may be served in the Office of the Director - that means anybody that is in the director's office, you can walk in and serve them. That may be the solution you are talking about here for the public body, rather than trying to define who the responsible party is. All public bodies have an office, and notice to that office would constitute sufficient notice. (SEE EXHIBIT B).

257 GARDNER inquired as to who proposed the amendments and SOLLIS said he wrote them for the Dept. of Justice. GARDNER said he liked the general direction of the amendments and asked Mr. Sollis if he could work with Committee's Counsel to add that feature. SOLLIS said he would be happy to work with Counsel, and said what they were concerned with was the notice. CHAIR asked Luther Jensen if he planned to testify.

269 LUTHER JENSEN, Department of Justice. Said he had gone through their files to show the committee some examples of where receiving prompt notice, within the 180-days, enabled them to take steps to prevent further injury to members of the public and to preserve evidence that otherwise could be lost. He said sometimes examples are of help. They are interested in two things: that the notice comes to the Department of Justice, and that they receive it promptly. He said notice should be received in an agency that would be responsible for advising as to the legalities of the matter, and that would be the Department of Justice.
There was further discussion regarding notice requirement and compliance, and also the Tort Claims Act. CHAIR called next witness.

TAPE 22-B

417 JOHN T. LONG, Risk Manager on behalf of Lane County. He read a Resolution passed by the Board of Commissioners for Lane County (See EXHIBIT D). The resolution was read in opposition to notice requirement changes and time limitations in current public tort statutes.

449 BROWN talked about some of the "horror stories" over the 6-month limitation of claim notice, and relayed a case in St. Johns School where a child was injured on the school yard and the attorney did not advise the parents until after the 6-month period and then told them they had no case. He said an equitable solution was needed. GARDNER asked witness if he had any objection to the proposed amendments, as drafted and LONG said he had not seen them but what he had heard of them, he didn't think he would. LONG said the main concern at Lane County is the effect it would have - the overall statute, on the public entities. He said it would put the self-insured in a spot of jeopardy, even those who buy their insurance would be somewhat in jeopardy

because insurance contracts are not 100% coverage, and you would find yourself being exposed in an area where you would not have coverage to apply to the lawsuit of which you were notified. He said the other situation is that there is an increased potential for more of the entities to go self-insured because of the success of the self-insured programs previously.

LONG said he would like the committee to consider the effect this bill would have on the budget laws, and what effect it would have on Section ORS 294.350 in the associated statutes. He said if he interpreted it correctly, it eliminates the 180-day notice (the tort claim), which is the statute of limitations. He said we find ourselves exposed to a 2-year bodily injury statute of limitations; 3 years for wrongful death; and 6 years for property damage. WYERS said they had gone over that extensively in the last Session. LONG said there would be no way the public entity could stay within the budget requirement under that time frame. He said if the bill was passed, some modification of the budget law would be necessary.

493 GARDNER said a suggestion was made that we might want to specify that if substantial written notice was served on the head office of, say Lane County, that would be sufficient rather than the specified officer of that county. LONG said he saw no problem with it. He said notice would come to himself or the county counsel. He said they had no problem with day-to-day filing of notices. There was discussion about overlapping jurisdictions as it pertains to city, county governments, and people not knowing what jurisdiction they are in. CHAIR called next witness.

542 FORREST C. SOTH, City councilor for Beaverton, Oregon. He read his testimony in opposition to the bill by the City of Beaverton. (See written testimony, EXHIBIT E).

652 BROWN asked witness who in the City of Beaverton would a person file with, and SOTH said with the city recorder or mayor and they would see to it that the notice got to the city attorney.

676 CHAIR temporarily closed the hearing as there was some other business, that of introducing committee bills.

677 SMITH said he had something from the Department of Justice - regarding introducing a bill.

686 WYERS said this comes from the Department of Justice and he suggested that the committee introduce it as a committee bill - he asked for a move.

687 KULONGOSKI moved to introduce it as a committee bill. But he said for the record, he did not think voting to allow a bill to be introduced by the committee would indicate that the members are for or against the bill. WYERS said we are not asking people if they are going to support the bill or not, but if committee doesn't want to introduce it as a committee bill they should say so.

696 FADELEY said he would like to be shown as voting no. There was discussion as to whether it would have to be run by the Legislative Counsel. WYERS said it was from the Attorney General - at his request.

699 CHAIR said Senator Fadeley wishes to be registered as not wanting to introduce this. He called for roll call:

VOTING AYE: Senators Kulongoski and Wyers.

VOTING NO: Senators Brown, Fadeley, Gardner, Jernstedt and Smith.

CHAIR said the next one was a computer crime bill. It established penalties, at the request of the Attorney General.

VOTING AYE: Vote was unanimous in favor of introducing the bill by the committee.

CHAIR said next one modifies witness immunity statute - witness may be prosecuted or subject to penalty for any perjury, false swearing, etc.

VOTING AYE: Senators Brown, Fadeley, Gardner, Jernstedt, Kulongoski, Smith.

VOTING NO: Senator Wyers.

CHAIR said next one is at the request of Pacific Northwest Bell.

VOTING AYE: The vote was unanimous in favor of introducing the bill by the committee.

CHAIR said the next bill - to get trouble damages, you have to prove the wrong or omission was a result of intentional misconduct. It interposes the element of proof of intentional in order to receive trouble damages under the pre-existing statute, regarding to discriminatory rate-setting. All those in favor of introducing as a committee bill:

VOTING AYE: Vote was unanimous to enter it as a committee bill.

CHAIR said the next bill put in at request of the Oregon Public Defender, Gary Babcock. Vote was called for those in favor of introducing the bill by the committee:

VOTING AYE: The vote was unanimous in favor of introducing by committee.

CHAIR said that Counsel has one to remove obsolete references for criminal conversations, it was appealed - consenting adults statute.

VOTING AYE: Vote was unanimous to introduce bill by committee.

The introduction of bills completed, the CHAIR returned the meeting to hearings and called for witness John Janzen.

TAPE 24-A (There is no tape #23)

003 SENATE BILL 86 - Relating to Public Body Tort Liability

JOHN JANZEN, Risk Manager, City of Eugene. He said most of the points that the City of Eugene is concerned about have already been raised in prior testimony. He said their concerns relate specifically to what they consider would create a public safety issue in the passing of the bill as it is currently written. He said the city relies quite heavily on the notice requirement as a way of addressing public safety and hazardous conditions that exist and sometimes this is the only way they find out about them - through the written notice they receive on a claim. He said they felt that the adoption of a different set of statutes of limitation and the elimination of the 180-day notice would jeopardize their ability to get out and address those types of conditions on city property and streets.

He discussed the potential financial impact on municipalities - that governments are required to anticipate their annual expenditures in advance when they establish their budgets and many public entities are in a self-insured position with their liability programs, or self-insured retention, which means they assume a very high deductible. He said they have to forecast the claims they may incur and try to forecast an approximate figure for those claims. He said they keep a file of potential claims - from notes, telephone calls or information that indicates potential claims, and they establish an approximate value for this file at budget time. He said the elimination of the 2-year statute would require them to anticipate the potential liability they would have to budget. They would guess it would be somewhere from a quarter to a half a million dollars worth of potential liability. He said the financial implications of eliminating of those statutes would be very damaging to municipalities, and that their council is that they do oppose the bill as it is written. It was their opinion, however, that it was absolutely necessary to try to retain the 180-day and the 2-year statute.

053 FADELEY asked witness if their premiums end in part on the amount of money
that is reserved for a potential settlement - do you think they raise the
mere number of claims in the decision to reserve some money for a potential
settlement of that claim - would that affect your premium. JANZEN said
since they are self-insured they take the first $100,000, that their
reserves are basically established. FADELEY asked if they reserve another
$100,000 above the deductible and JANZEN said they only reserve within the
068 deductible that is carried on the insurance. FADELEY asked witness if
they had some kind of reserve program that would cover potential claims
that are 180-days old even though they had not been notified yet. JANZEN
said expense reserves at the end of the year includes all notified claims
and also an assessment of their potential claims (their 180-day file) and
an amount set aside, in actual dollars, for that.There was further dis-
cussion between Senator Fadeley and Mr. Janzen regarding anticipating
expenditures as pertains to potential claims.

116 WYERS asked if in their suspense file (180-day file) they send out any notices and JANZEN said they review every notice that comes in and if they feel there is any possibility of some kind of liability on their part, we send a notice and follow up on it - it is an administrative process. He said they probably get less than 25% of their claims filed in the proper manner. They do not make an issue of proper notice. Out of 200 claims, he said, about two claims were denied for untimely notice beyond the 180 days. They are usually served on the mayor or the city manager.

153 CHAIR called the next witnesses, Bill Blair and Paul Snyder.

160 BILL BLAIR, Assistant City Attorney for the City of Salem and also representing the League of Oregon Cities and testifying against the bill. (See written testimony, EXHIBIT F attached). He analyzed the amendments proposed by the Department of Justice as follows: 1) requirement for certified mail; 2) problem as to who it is that receives notice; 3) the need for some kind of provision that actual notice is sufficient compliance with the statute; 4) the need that if the public body represents that this is the way you file claims, somebody who follows that procedure - within the 180-days - ought to have complied with the statute. He said they agree with those four principles, that the statute ought to be administered in such a way that those four points are not abused, and that it was possible to amend the statute as it is now written to address those concerns fairly both to the claimant and the public body. He said he indicated to Mr. Sollis of a couple of points - one in particular - that the amendment does not address the question of who receives the notice. He felt it was possible to draft an amendment that would fairly and reasonably state who could get the notice and how you give it.

203 PAUL SNYDER, representing the Association of Oregon Counties, in opposition of SB 86 as it is drafted. He said he felt the committee was leaning toward the modification of the notice requirement.

He said some of the services provided by a public body are mandated by law and some of these things are very high risk, such as police protection, fire protection, sewer, road maintenance, etc. He said a corporation can get out of a high risk area, where it is no longer cost effective to stay in it, but a city or county cannot do that. He said he had heard of some potential legislation that would either eliminate or substantially increase the amount of potential liability that a public body may be subject to.

He gave some background of the 1967 Tort Claims Act, proposed by the Oregon State Bar Committee on Local Government. He indicated the bill was a proposed compromise approach - recognizing the interest of the injured person in that person is no less hurt when the negligence is by government than by someone else. He quoted from the Act, and gave its legislative background. He said he would be glad to work with the Department of Justice or the Committee Counsels on the amendments.

303 BROWN asked witness if he was aware of the Brown vs. Portland School District case where notice was served and yet the claim denied - it was these kinds of horror stories that generate such legislation. SNYDER said he agreed and did not see any problem of making modifications to accommodate that problem. Their position, he said, was not to deprive people of legitimate claims but to protect the balance between their entity and the rights of the individual.

324 FADELEY asked Mr. Blair how how they handled or budget assessment of outstanding claims - were they different than what Mr. Janzen described. BLAIR said yes - that a certain sum of money per year is supposed to be allocated to the risk management program until that fund of money reaches $500,000. In

addition to the fixed sum of money, the losses, or cost of the program, during the prior year is theoretically to be used and that includes reserves. They did not specifically reserve the incurred but not reported claims - the potential for claims that have not been filed. They set up specific reserves for claims as they are made. Other claims are theoretically taken care of by that additional sum of money that is supposed to be coming in each year to the fund.

334 FADELEY asked if the act that makes you set up public reserve for the specific plan is some sort of actual notice and BLAIR said that a notice from the claimant that he or she has a claim here establishes it.

367 Clayton C. Patrick, representing the Oregon Trial Lawyers Association brought in some written testimony that he wanted on record, but did not wish to testify. (See written testimony from OTLA, EXHIBIT G). It was in regard to the 180 day notice requirement. CHAIR then called for next witnesses, Michael Montgomery and Judith Tegger.

379 KULONGOSKI thanked Mr. Blair for the thoroughness of his memorandum to the committee - he said it was outstanding.

380 JUDITH TEGGER, representing the Oregon Schoolboards Association, appearing in opposition to SB 86. She said all of the arguments that have been brought on behalf of the cities and counties also apply to the schools, which also self-insure or do a combination of taking a large deductible. She said she agreed with Mr. Snyder's analysis of what that means in the public policy and the balancing arguments that are necessary. (See written testimony, EXHIBIT H).

TEGGER said when she was sought out by the Oregon State Bar Convention for her vote on this issue, someone commented on the floor that this was a plaintiff's Bar bill - it was pointed out by staff that the Oregon State Bar and the Liability Fund affected all of the attorneys because this question of 180-day rule was a drain on the Malpractice. She said that if that is the problem or motivation of introducing the bill that perhaps a little more continuing legal education is the answer rather than completely doing away with the notice requirement.

TAPE 25-A

004 KULONGOSKI asked her to go back - that after the argument was made one of the reasons why the bill was a bill that affected all members of the Bar because it was a drain on the Liability Fund of the Bar for Malpractice. TEGGER said yes, that is correct.

010 FADELEY commented on the effect it would have on the Bar Liability Fund.

013 TEGGER said she had not seen the proposed amendments by the Justice Dept., but in reviewing the statute, there would be no objections to clarifying in the statute as to who you would serve the notice on. Also, she thought the notice requirement should continue to be a written notice and the content should remain substantially as in the statute now, because of the policy considerations of safety, etc. Burden should remain on the claimant to show notice was given.

035 FADELEY said there was something in the statutes that said if there was not enough money in the budget then there could be a tax levy. He asked witness if she knew of any tax levy on the school districts to pay judgment. TEGGER said no but she had not researched it. Senator FADELEY and TEGGER discussed the problems school districts encounter as to limits on liability, etc. There was also discussion about the elimination of immunity and a Supreme Court Case of 1967, and how the schools would have been affected if the Tort Claims Act had not been passed.

062 MICHAEL MONTGOMERY, Clackamas County Counsel, in opposition to the bill. In listening to Senator Fadeley and Judith Tegger's discussion, MONTGOMERY said that is probably why the Association of Oregon Counties and the League supported the elimination of immunity or modification of it. He said since the insurance company collects the premium, they should have to pay the injured party.

He said Clackamas County is totally self-insured except for 12 vans used for senior citizens and children and they had never had claims under either of those two insurance policy. He said if you eliminate the 180-day notice requirement they would have to reserve from $150,000 to $250,000 extra public tax dollars in the first year, probably half that in the second and half that again in the third year, this was a guess. He said he was the attorney that represented one of the two defendants in the Brown Case - the one referred to by a Senator that called it "the horror story." He said the Attorney General's amendments would cure the problem that came up on the Brown case, and he felt they were satisfactory. The victim, he said, would not be penalized in the Brown Case, the Bar Liability Fund is going to pay that victim. He said he was 99% sure of that, after CHAIR questioned it. The Bar was paying the attorney who was appealing the case - that was his understanding from the counsel involved. He said the victims do not testify - the attorneys do.

111 WYERS asked witness that as a County Counsel what kind of leverage would he have to say, bring upon the County Sheriff's Dept. to comport themselves in a manner that would avoid claims from people they encounter in their work. MONTGOMERY said they administer their own risk management program by committee. Instead of spending money to hire somebody, he said when their yearly insurance went up as high as $350,000, they went self-insured on liability. He said the Sheriff sits in on their Risk Management Committee, and is very enthusiastic about their risk prevention program. He said they started this program in June, 1977, it works and it's great. CHAIR asked witness if he felt he got good cooperation from the Sheriff's Dept., trying to figure out how they could avoid people suing them. MONTGOMERY said they had come up with three risk prevention programs of their own - the Sheriff's Dept. - and he said they were excellent. WYERS asked witness if they have many claims with people who have brushed with the law, and suggested he visit their jail unannounced at 8 or 9:00 o'clock some Saturday night to see how the officers conduct themselves, and if it is in a way that is apt to minimize the complaint of citizens. MONTGOMERY said on the point of the 180-day notice, it was very important in the permit area. He felt the statute was poorly written as it did not make clear who would receive the notice. He suggested three options as to whom the notice should go - the governing body, chief executive or legal counsel.

165 CHAIR adjourned the meeting at 5:50 P.M.

Respectfully submitted,

Vera Moiseve, Committee Assistant

150 CHAIR asked for questions from committee. He asked the reason for the reference of the woman from Spokane.

155 McMURDO said the last public record we have of a commissioner of deeds was a woman who resided in Spokane, and Governor Holmes appointed her as Commissioner of Deeds in Oregon.

157 CHAIR asked for further testimony. He said it would be scheduled for the committee's next work session. CHAIR asked for motion.

169 KULONGOSKI moved that it be sent to floor with a Do Pass, HB 2351.

171 CHAIR said that Counsel points out that if the Evidence Code passes that Section 1 will be deleted, if we pass this before the Evidence Code gets through. He asked for roll call:

VOTING AYE: Senator Fadeley, Jernstedt, Kulongoski and Wyers

VOTING NO: None

EXCUSED: Senator Brown, Gardner and Smith

Motion passed that HB 2351 be sent to floor with a Do Pass. Senator Fadeley to carry bill on floor.

WORK SESSION ON SENATE BILL 86

199 CHAIR opened meeting on SB 86, and asked how many in audience were interested in this bill. He said he did not put it on a Work Session to ask for a motion today, to send it out or to amend it. What he wanted to do was to point out or bring it back to everyones' attention again and encourage everyone to update their portfolios for the best argument for this costing municipalities money. He said it was his impression after the last hearing, and in conversations with members, that if it were established that SB 86 would cost the public bodies more money and have a revenue impact, then the committee would want to amend it and go to something that would insure better notice and would clear up the ambiguities and pitfalls in the current law.

He said if it would cost more money, it would be something in the next Work Session to have a motion to send out. He asked Counsel Kris LaMar to alert people who have concerns about this bill to marshal their facts about the cost aspect of it, and make a brief argument along the fiscal lines so that the committee could put it into their thoughts as to what they really want to do at the next Work Session. He said there was a new financial impact statement in members' file.

245 KULONGOSKI said he would like to get the feeling of the committee as to what direction they want to go on this bill - 1) take the bill which eliminates the 6-month statute of limitations; and 2) reform the notice provision. He said testimony should be limited to the problem of how much it is going to cost. CHAIR said that is what he had in mind, since the committee had already heard about the needs for early warning, etc. KULONGOSKI inquired if notice had gone out to the public bodies to see if it would cost them money or not. He said the sole question is to repeal the 6-month statute of limitations and treat it like any other tort.

283 COUNSEL KRIS LaMAR said there seemed to be 3 different suggestions on how the bill should be amended. One was to loosen up the notice requirements. She felt there was wide agreement it would not have any major fiscal impact. Up to that point, the fiscal analysis was the only thing we have, although we had an earlier synopsis of part of the Portland Risk Management analysis that was presented. She said those who administer these statutes were having difficulties in deciding which of those three components would be altered or repealed, and that has an effect on how the money issues come down. She said she had discussed the fiscal impact of those three alternatives and, depending upon which route the committee wants, whether you want information in comparative form - then all the agencies could go back and put those figures together. But primarily we are focusing on the issue of loosening up the notice requirement. (See proposed amendments by Counsel, EXHIBIT B).

KULONGOSKI said there needs to be no notice of requirement if in fact the 6 month limitation statute is repealed. If the committee doesn't desire to repeal, then they could go on to the second one.

321 CHAIR told the audience who came regarding SB 86 that the committee is interested in hearing the arguments that it will cost more money to repeal the 180-day notice, for governments. He said some of the arguments we have heard is that nobody is losing the claim anyway. If no one is losing their claim anyway, then how will this raise the cost? If you have a claim and make a reserve,the money that is on reserve draws interest. If when you reserve, the money is effected by whether you have a 180 day requirement or a 2 or 3 year requirement, we want to know that. He said the committee also would like to hear arguments in eliminating the 180 days; what would happen to local governments if there had to be a lawsuit filed within 2 years so you would not have the 6-year on the property claims. This was what the committee was interested in. He said if it will cost too much, then we will change the way the notice is handled. He said it would not take very long to get the bill out, but mostly they wanted to know what the cost arguments were - the money. He asked the interested parties to handle their information through Counsel, Kris LaMar, who would take the responsibility.

380 FADELEY said he was concerned whether the substantial notice compliance was written in such a fashion that it was indefinite - was it an actual notice, and was the risk of not receiving any notice shifted to the government, he referred to the printed amendments by staff (sub a (2)). CHAIR said the intent of that language was that if you notified one agency, you notified them all - the committee may not want to go that far. FADELEY said the main thing was over the 180day notice and money. CHAIR said if we decide the money is wrong, then the committee will want to tighten up the proposed amendments as to the notice and go with that - he felt there was general agreement with that. FADELEY suggested that the interested parties may be invited to provide substitute language at the next hearing.

434 COUNSEL LaMAR said there was a subsequent set of amendments that were edited by a large group of interested persons, and those were not based upon her drafted set of amendments but upon the Department of Justice's original set of amendments - she said the goals of the two were basically different. (See EXHIBIT B-1, Dept. of Justice proposed amendments, attached).

006 FADELEY was concerned about the language of "receipt by any agency or officer", which the claimant believed was the proper agency or officer. He thought those interested in the bill could present their thoughts on that aspect for the proposed amendment.

019 CHAIR asked if the proponents of the proposed amendments could better identify the amendments, since some bills have several different amendments submitted and it was hard to keep them straight without proper identification.

045 CHAIR said there was a written document presented to him from Robert C. Guile, Risk Manager, Marion County Risk Management Department. Mr. Guile asked that the document be submitted into the record, which was done. (See EXHIBIT C attached). No further business on SB 86, CHAIR adjourned meeting on it, and opened the meeting on Senate Bill 198.

SENATE BILL 198 - Relating to eminent domain procedure

050 JACK SOLLIS, Department of Transportation. He discussed the State ex rel Department of Transportation v. Glen case. They construed the statute in its present form as including interest in the verdict. His own analysis of the case was that the verdict did exceed the offer because the verdict included $1500 for some dead cattle that the Court of Appeals later decided could not be paid for in an eminent domain proceeding because that comes under a different category of law. Then when it went to the Supreme Court the theory came out of adding interest to the verdict in order to get it back up over the offer, and that was the way it stood. He said that is the reason the bill was introduced, to reflect what they believed to be the original intent of the bill - that the verdict was the determining factor. He said it gave them an opportunity to make a higher offer 30 days before the trial. Say we deposited money into the court - the difference between the verdict interest which will accrue at 9% from the date of possession, and that under the Supreme Court ruling is now added to the verdict to determine whether or not the attorney fees and costs are awarded to the defendant.

103 CHAIR asked witness if the business about the 30 days before the trial was in this bill and SOLLIS said no. CHAIR said he knew he was not changing the bill but it was not in the language of this bill, and asked witness when it was changed. SOLLIS said in 1975 Legislature. CHAIR asked witness if that didn't slow down litigation and SOLLIS said that was the purpose - to give them an opportunity to make an offer that the defendant really had to consider. He said before, they could make good substantial offers before trial and defendant didn't have to consider them because attorney fees were based on the offer prior to filing the complaint - that was the only way he could get attorney fees. CHAIR asked witness as they got closer to a trial would they have a chance to get better appraisals. There was added discussion regarding the 30 days before trial and negotiations. SOLLIS said negotiations start as soon as a case is filed in a lot of these cases - not limited only to 30 days before trial. He said it pins them down to their highest offer so the defendant can decide whether to accept that offer and start negotiations, or go to trial. CHAIR asked for questions from members. He recognized Representative Liz Van Leeuwen and asked if she would like to testify.

SENATE BILL 86 - Relating to public body tort liability

145 CHAIR informed Senator Gardner what had happened on SB 86 in his absence temporarily from the meeting. He said the 8-10 people from governments were asked, instead of testifying, to give us the best case arguments at the next hearing that this would cost money. If they are not able to do that then we may move it out. Senator Fadeley had asked them to prepare their ideas and give them to Counsel Kris LaMar against the possibility the committee decides to amend it, cleaning up the notice requirement.

165 GARDNER said he wanted to make sure we get the actual notice in and wondered if we were down as to who is sufficient to get the notice. CHAIR said there are several questions in the area of how we'd handle cleaning up the notice, if we decide to go that way. He said the threshold question is are we going to throw out the 6-months - the feedback he was getting was whether or not it was going to cost money and as a practical political matter if it was going to cost money, that the bill would not pass. On the other hand, local government people are saying they are satisfying all these claims anyway and nobody is getting cut-off. He wondered if they aren't proving the argument that it isn't costing money. He felt they would have a sharp, fascinating interchange on whether or not it will cost money.

187 FADELEY said he felt it would be good to have them on record to see what the cost impact would be.

198 COUNSEL LaMAR said she had talked with them that they should do some research on this, or if they want to eliminate the 6 months or two years.

208 FADELEY said it seemed that everybody agreed that the notice was too strict but he believed some kind of notice should be maintained even though it is different than the normal tort case - keeping some notice provision, he felt, would be wise. He said the final question is whether changing the 180-day notice would really cost too much money, and with the data on that, they would work on it. KULONGOSKI asked if we still agree with the notice requirement but are not set on the 180-day, when do you require the notice to be given - would it not be given in the complaint when it was given? He said he worried about the public entities going self-insured more and more. GARDNER said there was a great tendency to under self-insure and that it was an easy thing to put off, he cited School District #1 in Portland delaying a year in their actuarial program.

267 JERNSTEDT asked if anyone was working on the right terminology as far as to who is going to receive this notice.

268 CHAIR said Counsel Kris LaMar has drafted some language, and the Justice Department had brought in some other proposals. He said it was a Bar bill and they were eager for us to throw out the 180 days.

271 FADELEY said he was trying to figure out the effect on possible settlement on lawsuits through extending the notice time. He said in minor injury most people would have settled within a year, but with major injuries, where the permanence of an injury has not yet been determined, it would be hard to settle a case within a year.

286 CHAIR asked if the self-insured companies would have a different motivation in reporting within their own organization that there has been an accident.

292 FADELEY said if he ran someone down with his car, he would want to tell his insurance company as quickly as possible, shifting the responsibility to them - so, as the insured, he would have a tremendous motivation to get his insurance company involved in the act and cooperate fully with them. He said when you are self-insured you are both sides of the case and don't necessarily have the same feeling. There was additional discussion among committee members on claims and self-insured. KULONGOSKI cited the LaFayette School District case in Court of Appeals. He said if all they are going to be limited to was $100,000 (statutorily), even though they insure themselves, they are getting a very good deal and may even go back as private carriers - not having to assume the responsibility of it. He said he would hope that Committee Counsel would keep a close watch on this case as it goes to the Supreme Court. He said he felt Senator Roberts raised a very good point. There was discussion regarding the case as Betty Roberts presided.

362 CHAIR asked if there was a way we could satisfy these problems that self-insurance and problems that witnesses have brought up by someway mandating the reporting of having injured people - here we are putting the responsibility on the injured person to behave in an organized way, and although this is a Bar bill, some of the testimony is that people who get hurt most by this are those who have not seen a lawyer until after they have lost their claim.

380 FADELEY said if he was a financial manager for a government body, he would try to get a report of potential claim as early as possible. He said most public bodies had certified auditors who write to attorneys asking them if they know of any pending claims - the manager is going to want to be notified as soon as possible of potential items of litigation.

398 CHAIR said it had been his experience that supervisors demand that you report incidents, not for insurance reasons so much, but they just want to know what is going on. He said usually the governmental body knows that there is a potential claim, but they want the notice requirement so they can find out - he said it was sort of a red herring thing.

419 KULONGOSKI agreed that they probably all do have notice, but he said the insurance companies are not going out to look for the other party to settle until they get the notice from the individual. CHAIR said the question was raised if it was the same with self-insureds, where there was no third party. KULONGOSKI said it was a fiscal question and that there was no difference whether self-insured or private - the only public policy they have is that is it going to cost them too much money - that is their argument if they have to go to another system. CHAIR said to that extent it will show they are beating people out of claims. KULONGOSKI said that was the tragedy of the whole thing - they's why they save money

450 CHAIR said he wondered if it would be confusing if we say "it is going to be two years for personal injury and property damage, and three years for wrongful deaths" so that the six years is out. Or he wondered if it would be better just to say we are considering eliminating the 180 days.

459 KULONGOSKI said if the public entities had a choice of cost saver it wouldn't be with the notice - it would be the 180 day statute of limitations they would probably want.

TAPE 39-A

011 CHAIR said the committee would try to find out the cost for the next meeting.

018 FADELEY said if he was forced to vote this afternoon, he probably would have made the 180 day a year, but he said he wouldn't have wiped out the notice entirely. He said the last subsection of the actual notice can be made a little better in terms of turning aside arguments. CHAIR said that would be the third way to go - to lengthen the notice requirement period.

035 COUNSEL LaMAR said she wondered how she could get them to respond to her draft as she did not want to force some kind of private authorship. FADELEY said he told them to work with Counsel's draft in trying to clean up that language. CHAIR suggested that Counsel draft a letter to the people who have shown an interest in this and he would sign it, saying we would start with Counsel's draft and they should feed their ideas into it.

041 GARDNER said what he wanted to accomplish with this bill primarily is, when you have actual notice, to get them not able to play the technicalities. There was a discussion on cleaning up the notice and leaving the 180 days. KULONGOSKI said he was for eliminating the 180 days and FADELEY said one year would be better than the elimination. GARDNER said he wanted to hear more on how much it costs - it is supposedly here to keep down the costs. Some general discussion among the members on this.

Meeting adjourned at 5:30 p.m.

Respectfully submitted,

Vera Moiseve, Committee Assistant

EXHIBITS:
- A - Letter from PUC (Gene Maudlin), SB 175
- B - Proposed Amendments by Legal Counsel, SB 86
- B-1- Proposed Amendments from Dept. of Justice, SB 86
- C - Letter from Marion County Risk Management Dept., SB 86
- D - Letter from Oregon Farm Bureau Federation, SB 199
- E - Testimony by Dave Corwin, Lane County, SB 199
- F - Suggested amendment, Elizabeth Belshow, State Supreme Court, Court Administrator
- G - Letter re amendment on SB 346 from Circuit Judge Richard L. Barron
- H - Letter from Circuit Judge Delbert Mayer re court reporter bill, SB346
- I - Amendment to SB 289 from Vinita Howard, Motor Vehicles Division
- J - Testimony by David Florea, Police Chief, Monroe, Oregon, SB 289
- K - Witness Registration Sheet for SB 175
- L - Witness Registration Sheet for SB 199 & 198
- M - Witness Registration Sheet for SB 346
- N - Witness Registration Sheet for SB 289
- O - Witness Registration Sheet for HB 2351

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March 17, 1981 MINUTES Room 346

MEMBERS PRESENT: Walter F. Brown
Edward Fadeley
Jim Gardner
Ted Kulongoski
Jan Wyers, CHAIRPERSON

EXCUSED: Kenneth Jernstedt
Robert Smith

TAPE 67A

006 Meeting was called to order at 3:20 p.m. in Room 346.

015 SENATE BILL 86 - Relating to public body tort liability - EXHIBIT A and EXHIBIT B.

018 CHAIRPERSON WYERS called attention to Exhibit A - a letter from the City of Salem.

024 WILLIAM G. BLAIR, Assistant City Attorney, City of Salem. MR. BLAIR explained they had had some difficulty in getting the information on fiscal impact that the committee had requested and that was why the letter (Exhibit A) was so late in being presented to the committee. MR. BLAIR said they attempted to find out what their insurance premiums would have been for the past three years had they been purchasing insurance rather than self-insured. They just recently found out what the probable impact would be in terms of premium rate hikes based on repeal of the 180-day notice requirement. Their best assessment would be $100,000.00 related particularly to the 180-day notice requirement.

THE CHAIR asked what the $81,000.00 that was being discussed on page 2 of the letter was addressing.

MR. BLAIR said it was the difference between the cost if they were to purchase insurance and if they were to continue with their self-insurance probram. Both costs would go up.

THE CHAIR asked whether he was saying that if the 180-day requirement were taken away, they would have to buy insurance rather than self-insure.

MR. BLAIR explained that the $100,000.00 of impact was based on continued self-insurance. At this point, the City of Salem thinking is that they would continue self-insurance. After a year they would review the situation and if the program had become unmanageable, insurance would be purchased.

MR. BLAIR explained there was no way to assess how many claims would be out there if there were no 180-day requirement. The only way the this can be approached would be by assessing what they would have to do in terms of budgeting and reserving additional funds.

THE CHAIR asked if the reserve funds were not out at interest and the answer was they did. However, they are committed. They are not available for operating expenses. The money is set aside to pay claims.

CHAIRPERSON WYERS said that then it was a matter of $100,000.00 additional reserves rather than $100,000.00 additional cost.

MR. BLAIR explained it was a budget for $100,000.00 additional cost most of which, during the first year, would be reserved.

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SENATOR GARDNER asked about amendments submitted by the Department of Justice. SEE EXHIBIT B. (Department of Justice Amendments attached to letter submitted by City of Salem, dated March 17, 1981.

SENATOR GARDNER asked Mr. Blair what his reaction was to the Department of Justice's proposed amendments.

099 LESTER RAWLS, Professional Liability Fund, Portland, Oregon. SEE EXHIBIT C.

CHAIRPERSON WYERS called attention to a letter from Jack L. Sollis, Assistant Attorney General, dated March 16, 1981. (SEE EXHIBIT D).

CHAIRPERSON WYERS asked Mr. Rawls whether he was saying, in response to questions raised by figures used in EXHIBIT D, that insurance carriers had told him privately that although they oppose the bill they do not think they would have to charge higher premiums. There is not that much difference in Washington that has done away with the 180-day requirement. It is based on other factors.

185 MR. RAWLS said that he thought the one thing they were concerned with, and he was almost certain the Bar did not intend this, is the way the bill is written and if passed as it is written, would delete the two-year statute of limitations on any tort. MR. RAWLS said that as he reads the statutes anyone of those, when it is not otherwise established, then it goes back to ORS 12.110. It was his understanding that otherwise, the companies did not have that much objection to the bill at all.

THE CHAIR asked Mr. Rawls how he analyzed the concern that this costs more because you have to reserve more money. He was addressing the self-insured.

MR. RAWLS said that was a difficult topic to address without knowing that their philosophy was in reserving. It depends on your reserving techniques. He would have to sit down with the people and find out what their basic assumptions are that were made.

SENATOR BROWN asked about the Utah notice limitation. He wanted to know whether they had a short period such as six months.

MR. RAWLS explained that before commencement of an action can be made -- before you can sue either a city or a county -- you must give notice to the city or county or the attorney general. Said there was nothing like a six-month informal notice. It is a notice prior to commencement of a suit.

258 CHAIRPERSON WYERS noted that EXHIBIT E, submitted by TRI-MET of Portland had arrived too late to be thoroughly studied.

SENATOR KULONGOSKI asked whether there were any amendments to the printed bill and he was told that at this point the committee had not amended it.

THE CHAIR and SENATOR FADELEY both expressed disappointment and dismay at the fact that material on this matter had not been submitted earlier to the committee even though it had been requested. SENATOR FADELEY expressed the opinion that those submitting material had not taken the matter seriously.

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SENATOR KULONGOSKI said his position with regard to this proposed legislation has not changed since the first time he had seen the bill. He feels the six month limitation should be repealed. He said he supported the bill in its present form except for one amendment he does feel it needs. It does not have a proviso as to when it takes effect and what cases. Does it take effect on all cases that are current, filed after the effective date of the Act. It should be defined just exactly when the public entities should be noted that liability is occurring. SENATOR KULONGOSKI pointed out it would be something committee counsel would have to draft.

SENATOR FADELEY also called attention to Exhibit B and an attachment thereto which contains a proposal takes the Notice of Claim back to the point that says that the Notice of Claim that does not contain the information for which is presented in any other manner is invalid. It appears they are still trying to rule some people out on the basis of defective notice. SENATOR FADELEY did not think anybody could have gotten a fair reading from the committee that they wanted that in any proposed amendments.

THE CHAIR said he had been thinking along two lines on this legislation. One was the Washington approach espoused by Senator Kulongoski. The other would be to make the simplest, clearest statement of the Notice without any requirement of proof on the part of the claimant that the local government had gotten notice. SEE EXHIBIT F.

SENATOR GARDNER said he wanted actual Notice. He said he agreed there were some provisions in the ATtorney General's draft that are unnecessary. SEE EXHIBIT G. He said the only change he would support would be actual Notice.

SENATOR KULONGOSKI said that when actual notice is mentioned two issues come to his mind. One is who would be notified. Two what would be the content of the notice. He wanted to know what Senator Gardner had in mind with regard to actual notice on those two issues.

SENATOR GARDNER said if the representative of a local body finds out about a claim or a potential claim, he did not believe they ought to be able to sidestep that by saying that it wasn't dispatched properly, or was not put out in writing, etc.

SENATOR GARDNER recalled that at the last meeting on this legislation the hope had been made that the contending parties would meet with Legal Counsel LaMar. He asked whether they had done that.

COUNSEL LaMAR said she had had one response to EXHIBIT F and that was from the City of Salem. She had received that at 2:55 p.m. today. In response to Senator Gardner she said that nobody had met with her on the technical work with the form of notice, manner of notice, etc.

SENATOR GARDNER said it was unfortunate that such a meeting had not occurred because the committee had wanted the parties to work through Ms. LaMar. He said he felt the issues raised by Senator Kulongoski were issues that were compromisable and it would be best compromised by the two sides sorting it out so we do not have any over-technical requirements. In other words, if they know about it, they should not be able to get of it by a technicality.

It was agreed that the current statute is overly technical and allows them to get away on a technicality.

SENATOR KULONGOSKI reviewed the opposition. One is the bill itself in its present form. He said he understood there is now a proposal that an amendment be made that would extend the six month to a one year statute of limitations. Then, there is the policy decision that to keep the six months which he understood Senator Gardner favored. Then actual notice.

SENATOR GARDNER said that Senator Kulongoski was correct. He viewed the latter one, actual notice, as a more technical thing that is compromisable pretty much by the parties working together through Counsel.

THE CHAIR understood at the last meeting that that was acceptable. He had heard no one come forward and say that actual notice clearly stated would be unacceptable.

SENATOR GARDNER pointed out that there are variations in how that is drafted, tecnically.

THE CHAIR listed the political considerations.

1. Should the bill be sent out as it presently was. That would be the most difficult bill to pass for those who want to put people who are injured by a public body on the same footing as people injured by a private entity or person.

2. If the committee decides there are not enough votes here or on the floor to do that, then we ought to decide whether we want to look at something such as Senator Fadeley is thinking about.

3. If we do not that, do we just then want to work on notice.

SENATOR GARDNER said he thought that was correct.

SENATOR FADELEY said he could not help but wonder after reading the material presented whether people were just trying to stonewall the committee. SENATOR FADELEY said that since the testimony of the atrocities committed in the name of the notice provisions by Tri-Met and those people was so clear he could not see why he was seeing the notice pegged up again or made more difficult in the amendments. He wanted to know whether the real issue was that this legislation was going to be fought to the last ditch and not get any bill at all. He thought if that was the issue, then he thought the bill should be put out and see whether the Bar has the votes or not. He said he was sure there were different feelings among different jurisdictions.

SENATOR BROWN directed a question to Senator Gardner. Would the SEnator feel comfortable with the term"actual constructive notice" so that under appropriate circumstances it would be chargeable if their agent or employees were involved.

SENATOR GARDNER said he would but still wanted people to work with Ms. LaMar and he volunteered to join the group in attempting to reach some acceptable solution.

CHAIRPERSON WYERS said that he gathered that another option was being suggested and that was if it was decided to give up on doing anything with the 180 day but spend a little time making sure that we have the clearest notice we can get.

SENATOR KULONGOSKI supported Senator Fadeley in the statements he had made. He said he thought the people coming in before the committee had not received a

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clear signal of the direction the committee wants to go. He said he thought these people were floundering themselves wondering whether they should concern themselves with the six months, the year notice or what it is. He said he felt they were going to have to be given a clear statement from the committee as to what directions we are going to go.

SENATOR KULONGOSKI discussed certified mail and said the point had been made before that with this type of mail the parties receiving it can always refuse to accept it. That is an inherent weakness with certified mail.

SENATOR KULONGOSKI said that if the committee did not desire the bill in the printed form with the amendment on effective date; they do not want to remove the 180 days; someone wants a longer period of time and wants to go to a year, the Senator said he would support that as an alternative.

SENATOR GARDNER said he was going to stick with actual notice.

THE CHAIR said that it felt that if the committee did not go for the Washington approach, it might as well go Gardner's way. Unless this bill is changed quite a bit there is going to be a lingering question about it.

SENATOR KULONGOSKI explained that he had said that if the bill passed it would have to have a clause in it that this Act applies only to cases on or after the effective date of the Act. There is nothing in there now and it looks like cases that were filed one year and nine months ago could still come in the files.

SENATOR GARDNER MOVED THAT SENATE BILL 86 BE AMENDED TO PROVIDE FOR ACTUAL NOTICE. This was a conceptual motion. There will be another work session after the details are worked out.

SENATOR KULONGOSKI asked whether it was the Chair's contention that the committee would not now work on a bill that repeals the six month notice. The six month statute of limitations will remain in the bill in whatever form it comes out of the committee.

CHAIRPERSON WYERS said that was his intention.

SENATOR FADELEY thought that maybe an extension to one year of the six month's might be acceptable. One of the reasons he suggested this was the one year presentation on the other bill made by the Department of Justice where they were talking about one year there. He recalled a previous hearing. This one year limit was in a Victims of Compensation of Crime bill. If there should be a one year time for making the claim of victims of compensation of crime, it seemed to him as though maybe a one-year time for the injured citizen run over by the county truck is okay too.

SENATOR GARDNER explained in answer to a question from Senator Brown that if the jurisdiction knows there is a claim out there, and they know that within the time period, that ought to be sufficient. He repeated that he would like some more time to work out the refinement of that.

THE CHAIR said he saw as the problem right now the 180-day question and not the wording of the notice.

Before the roll call on the amendment Senator Gardner explained that this motion was to amend the bill so as to make it conceptually a bill that would provide that actual notice is sufficient to notify a local jurisdiction within the six months.

ROLL CALL:

Senator	Walter Brown	Aye
	Edward Fadeley	Aye
	Jim Gardner	Aye
	Ted Kulongoski	Aye
	Jan Wyers, CHAIRPERSON	Aye

Excused: Ken Jernstedt
Robert Smith

MOTION ADOPTED.

THE CHAIR announced the bill would be put back on work session within a week or ten days. It would be as soon as it could be managed.

SENATOR GARDNER urged the local governments present to realize the committee was very serious about this and that the committee did want to eliminate technicalities so they will work in good faith with Counsel.

THE CHAIR explained a question which he wanted addressed and that would be the case of a person being hurt by the city and it was actually the county and they send an actual adequate notice to the city, should that be binding on the county. He wanted suggestions on that and how that should be worded. That is an area where a claimant could be legitimately confused. He called attention to EXHIBIT F which contained a section addressed to this problem.

SENATOR GARDNER said there might be some virtue in going the simplistic route which says if you have actual notice within the six month period, that is sufficient. That would allow the court to have a little bit of flexibility with what has been done.

SEE EXHIBIT H, I, J, K.

426 SENATE BILL 83 - Relating to circuit courts

SENATOR KULONGOSKI presented testimony he had been requested to by Representative Yih. (EXHIBIT M).

THE CHAIR announced the need for the committee to discuss how active role the committee wanted to take in examining the policy decisions about the need for additional judges and how much that decision should be shifted to Ways and Means.

SENATOR GARDNER wanted to know whether the Judicial Conference was going to testify on these bills and felt it would be good to have a recommendation one way or the other to Ways and Means.

TAPE 67B
002 After the Chair informed the committee that Chief Justice Denecke had asked that Senate Bill 83 be held up until some other bills came in, SENATOR FADELEY said

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0 SENATE BILLS 601 and 620 (continued)

040 ROBERT SCOTT, Attorney, Albany, Oregon. Testified in support of Senate Bills 601 and 620. Represented Linn County Bar Association. SEE EXHIBIT W. Insofar as Senate Bill 601, it would be recognizing a fact that exists. Linn and Benton Counties have acted as separate districts although they are one judicial district. This has been the case for the last 12 years when he has been in Linn County. There is no interaction between the two.

SENATOR FADELEY did not understand what problem would be solved by creating separate districts.

MR. SCOTT said the problem is that the statistics for the two counties are lumped together as a common practice when determining whether or not to add additional judges. When taken as the 21st judicial district, they do not need any additional judges. When taken as Linn County, they are either the first or second hardest working county in the state so far as cases filed, cases terminated and cases tried per judge. Linn County wants their statistics treated alone.

070 MR. SCOTT then discussed Senate Bill 620. He called attention to EXHIBIT W. He explained they had presented their case to the Bar. Similar to Judge Abrams situation, their committee was formed in the summer of 1980. The primary concern of the committee was that they get in front of the legislature. They asked for permission to make a later presentation before the Oregon State Bar committee. They granted the permission. They said they would not make a recommendation to the Bar Association for several reasons. One reason given was that the presentation was not timely -- it would, in effect, force the committee to reorganize their priorities. Another reason was that they felt there should have been better cooperation between the Linn and Benton County judges, which there has not been. MR. SCOTT said that they do not have it within their power to solve that problem and the judges have indicated they are not going to solve it themselves.

MR. SCOTT explained he was the Chairman of the Judicial Administration Committee of the Linn County Bar. This was formulated last summer in an effort to have the judges get another judge.Essentially that was about as simple a fashion in which he could put it.

MR. SCOTT offered into the record a letter from Chief Justice Denecke. SEE EXHIBIT O.

130 JACK FROST, District Attorney, Linn County. Came in support of Senate Bills 601 and Senate Bill 620. He supported everything Mr. Scott had said.

SENATOR KULONGOSKI said that for the record he wanted it known that insofar as the two judicial districts for Linn and Benton Counties he knew the Court Administrator wanted an opportunity to testify before the committee.

SEE EXHIBIT X.

SEE EXHIBIT Y - regards Senate Bill 86,

Meeting adjourned at 6:05 p.m.

Respectfully submitted,

See page 15 for list of exhibits.

Harriet Civin, Chief Committee Assistant.

Page 3

83A to interfere with someone else's liberty when he goes through the process of whatever he is going to do, if it didn't actually interfere with that person's liberty, it would not apply. So it changes it from an intent to actually what happened from the viewpoint of the victim.

MR. SMITH called attention to the suggested third paragraph, if it was merely incidental to the commission of another crime, he suggested that there could be good many rather aggravated circumstances where this would result in no kidnapping. The third paragraph MR. SMITH was referring to was one not included in the bill but had been suggested by Mr. Crabtree.

THE CHAIR asked whether the words "merely incidental" would not take care of that. It is not merely incidental to the theft of a car to transport somebody against their will.

MR. SMITH said that given time other examples rather than that of stealing a car would be apropos.

THE CHAIR asked Mr. Smith whether they wanted to be able to prosecute for kidnapping when they did not interfere substantially.

MR. SMITH said they certainly would want to in some cases at least.

SENATOR KULONGOSKI addressed a question to Mr. Crabtree and said he was interested in the change in line 5 and 6 of the bill. He wanted to know what would be different from the prosecutor's standpoint in the proving of his case.

MR. CRABTREE said that first of all the prosecutor is not going to be allowed to merely rely on what the jury infers as the intent of the actor in doing it.

MR. CRABTREE said that under this proposed legislation the question of what constitutes incidental movement would be a jury question. He said they are definitely not trying here to abolish the crime of kidnapping entirely. Anything that has a true flavor of a kidnapping or that is the only offense, you are still going to have a conviction for kidnapping.

SENATOR KULONGOSKI summed what what appeared to him to be the change. Under current law, the proof is that the person had intent to substantially interfere with another's personal liberties. The change would now make the element of proof as the person who interfered.

MR. CRABTREE said that was correct. That he actually accomplished it rather than intended to do so.

SENATOR KULONGOSKI informed the committee that there was another bill which had been introduced by Senator Powell which deals with kidnapping -- custodial kidnapping. He thinks these bills are an attempt to change the same statute.

424 <u>WORK SESSION: Senate Bill 86 - Relating to public body tort liability</u>.

SENATOR GARDNER explained that most of the problems with this bill had been ironed out. He explained that we were now down to two minor issues which have not been agreed upon. SENATOR GARDNER called attention to EXHIBIT A.

SENATOR WYERS told the committee the sponsors of the bill were still of a mind to have the bill sent out pretty much the way it was introduced.

SENATOR KULONGOSKI MOVED THAT SENATE BILL 86 BE SENT TO THE FLOOR WITH A DO PASS RECOMMENDATION. THE INTENT OF IT BEING TO REPEAL THE 180-DAY LIMITATION IN THE LAW AND THAT WOULD PUT THEM UNDER THE TWO-YEAR STATUTE.

TAPE 84A 030 SENATOR WYERS said that if the committee decided to conceptually adopt the above motion, there would still be one remaining question as to whether an additional reference be added to make it very clear to everyone that the two-year statute of limitations in Chapter 30 would still apply.

SENATOR FADELEY said that the bill apparently tries to make a six-year statute applicable for property damage and a three-year statute applicable for wrongful death actions of at least one sort by a personal representative.

SENATOR FADELEY said that as he understood the motion it was not asking for the six-year statute and the three-year statute on wrongful death was not being asked for.

SENATOR KULONGOSKI said that was correct.

SENATOR FADELEY asked whether he was intending that the existing two-year statute on personal injury apply and that the two-year general statute for tort claims act still apply.

SENATOR KULONGOSKI replied that was correct.

In response to a question concerning fiscal impact COUNSEL LaMAR attempted to answer. She said that only three public bodies had indicated what they expected the fiscal cost would be. One of those was Tri-Met. EXHIBIT B.

SENATOR JERNSTEDT said he just wanted a quick figure and not an exact one.

MS. LaMAR said the Department of Justice had indicated that the local liability fund would need an additional $279,000.00 per year during the next biennium. EXHIBIT C.

SENATOR FADELEY called attention to EXHIBIT D presented by Clackamas County. The Senator said he was confused by the figures quoted because it would indicate that the people being injured by Clackamas County at this time were not being paid.

SENATOR FADELEY said the Chairman had called attention to testimony given by Lester Rawls. Mr. Rawls had discussed premiums if charged by an insurance company rather than self-insured. SENATOR FADELEY said he had read somewhere that either the insurance company or the self-insured put aside a reserve for potential claims that had not been asserted.

SENATOR FADELEY said the question is whether all of this class of insurance or self-insurance would be on the basis of a known claim and experience or whether there would be a contingency some people would put into their actuarial computations for a claim not yet made but potential to be made.

LESTER RAWLS. He thought there were two ways insurance companies operate and to an extent self-insurers do the same thing. You reserve for known claims. In every type of casualty business there is the unknown claim that is what is called incurred but not reported. It is usually based on previous experience to that class of business. Money is set aside in a reserve and when the claim actually comes in then the transfer is made to the actual reserve. It is an accounting system.

MR. RAWLS said that what he is hearing here is that the fear if the 180-day notice is no longer available, they will have to increase their reserves. MR. RAWLS said he did not understand that thinking and he said he had been unable to find anybody in the insurance industry who could tell him how they come to that particular decision. The only way they can do that is as someone has said that in the past denying certain numbers of claims because they have not complied with the strict requirements of the statute.

As an insurance factor, there is no possible way they can say this particular piece of legislation in this area is going to raise our costs "x" number of dollars. There is just no way to know that.

SENATOR FADELEY said that he then drew from Mr. Rawl's remarks that in Mr. Rawl's expert opinion that the contention that it would cost more money is not based upon an insurance understood idea.

MR. RAWLS said that he had talked to a number of companies that have been involved and they have no way actuarially to determine exactly that particular legislation. Oregon and Washington are quite similar as to roads, etc. Washington has no limitation whatsoever. The availability of coverage and cost according to the people over there is fairly much the same as it is in Oregon. It is on the experience of the past year that they develop their losses which are the biggest factor in determining their rates. In this type of business there is no real established rate such as in the automobile insurance. You have general guide lines and it then it goes on the competition and how badly you want the business.

MR. RAWLS explained that when you talk about limits of liability exposure and you either increase or decrease those you have a better handle on what it might cost than you do. . . .

SENATOR WYERS said he thought he had heard Mr. Rawls say that he could see no reason for them to reserve more money.

MR. RAWLS said that certainly the reserve of the general fund of the State of Oregon sits there in the general fund. It may be that somewhere down the line you might have to come to the Emergency Board and say they had spent more than they had to. That does not necessarily follow that it is costing more. They are just paying the legitimate claims to the citizens of the state that should be paid.

SENATOR GARDNER said there was an assumption in that analysis that legitimate claims which don't meet the technical grounds of the statute will be paid regardless of their technical deficiency.

MR. RAWLS agreed that was the assumption contained in his analysis.

SENATOR BROWN said that it is his understanding from testimony given by Mr. Rawls previously and testimony today basically says that in Mr. Rawl's opinion that the same insurance company insuring a city in Washington with no limit and a city in Oregon with limits would be substantially the same rate.

MR. RAWLS said that would be correct.

CHAIRPERSON WYERS called attention to Exhibit C--a letter from Jack Sollis. He asked for Mr. Rawl's comments on the letter. Mr. Sollis says that it would increase the premium. (See Exhibit C).

Page 6

84A MR. RAWL's said that he would hope that when a letter such as Exhibit C is presented it would be accompanied by supporting documents.

A discussion of insurance rates ensued.

398 SENATOR FADELEY said he was still not ready to vote for anything more than he said he was the other day. That is a year. He said he had moved closer to being willing to vote for more than a year. He was still in doubt as to whether a cost would be imposed. If a cost was not being imposed, then he saw no point at all in not having a standard two year. He thought however that some notice and provision would be protective of tax dollars.

SENATOR KULONGOSKI SAID HE WAS WILLING TO WITHDRAW HIS MOTION AT THIS PARTICULAR TIME.

CHAIRPERSON WYERS said he thought Mr. Lamb might be able to help on this proposed legislation. He said he would also like to have some backup information on this letter from Mr. Sollis. (Exhibit C).

SENATOR FADELEY said that if there was any proof on this,he would like to have it and would like to get it by next Wednesday. The only real evidence presented to the committee is opinion in letters which he felt he could not entirely rely on. He said there was an opinion by Mr. Rawls which he was more inclined to rely on.

E 83B

0 SENATE BILL 439 - Relating to computer fraud.

043 JAMES J. CASBY, Jr., Assistant Attorney Genral and Counsel to the State Board of Higher Education. Testified in support of the bill. (SEE EXHIBIT E).

SENATOR BROWN asked whether there was currently any "criminal peg" on which to hang a computer embezzler.

MR. CASBY called attention to Exhibit E, pp. 4 and 5. He listed those statutes which may be used to prosecute computer crime. However he felt these "pegs" were not satisfactory. One reason for this is that they were drawn and constructed in a precomputer age.

SENATOR BROWN asked whether this statute or proposed legislation had been drawn and based on some model which had been passed in some other state.

MR. CASBY explained that the legislation is modelled on the Arizona statute. MR. CASBY did say he was not familiar with the experience under the Arizona law. He said he would be pretending if he were to say there is an experience of successful use of this statute. He called attention to EXHIBIT E and the excerpt from THE COMPUTER CAREER NEWS.

In response to SEnator Brown, Mr. CASBY said that the Arizona statute had not been amended so far as he knew since Mr. Branchfield (MR. Casby's predecessor) had prepared Senate Bill 439.

SENATOR BROWN felt it would be wise to get more information on the Arizona experience and present it to the committee when the bill is discussed again.

SENATOR KULONGOSKI wanted to know whether this bill would be applicable to the student situation where some student comes in to the computer center and involves

TAPE 109A

004 MEETING WAS CALLED TO ORDER BY SENATOR JAN WYERS, CHAIRPERSON AT 5:10 P.M.

MEMBERS PRESENT: Senator Walt F. Brown
Edward Fadeley
Jim Gardner
Kenneth Jernstedt
Ted Kulongoski
Robert F. Smith, Vice-Chairperson
Jan Wyers, Chairperson

024 SENATE BILL 86 - RELATING TO PUBLIC BODY TORT LIABILITY

024 Michael Lamb, Casualty Actuary, Insurance Division, presented the committee with an Acturial Review of the Tort Liability Fund. (EXHIBIT A). WYERS and LAMB discussed the Highlights area on page A of Exhibit A and the estimates they had heard about that would increase the cost by ten percent if the 180 day requirement was eliminated.

067 SENATOR FADELEY arrived at this point.

SMITH clarified that the report had been prepared in 1979, and that Lamb did not feel it could be used as a matrix to extend on to this report and these figures what an extension of the tort liability statute of limitation might mean in cost. SMITH asked Lamb if he thought there would be any cost increase. LAMB replied that he thought there would be some increase, but he had no way of evaluating it.

124 FADELEY questioned Lamb about his comment that as far as the state program with local entity involved in the state program, he did not believe there would be any cost increase. LAMB said based on the work he did on the tort liability fund a year and a half ago, he didn't think there would be any need for them to increase the charges they made. FADELEY asked if that meant the state was charging too much. FADELEY said he thought Lamb was saying that the state's self-insurance program would have an increase in the cost and asked Lamb to quantify that expectation. LAMB replied that he could not. FADELEY asked if he could do it as a percentage of claims or in dollars relative to the present self-insurance cost. LAMB replied that he could do neither. FADELEY then listed several percentage figures and asked if it would be less than those percentages. LAMB again said he had no way of knowing. FADELEY persisted in his questioning; LAMB said from some of the correspondance he had seen from local governmental bodies, that the cost would probably not be less than five percent, but he could not evaluate how much more than that it might be.

185 FADELEY spoke to the costs of claims estimated by the cities of Portland and Salem. He said it seemed to him that money could be saved if there could be a way figured out to encourage people to notify the governmental agency sooner.

220 GARDNER asked if Lamb's best estimate was that the cost to the state would be not less than 5 percent. LAMB said he did not know about the state, the 5 percent estimate came from local governments. He had not been able to analyze the State of Oregon in a way to give an accurate estimate. GARDNER said some of the basis for estimates that came to them, had to do with the number of claims declined because they were over the 6-months period and asked Lamb if he felt there were any actuarial imperfections in that method. LAMB and GARDNER discussed that question.

238 WYERS asked if there would be any new claims if they did away with the 180-day requirement other than the claims that were now being defeated by missing that. Lamb said he didn't if anybody had anyway of knowing how many claims there would be of that kind. WYERS asked if Lamb had any comments to make about the estimates of increased needs to reserve by self-insured local governments or public bodies. LAMB replied that the amount of that need would differ by the nature of the public body and their exposures. WYERS asked for comment on Lester Rawl's testimony that the greatest effect on rates was the loss experience rather than notice requirement - he was saying in Washington, it was his information that the thing that really affected the rates was the loss experience. LAMB said the movement of insurance rates had brought about by the changes in expectations of loss, claim costs.

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295 THE CHAIR MOVED THAT SENATE BILL 86 BE REMOVED FROM THE TABLE, WHERE IT HAD BEEN PLACED BY OPERATION OF RULE 8.20.

Hearing no objection, SB 86 was removed from the table.

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337 FADELEY MOVED THAT THE SIX-YEAR STATUTE ON PROPERTY DAMAGE, THAT CHANGE, BE DELETED FROM THIS BILL AND THAT THE THREE-YEAR WRONGFUL DEATH STATUTE BE DELETED FROM THIS BILL.

GARDNER asked if that meant personal injury only. FADELEY said that essentially there would be no other statute except the two-year statute that presently exists in the law, the 180-day is not a statute of limitation, it is a notification requirment.

353 LaMAR explained amendments she had prepared. (See EXHIBIT B).

405 GARDNER clarified that the effect would be for all claims under the tort claims act, there would be a two-year statute of limitations and no special notice requirements. WYERS explained that the motion now was just on the two-year statute of limitation. GARDNER asked what the practical effect of that would be, how would it change the statute of limitation.

COMMITTEE MEMBERS and COUNSEL discussed the proposed amendment.

ROLL CALL VOTE:

Voting Aye: Senators Brown, Fadeley, Gardner, Jernstedt, Kulongoski, Smith, Wyers.

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451 LaMAR explained a subsequent section to amendments of March 25, 1981. (Exhibit B) She said the committee needed to decide whether to adopt a subsequent section as an addition to the bill, which would provide that the amendments made to ORS 30.275, by this act, shall apply to all alledged injuries or losses for which the time limits prescribed herein shall not have passed upon the effective date of this act.

473 GARDNER asked what it would do if they didn't make that amendment. LaMAR replied that since they had taken out the former statute of limitations, they just need to clarify what it was that that applied to. Otherwise, she said, they could have a hiatus.

TAPE 110A

021 GARDNER and LaMAR discussed this further.

SMITH said Mr. McCullum testified that he currently had a case before the Court of Appeals, he wasn't sure what the case was about, but by making this change would they in any way be interferring with that case, by legislative action. LaMAR said she knew that the Court of Appeals had in the past, taken legislation that has been passed in trying to infer legislative intent, in interpreting cases which arose prior to the passage of amendments.

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050 FADELEY MADE A MOTION TO ADD A CLAUSE SAYING THE EFFECTIVE DATE OF THIS ACT WAS JANUARY 1, 1982, AND THEN STATING THIS 1981 ACT SHALL FIRST APPLY TO CLAIMS BASED ON INCIDENTS OR OCCURANCES AFTER THE EFFECTIVE DATE OF THIS ACT.

066 COMMITTEE MEMBERS AND COUNSEL discussed the motion.

091 FADELEY explained to the Committee that there were three things that had been voted on in the prior motion; those were 1) time of discovery, 2) no 6-year statute, 3) no 3-year statute.

095 FADELEY explained the motion relating to effective date.

114 ROLE CALL VOTE:

Voting Aye: Senators Brown, Fadeley, Gardner, Jernstedt, Kulongoski, Smith, Wyers.

MOTION ADOPTED.

Page 4

116 WYERS and FADELEY discussed how the language would be added in to effect the motions.

144 LaMAR referred to the proposed amendments. (EXHIBIT B)

151 WYERS listed the actions the committee had taken up to date on the bill and asked if they could now amend in concept an elimination of the 180-day notice requirement and then put it back on work session with the language worked out.

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166 THE CHAIR MOVED, IN CONCEPT, TO ADOPT AN AMENDMENT TO ELIMINATE THE 180-DAY REQUIREMENT.

ROLE CALL VOTE:

VOTING AYE: Senators Brown, Fadeley, Kulongoski, Wyers

VOTING NAY: Senators Gardner, Jernstedt, Smith.

MOTION CARRIED

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213 BROWN MOVED SB 86 TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

ROLL CALL VOTE:

Voting Aye: Senators Brown, Fadeley, Kulongoski, Wyers.

Voting Nay: Senators Gardner, Jernstedt.

Excused: Senator Smith

MOTION CARRIED

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230 SENATE JOINT MEMORIAL 5 - MEMORIALIZES CONGRESS TO REQUEST THE PRESIDENT TO ESTABLISH POLICY AGAINST FIRST USE OF NUCLEAR ARMS

233 SENATOR TED KULONGOSKI, chief sponsor of SJM 5, asked to have the measure corrected to correctly spell his last name.

265 CONGRESSMAN JIM WEAVER, testified in favor of SJM 5. He thanked the committee for holding a hearing on this subject. He felt that everyone should do their maximum effort to stop the world's spin toward nuclear holocaust. He urged the committee to act favorably on Senator Kulongoski's Memorial.

The first observable effects of a nuclear bomb explosion will be a bright flash and intense heat, WEAVER said. He said that proceeded the blast by several seconds. Blindness occurs from looking at the blast

MEMBERS PRESENT: Senator Ed Fadeley
Jim Gardner
Ted Kulongoski
Jan Wyers

094 SENATE BILL 85 - Relating to Juries

110 JUDGE JOHN BEATTY, Circuit Court Judge, representing the Judicial Conference, testified in support of SB 85. The amendments proposed by Counsel would permit a separation of a jury after deliberation had been undertaken in the discretion of the trial judge. When a jury is permitted to separate during deliberation there is more possibility for contact with outside people.

190 MOTION: SENATOR GARDNER moved the amendments in Exhibit A.

VOTE: CHAIRMAN WYERS called for objection and there being none the motion was so ordered.

MOTION: SENATOR GARDNER moved SB 85 to the floor with a Do Pass as Amended recommendation.

VOTE: In a roll call vote the motion carried with Senators Fadeley, Gardner, Kulongoski and Wyers voting AYE. Senators Brown, Jernstedt and Smith excused.

311 SENATE BILL 86 - Relating to Public Body Tort Liability

316 MR. BILL BLAIR, Assistant City Attorney, Salem, (EXHIBIT H) testified that the amendments to SB 86 (EXHIBIT G) represent a compromise made and agreed upon by most of the proponents of SB 86. It is acceptable to the City of Salem, City of Portland, Trimet and to the State of Oregon.

417 Mr. Blair stated that the intent behind Section 5, page 2, was to provide that actual notice means any means whereby the people that have to deal with claims by public bodies find out what has happened and should be aware that someone is going to bring a claim so that they can get on it, adjust to it, defend it or deny it.

Tape 155B

124 MOTION: SENATOR GARDNER moved the amendments in Exhibit G.

VOTE: In a roll call vote the motion carried with Senators Gardner, Jernstedt, Kulongoski, Smith and Wyers voting AYE. Senator Fadeley voting NO. Senator Brown excused.

142 MOTION: SENATOR GARDNER moved that the effective date be used that was in SB 86A.

VOTE: CHAIRMAN WYERS called for objection and there being none the motion was so ordered.

MOTION: SENATOR GARDNER moved SB 86 to the floor with a Do Pass as Amended recommendation.

VOTE: In a roll call vote the motion carried with Senators Fadeley, Gardner, Kulongoski, Smith and Wyers voting AYE. Senator Jernstedt voting NO. Senator Brown excused.

220 SENATE BILL 83 - Relating to Juries

220 SENATOR POWELL, District 19, testified in support of SB 83 saying that the pro-tem position in Linn County should be funded as an additional judge. Judge Warden's analysis also shows the need for a Circuit Court judgeship.

279 The meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Sandra Brantley

Sandra Brantley
Committee Assistant

EXHIBITS

A - Amendments, SB 85
B - Testimony, Judge Beatty, SB 85
C - Amendments, SB 50
D - Amendments, SB 50
E - Testimony, Multnomah County, SB 50
F - Amendments, SB 441
G - Amendments, SB 86
H - Testimony, Bill Blair, SB 86

OVERSIZED EXHIBIT, SB 55

TAPE 167A

007 MEETING WAS CALLED TO ORDER BY SENATOR JAN WYERS, CHAIRPERSON, AT 3:12 P.M.

MEMBERS PRESENT: Senator Walt Brown
Senator Edward Fadeley
Senator Jim Gardner
Senator Kenneth Jernstedt
Senator Ted Kulongoski
Senator Robert F. Smith, Vice Chairperson
Senator Jan Wyers, Chairperson

009 HB 2872 - RELATING TO REPAYMENT OF REWARDS

Tape 167, Side A, is inaudible. The committee held a hearing and work session on HB 2872.

REP. MAX SIMPSON spoke about the bill and suggested removing "circuit court" on line 6.

The Committee adopted the motion to delete "circuit court" on lines 6 and 11.

HB 2317 - RELATING TO CONDITIONS OF PROBATION

NEIL CHAMBERS, representing the Corrections Division, spoke in support of the bill and presented written testimony (Exhibit A).

SY KORNBRODT, representing the Federation of Oregon Parole and Probation Officers, spoke in support of the bill except for one point inadvertently left out having to do with "1) you shall not illegally use narcotics. . ."

RICHARD BARTON, representing the Oregon Trial Lawyers Association (OTLA) spoke in opposition to the bill. It substitutes one list for another. The use of "any weapon" is too broad. (K) should not apply to probationers; it should apply to parolees.

HON. JOHN BEATTY, representing the Judicial Conference, presented the committee with a brief comments on some bills (Exhibit B).

Tape 167B

014 WORK SESSION

015 SB 86 - RELATING TO PUBLIC BODY TORT LIABILITY

019 WYERS noted the L.C. amendments (Exhibit C). These were the result of a meeting between Bob Lundy, Legislative Counsel; Bill Blair, City Attorney for Salem; and Kris LaMar. The compromise that was adopted last week had some internal references that needed adjustments. There are no substantive changes made in the proposed amendments (Exhibit C).

036 MOTION: SMITH MOVED TO BRING THE BILL BACK TO COMMITTEE AND TO RECONSIDER THE VOTE BY WHICH THE COMMITTEE PASSED THE BILL.

040 MOTION PASSED: THERE WERE NO OBJECTIONS.

041 MOTION: SMITH MOVED ADOPTION OF THE PROPOSED AMENDMENTS (EXHIBIT C).

044 MOTION PASSED: THERE WERE NO OBJECTIONS.

045 WYERS set the bill over for another work session.

051 PUBLIC HEARING

052 HB 2317 - RELATING TO CONDITIONS OF PROBATION

053 DEKE OLMSTED, representing the Department of Community Corrections, Washington County, spoke in support of the bill. He supported Judge Beatty's statements. OLMSTED'S department supervises 1500 probationers with 22 professional staff.

He is concerned with (k) being in the standard conditions of probation. He did not believe that all probationers should be subject to a standard condition of search and seizure, nor should the judge have to delete it in cases where he does not see it appropriate. It would be more appropriate to have this as an optional condition in section 2.

The bill cleans up some old language which is difficult to interpret, such as what is a vicious habit.

079 FADELEY questioned what the penalty would be if the probation officer abused the search.

084 OLMSTED stated that strict policy is set so that it is very difficult for a probation officer to search. If the officer does not follow policy, it would be a legal question as to whether or not there were reasonable grounds. His current rules would prohibit many of the searches that the bill would permit.

115 WYERS asked if the judge in a probation order would give reasons for the conditions.

130 OLMSTED said that in practice, the judge might offer reasons. The court in Washington County is concerned with helping the defendent understand the relevancy of the conditions of probation, the need to adhere to the conditions and the consequences for not adhering.

The special conditions of probation are added to the order in a special list.

147 JERRY COOPER, Chief Deputy District Attorney for Washington County, stated that the Oregon District Attorneys' Association (ODAA) is in favor of the bill. He agreed with Mr. Barton that on page 2, line 9, the standard condition of "neither own, possess nor control any weapon" is open to a lot

SENATE COMMITTEE ON JUSTICE
Public Hearing - 5/12/81
Cassette Tapes 175 & 176
ʼe 1

001 MEETING WAS CALLED TO ORDER BY SENATOR JAN WYERS, CHAIRPERSON at 3:08 p.m. in Room 350

MEMBERS PRESENT: Senator Walt F. Brown
Edward Fadeley
Jim Gardner
Kenneth Jernstedt
Ted Kulongoski (arrived at 3:30 p.m.)
Robert F. Smith, Vice-Chairperson
Jan Wyers, Chairperson

Tape 175A

010 SENATE BILL 86 - Relating to Public Body Tort Liability

009 The Committee had received amendments to SB 86 and had adopted them at an earlier meeting. Mr. Darrell Ralls, Director, Department of General Services, sent a letter to the Senate Justice Committee regarding the proposed amendments to SB 86. (EXHIBIT A).

012 MOTION: SENATOR SMITH moved SB 86 to the floor with a Do Pass as Amended recommendation.

VOTE: In a roll call vote the motion carried 6-0 with Senators Brown, Fadeley, Gardner, Jernstedt, Smith and Wyers voting AYE. Senator Kulongoski excused.

059 SENATE BILL 560 - Relating to Blind

061 COUNSEL explained that this bill was introduced to give a blind person some backup when a situation arises that they want to enter an establishment and would not be allowed in with guide dog. The blind person would then be supported by the statute that says the establishment could be charged with a fine if they would not allow the blind person in. An officer is not authorized to arrest for a violation that does not by definition have any type of incarceration as a penalty unless that offense occurs in the officers presense. SENATOR FADELEY suggested that this offense be raised to a misdemeanor and this would allow the officer to make an actual arrest.

156 MOTION: SENATOR JERNSTEDT moved the bill to the floor with a Do Pass as Amended recommendation. The amendment would state that violation of this bill would mean a "Class C misdemeanor." The amendment would delete lines 15and 16 and 22 through 24 and the language making rental housing and change the definition of the blind.

VOTE: In a roll call vote the motion carried 6-0 with Senators Brown, Fadeley, LGardner, Jernstedt, Smith and Wyers voting AYE. Senator Kulongoski absent.

TESTIMONY OF DAN O'LEARY IN SUPPORT OF SB 86

January 20, 1981

Senate Bill 86 has as its main feature the repeal of ORS 30.275. ORS 30.275 requires that every person who claims damages from a public body on account of any loss or injury shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice of said loss, containing certain specified information. I have attached to this testimony a copy of the full text of ORS 30.275, and marked it Exhibit A.

The Oregon State Bar, at its 1980 convention, has taken a position in support of the passage of Senate Bill 86, and the repealer of the statutory section noted.

My position would simply be that the statutory provision being repealed by Senate Bill 86 is unfair to the persons having valid claims against public bodies in the State of Oregon, it is unnecessary for the protection of the public bodies of the State of Oregon, and that the current statutory provision has given rise to abuses by certain public bodies and their insurance carriers, which I, and the Oregon State Bar, believe to be undesirable.

It has been my experience, in the practice of law, and in representing people who have potential claims against public bodies, that most persons are unaware that there is a specific six months statutory notice period with which they must comply in order to present a valid claim to a public body. Most people who

Exh. A
Sen. Comm. on Justice
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have claims, which would be presented under the section being repealed, are generally aware that there are time limitations in presenting claims. However, most people having such claims are surprised to find that the time limit is six months from the date of the accident. As a result, many people who have valid claims find that those claims are already defeated before they take the first step in enforcing the claim.

Secondly, once the concept of sovereign immunity has been abrogated, as it has been in the State of Oregon by the passage of ORS 30.265, I see no reason why public bodies should be treated more favorably under the law than private individuals or corporations having the same type of claims made against them. This essentially is the reasoning of the four state supreme courts who have held statutes like ORS 30.275 unconstitutional as a denial of equal protection of the law, or as a denial of due process of law, or both. I have attached documents showing the particular cases and particular supreme courts to which I have reference in this testimony.

Finally, it has come to my attention that ORS 30.275 has given rise to abuses by public bodies and their insurance carriers. At the present time, I have a case in my office where a person was injured on a public bus. The public body had notice of the injury and within a few days after the accident, sent a several page questionnaire to the injured person, asking for detailed

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information about the person and the accident, which the injured person filled out and returned to the public body's insurance carrier. The injured person also obtained and supplied medical information from the injured person's doctor to the insurance company. The injured person had numerous conversations with the adjuster for the public body over a period slightly in excess of seven months and then received a letter from the insurance adjuster for the public body, advising the claimant that since no notice had been given under the terms of ORS 30.275, the insurance company was no longer interested in receiving communications from the injured person, or in settling the claim. I simply do not believe that the legislature could encourage such claim practices either by public bodies or their insurance carriers. So long as ORS 30.275 is a part of the law, unfortunately, such practices will be encouraged.

I urge passage of Senate Bill 86.

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(a) "Nonsalaried or courtesy physician or dentist" means a physician or dentist who receives a fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. The term does not include a physician or dentist described under paragraph (a) of subsection (1) of this section.

(b) "Volunteer physician or dentist" means a physician or dentist who does not receive a salary, fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. [1977 c.851 §2]

30.268 Liability for certain medical treatment at facilities other than University of Oregon Health Sciences Center. (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation that are provided at a location other than the University of Oregon Health Sciences Center campus or one of the University of Oregon Health Sciences Center clinics are within the scope of state employment or duties when:

(a) Provided by members of the University of Oregon Health Sciences Center faculty or staff, University of Oregon Health Sciences Center students under prior written express authorization from the President of the University of Oregon Health Sciences Center or his representative to provide those services at that location;

(b) The services provided are within the scope of the express authorization; and

(c) The University of Oregon Health Sciences Center:

(A) Derives revenue in the same amount as it would for fee-for-services care rendered on the University of Oregon Health Sciences Center campus or at a University of Oregon Health Sciences Center clinic; or

(B) Is performing a salaried, nonfee-generating or volunteer public community or nonfee-generating educational service by providing the services.

(2) For the purposes of ORS 30.260 to 30.300, services constituting patient care that are provided at a location other than the University of Oregon Health Sciences Center campus or one of the University of Oregon Health Sciences Center clinics are not within the scope of state employment or duties when:

(a) Such services constitute an exclusively private relationship between the patient and a person described in paragraph (a) of subsection (1) of this section; and

(b) The requirements of subsections (b) and (c) of subsection (1) of this section are not met. [1977 c.851 §3]

30.270 Amount of liability. (1) Liability of any public body or its officers, employes or agents acting within the scope of their employment or duties on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) $50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

(b) $100,000 to any claimant for all other claims arising out of a single accident or occurrence.

(c) $300,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds $300,000, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.

(4) Liability of any public body and one or more of its officers, employes or agents, or two or more officers, employes or agents of a public body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (1) of this section. [1967 c.627 §4; 1969 c.429 §2; 1975 c.609 §13]

30.275 Content of notice of claim; who may present claim; time of notice; time of action. (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the

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scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity. [1967 c.627 §5; 1969 c.429 §3; 1975 c.604 §1a; 1975 c.609 §14; 1977 c.823 §3; 1979 c.284 §64]

30.280 [1967 c.627 §6; repealed by 1975 c.609 §25]

30.282 Local public body insurance against liability; payment of assessment to state Liability Fund. (1) The governing body of any local public body may procure insurance against liability of the public body and its officers, employes and agents acting within the scope of their employment or duties, and in addition to, or in lieu thereof, may establish a self-insurance fund against such liability of the public body and its officers, employes and agents and if the public body has authority to levy taxes, it may include in its levy an amount sufficient to establish and maintain such a fund on an actuarially sound basis.

(2) Notwithstanding any other provision of law, two or more local public bodies may jointly provide by intergovernmental agreement for anything which subsection (1) of this section authorizes individually.

(3) As an alternative or in addition to establishment of a self-insurance fund or purchase of insurance or both, the governing body of any local public body and the Department of General Services may contract for payment by the public body to the department of assessments determined by the department to be sufficient, on an actuarially sound basis, to cover the potential liability of the public body and its officers, employes or agents acting within the scope of their employment or duties under ORS 30.260 to 30.300, and costs of administration, or to cover any portion of potential liability, and for payment by the department of valid claims against the public body and its officers, employes and agents acting within the scope of their employment or duties.

(4) Assessments paid to the Department of General Services under subsection (3) of this section shall be paid into the Liability Fund created under ORS 278.100, and claims paid and administrative costs incurred under subsection (3) of this section shall be paid out of the Liability Fund, and moneys in the Liability Fund are continuously appropriated for those purposes. Assessments made under subsection (3) of this section shall be determined on the same basis as contributions of state agencies are determined under ORS 278.110 unless otherwise provided by agreement between the local public body and the Department of General Services, and after notice of any claim is furnished as provided in the agreement the claim shall be handled and paid, if appropriate, in the same manner as a claim against a state agency, officer, employe or agent, without regard to the amount the local public body has been assessed. [1975 c.609 §19; 1977 c.428 §1]

30.285 Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees. (1) The

REMEDIES; SPECIAL ACTIONS AND PROCEEDINGS 26-40

PROCEDURE IN ACTIONS AND SUITS 11-25

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he court, need bear no fixed relationship the compensatory damages awarded. Alper v. Western Motels, Inc., 84 Nev. 472, 443 P.2d 557 (1968); Gerlach Live Stock Co. v. Laxalt, 52 Nev. 191, 201, 284 P. 310, 313 (1930). At trial, appellants' net worth was established at six million dollars. The jury was properly instructed, and under the circumstances of this case, we do not find the jury's award of punitive damages excessive. Cf. Miller v. Schnitzer, supra; cf. Wells, Inc. v. Shoemake, 64 Nev. 57, 74, 177 P.2d 451, 460 (1947).

The judgment is affirmed.

THOMPSON, C. J., and MOWBRAY, BATJER and ZENOFF, JJ., concur.

Margaret TURNER, as Legal Guardian of Lionel Eugene Hollins et al., Appellants,

v.

Jack STAGGS et al., Respondents.

No. 6770.

Supreme Court of Nevada.

June 6, 1973.

Rehearing Denied June 25, 1973.

Action was brought on behalf of minors for wrongful death of their mother against county, hospital, the administrator thereof and physician. The Eighth Judicial District Court, Clark County, Joseph Pavlikowski and Howard W. Babcock, JJ., entered summary judgments dismissing complaint against county and administrator of hospital and a judgment in favor of the physician and an appeal was taken. The Supreme Court, Batjer, J., held that notice of claim requirements found in statutes requiring the presentation of a claim against county within six months as a condition precedent to bringing action thereon as applied to governmental torts deny equal protection since they have the effect of arbitrarily dividing all tort-feasors into two classes: private tort-feasors to whom no notice of claim is owed and governmental tort-feasors to whom notice is owed.

Reversed in part and affirmed in part.

Zenoff, J., filed a concurring opinion and Thompson, C. J., filed a dissenting opinion joined in by Mowbray, J.

1. Notice ⟹9

Requirement of giving notice presupposes the existence of an individual capable of giving it.

2. Constitutional Law ⟹308
Counties ⟹209, 213

The minority of surviving children, between ages of five and 13 years at the time of the death of their mother, a former patient in county hospital excused compliance with statute requiring the filing of a wrongful death claim within six months against county as condition precedent to bringing action; in addition the notice requirements of claim statute violated rights of the minors to due process. N.R.S. 41.031, 41.038, subd. 1, 244.245, 244.250; U.S.C.A.Const. Amend. 14.

3. Constitutional Law ⟹249
Counties ⟹209

Notice of claim requirements found in statutes requiring the presentation of a claim against county within six months as a condition precedent to bringing action thereon as applied to governmental torts deny equal protection since they have the effect of arbitrarily dividing all tort-feasors into two classes: private tort-feasors to whom no notice of claim is owed and governmental tort-feasors to whom notice is owed. N.R.S. 41.031, 244.245, 244.250; Const. art. 1, § 2; art. 8, § 5; U.S.C.A. Const. Amend. 14.

Charles L. Kellar, Las Vegas, for appellants.

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85 Wash.2d 810

Gerald HUNTER, Jr., a minor, by his guardian ad Litem, Gerald Hunter, Sr., Respondent,

v.

NORTH MASON HIGH SCHOOL et al., Petitioners.

No. 43637.

Supreme Court of Washington,
En Banc.

Sept. 11, 1975.

Action was brought against high school and school district and others for knee injury suffered by student while playing rugby during physical education class. The Superior Court, Mason County, Henry A. Hewitt, J., dismissed complaint as to school district under the nonclaim statute and plaintiff appealed. The Court of Appeals, 12 Wash.App. 304, 529 P.2d 898, reversed and remanded and school district petitioned for review. The Supreme Court, Utter, J., held that the "nonclaim" statutes unjustifiably discriminate against persons with claims against the government and its subdivisions in violation of the equal protection clause of the Fourteenth Amendment.

Decision of Court of Appeals affirmed.

Wright, J., concurred in the result with opinion in which Hamilton, J., concurred.

Stafford, J., dissented with opinion.

1. Constitutional Law ⟹249

The right to be indemnified for personal injuries is a substantial property right and statutory classifications which substantially burden such rights as to some individuals but not others are permissible under the equal protection clause of the Fourteenth Amendment only if they are reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. U.S.C.A.Const. Amend. 14.

2. Constitutional Law ⟹208(1)

The "substantial rationality" requirement for testing constitutionality of statutory classification does not reduce the "strict scrutiny" appropriate where fundamental rights or "suspect classifications" are affected. U.S.C.A.Const. Amend. 14.

3. Constitutional Law ⟹208(1)

Classifications in state regulation of business and economic matters are invalid only if they fail to bear a rational relationship to a permissible state objective. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⟹208(1)

If statutory lines substantially conform to a permissible state purpose, the distinction they draw will survive judicial review without any "balancing" of the relative value of the interests they advance and those they inhibit; if they do not they will not, for discriminatory legislation cannot be validated by reference to a purpose it does not serve, however laudable or important that purpose may be. U.S.C.A.Const. Amend. 14.

5. Constitutional Law ⟹243
Municipal Corporations ⟹1021
States ⟹197

The "nonclaim" statutes, in creating two classes of tort-feasors, governmental and nongovernmental, do not have a fair and substantial relation to object of enabling governmental institutions to adequately investigate and defend against claims or to facilitate budget planning, and absent any substantial or even rational basis to support discrimination between governmental plaintiffs and others they cannot stand under the equal protection clause of the Fourteenth Amendment. RCWA 4.96.-020; U.S.C.A.Const. Amend. 14.

6. Municipal Corporations ⟹226

Even where no specific statutory authorization exists, the power of municipal corporations to purchase liability insurance is implicit in their power to conduct the

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85 Wash.2d 883

Thomas JENKINS, as Personal Representative of the Estate of Pamela Diane Jenkins, Appellant,

v.

STATE of Washington et al., Respondents.

Paula Louise SMAIL et al., and Louise Kalakuhi, Appellants,

v.

BURLINGTON NORTHERN, INC., a Foreign Corporation, and State of Washington, et al., Respondents.

Nos. 43386, 43411.

Supreme Court of Washington,
En Banc.

Oct. 2, 1975.

Actions, consolidated for trial, were brought against county for negligent injury. The Superior Court, King County, George H. Revelle, J., dismissed because of untimely compliance with claim for damages statute and plaintiffs appealed. The Supreme Court, Horowitz, J., held that statute requiring that action for damages against county be commenced within three months after 60 days have elapsed from presentation of claim to board of county commissioners violates equal protection clause of State and Federal Constitutions insofar as it purports to impose a different time limitation on commencement of tort actions against county from that imposed on tort actions against other governmental entities.

Reversed.

1. Counties ⟹209, 216

Statute requiring that action for damages against county be commenced within three months after 60 days have elapsed from presentation of claim to board of county commissioners controls commencement of actions against counties, including tort actions, and that statute has not been impliedly repealed by statute providing that all political subdivisions of state shall be liable for tortious conduct to same extent as if they were private persons, provided that filing within time allowed by law shall be condition precedent to maintaining action. RCWA 4.96.010 et seq., 4.96.020, 36.-45.030.

2. Statutes ⟹158

Repeals by implication are not favored.

3. Statutes ⟹159

In absence of specific repealing language, prior act is not repealed by enactment of later act relating to same matter unless later act covers entire subject of earlier act, is complete within itself, is evidently intended to supersede prior legislation on the subject or the two acts are so clearly inconsistent with and repugnant to each other that they cannot by fair and reasonable construction be reconciled and both be given effect.

4. Constitutional Law ⟹211

Principle of equal protection guaranteed by State and Federal Constitutions does not require that things different in fact be treated in law as though they were the same but it does require, in its concern for equality, that those who are similarly situated be similarly treated. RCWA Const. art. 1, § 12; U.S.C.A.Const. Amend. 14.

5. Constitutional Law ⟹211

When statute provides that one class is to receive different treatment from another, the state and federal equal protection constitutional provisions require that legislation apply alike to all persons within designated class and reasonable ground must exist for making a distinction between those who fall within the class and those who do not. RCWA Const. art. 1, § 12; U.S.C.A.Const. Amend. 14.

6. Constitutional Law ⟹47

In determining constitutionality of statute, court does not consider statute in isolation but rather against background of other statutes, which deal with rights of persons similarly situated and court reaches its conclusions as to the constitutionality

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theory upon which special assessments are upheld.

The special assessment is vacated and the cause is remanded to the trial court for further proof and a new determination of the issue in accordance with this opinion.

40 Mich.App. 197

Anne FRIEDMAN and Jerome Friedman, Plaintiffs-Appellants,

v.

FARMINGTON TOWNSHIP SCHOOL DISTRICT et al., Defendants-Appellees.

Docket No. 11159.

Court of Appeals of Michigan, Div. 2.

April 26, 1972.

Released for Publication July 3, 1972.

Action for damages against defendant school district and individual defendants arising out of slip and fall by plaintiff in hallway of elementary school. The Circuit Court, Hillsdale County, Robert W. McIntyre, J., entered accelerated judgment in favor of school district, and entered a verdict of no cause of action in relation to individual defendants, and plaintiffs appealed. The Court of Appeals, Holbrook, J., held that 60-day notice provision of statute providing that such notice must be given as a condition to any recovery for injury sustained by reason of any dangerous or defective public building violates the equal protection guarantees of State and Federal Constitutions, and that insofar as there appeared to be complete mutuality of liability between defendant school district, in whose favor accelerated judgment was granted, and individual defendants, who were agents of the district, and where trial against individual defendants was conducted without reversible error, claim of plaintiffs, arising out of slip and fall, against defendant school district, insofar as liability of the district was predicated upon the negligence of its agents named in the action, was barred and could be noted by the court.

Affirmed in part, reversed and remanded for further proceedings in part.

1. Evidence ⚷546

Application of the "value" test, and of the "necessity" test, in relation to admission of testimony of an expert witness, is properly left to common sense and discretion of the trial court. GCR 1963, 605.

2. Evidence ⚷546

Refusal to permit plaintiff's expert witness, in action against school district arising out of plaintiff's slipping and falling in school hallway, to answer posed hypothetical question which asked, inter alia, if expert had an opinion as to whether or not washing down the floors would constitute good maintenance practice, was within discretion of trial court to exclude portions of an expert's testimony touching the ultimate question which in the court's opinion goes beyond necessity and enters an area where the jury could get along without it. GCR 1963, 605.

3. Appeal and Error ⚷1058(2)

Insofar as expert witness of plaintiff, in action for damages against school district arising out of slip and fall in hallway of school, was subsequently allowed to testify as to the propriety of using warning signs, washing floors at time when they were not used, and to the effect of using water on a waxed floor, any error in relation to refusal to allow expert witness to answer hypothetical question which concerned itself with, inter alia, proper janitorial practices was harmless, since plaintiff eventually was allowed to get the substance of the excluded hypothetical question before the jury.

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386 Mich. 617

Patricia REICH and Leo Reich, Plaintiffs-Appellants,

v.

STATE HIGHWAY DEPARTMENT, Defendant-Appellee.

John KNAPP et al., Plaintiffs-Appellants,

v.

STATE HIGHWAY DEPARTMENT, Defendant-Appellee.

Ralph G. BAKER and Cynthia A. Baker, Plaintiffs-Appellants,

v.

STATE HIGHWAY DEPARTMENT, Defendant-Appellee.

No. 25.

Supreme Court of Michigan.

Feb. 25, 1972.

Proceeding on claim against state. The Court of Claims entered judgment for state. The Court of Appeals affirmed, 17 Mich.App. 619, 170 N.W.2d 267, and application for leave to appeal was granted. The Supreme Court, Adams, J., held that 60-day notice provision of state Tort Claims Act which required that governmental tort-feasors but not nongovernmental tort-feasors be given notice of claim, and which in effect created special statute of limitations with respect to actions arising from governmental negligence, violated equal protection guarantees of State and Federal Constitutions.

Reversed and remanded.

Black, J., concurred specially and filed opinion; Brennan, J., filed dissenting opinion.

1. Constitutional Law ⇨308

States ⇨184.1

Sixty-day notice provision of state Tort Claims Act denied due process as applied to minors. M.C.L.A. § 691.1404.

2. Constitutional Law ⇨249

States ⇨184.1

Sixty-day notice provision of state Tort Claims Act which required that governmental tort-feasors but not nongovernmental tort-feasors be given notice of claim, and which in effect created special statute of limitations with respect to actions arising from governmental negligence, violated equal protection guarantees of State and Federal Constitutions. M.C.L.A. § 691.1401 et seq.

Wisti & Jaaskelainen, by Don R. Hiltunen, Hancock, for plaintiffs-appellants.

Frank J. Kelley, Atty. Gen., Robert A. Derengoski, Sol. Gen., Louis J. Caruso, Myron A. McMillan, Asst. Atty. Gen., Lansing, for defendant-appellee State of Michigan.

Before the Entire Bench.

ADAMS, Justice.

I. *Facts and Proceedings*

These cases challenge the constitutionality of the notice requirement of P.A.1964, No. 170.

1. *Reich v. State Highway Department*

On October 10, 1966, on Highway US-45 in Ontonagon County, Patricia Reich suffered a whiplash injury when the car she was driving swerved out of control and collided with a tree. Claims on behalf of herself and her husband were filed December 12, 1966—63 days after the accident.

2. *Knapp v. State Highway Department*

On August 22, 1966, on Highway US-45 in Ontonagon County, Maxine Knapp and her three children (all under seven years of age) were injured when her car went out of control and overturned a number of times. Claims on behalf of the Knapps and their children were filed November 18, 1966—88 days after the accident.

3. *Baker v.*

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II. *Does the*
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1. C.L.1948, §
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P.A.1964, No

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fits, the exclusion must be accomplished by explicit language. Such exclusion may not be done by implication or by any general interpretation of words which generations of careless draftsmen have taught are frequently used synonymously with "child" or "children".

Accordingly, in the case before us the judgment of the Circuit Court of Ohio County is reversed and the case is remanded with directions to enter an order consistent with this opinion permitting the appellants, Karen Stifel Hanes and Donna Stifel Stengel, to share as children in the benefits conferred by the trust of Arthur C. Stifel.

Reversed and remanded.

MILLER, J., deeming himself disqualified, did not participate in the consideration or decision of this case.

Mary Helen O'NEIL et al.

v.

The CITY OF PARKERSBURG etc., et al.

Doyle H. HENDRICKSON, Administrator, etc.

v.

The CITY OF PARKERSBURG etc., et al.

Nos. 13708, 13758.

Supreme Court of Appeals of West Virginia.

Sept. 20, 1977.

Plaintiff filed suit alleging that she had been injured by negligence of hospital, a municipal facility under general supervision and control of city. Administrator filed a separate suit alleging that decedent was injured by hospital's negligence, from which alleged injuries she subsequently died. The Circuit Court of Wood County, Donald F. Black, J., granted defendants' motions in each case and dismissed with prejudice complaints against city, hospital, and its trustees because notice of claim was not filed as required in Code provision, and plaintiffs appealed. The Supreme Court of Appeals, Caplan, C. J., held that notice of claim provision that right of victim of governmental tort-feasor to sue is absolutely barred should he not give required notice to municipality within 30 days after his cause of action has accrued is violative of equal protection and due process clauses of State and Federal Constitutions and is unconstitutional.

Reversed and remanded.

1. Municipal Corporations ⟹723½

Since doctrine of sovereign immunity as applied to municipalities has been abrogated, such immunity is not a justification for notice of claim provision that right of victim of governmental tort-feasor to sue is absolutely barred should he not give required notice within 30 days after his cause of action has accrued. Code, 8-12-20, 17-10-17.

2. Constitutional Law ⟹208(16)
Municipal Corporations ⟹723½

Reasons for notice of claim provision, that right of victim of governmental tort-feasor to sue is absolutely barred should he not give required notice to municipality within 30 days after his cause of action has accrued, to give municipality opportunity to investigate facts giving rise to claim, to discourage unfounded claims, to facilitate proper settlement and to allow municipality to make necessary reserve in annual budget do not supply needed rational basis for arbitrary classification. Code, 8-12-20, 17-10-17; Const. art. 3, § 17.

3. Municipal Corporations ⟹742(1)

While natural and inherent right of citizen of state to prosecute claim for wrongfully inflicted injury may, in some

DEPARTMENT OF GENERAL SERVICES

Testimony on Senate Bill 86

Senate Bill 86 repeals ORS 30.275 which concerns filing instructions and filing deadlines in order for the claim to be accepted by the State or a public body. Sections 2 through 4 are essentially housekeeping in nature and modify three other statutes which reference the repealed statute. The basic policy issue relates to the repeal of ORS 30.275. As the state agency responsible for administering the Tort Liability Fund, the Department of General Services is concerned about the repeal of ORS 30.275 in that we believe such action sets the stage for the possible erosion of the State's statutory limits of liability.

Chapter 627, O.L. 1967, waived a portion of the State's sovereign immunity within rather restricting circumstances. Included was the provision that claims against public bodies were to be filed within 45 days of the date of loss and proceedings must be commenced within one year of the loss occurrence.

Chapter 429, O.L. 1969, modified the provisions of the 1967 Act by extending the 45 day filing deadline to 180 days and extending the commencement date for proceedings from one to two years. Although ORS 30.275 was further amended by the 1975, 1977 and 1979 Legislatures, these latter amendments have been primarily housekeeping in nature.

The several Legislatures which have reviewed the issue of tort action against public bodies have repeatedly maintained the posture that actions against public bodies should be treated differently than other civil actions. Although, as noted previously, the filing requirements were relaxed by the 1969 session, the special instructions governing who, where, when and how claims are to be filed have been consistently maintained. The inherent policy direction of this action is that claims against public bodies are to be filed, processed and settled as expeditiously and as fairly as possible.

Attached for your convenience is a copy of ORS 30.275. The repeal of this section has the following impact:

(1) Deletes specific instructions that state claims must be filed with the Attorney General and claims against local public bodies must be filed with the appropriate responsible party.

(2) Eliminates the 180 day filing deadline following date of the alleged loss.

(3) Eliminates provision that claims for death be filed within one year, including instructions for filing.

(4) Eliminates requirement that proceedings must be commenced within two years of the occurrence, excluding a 90 day period should the aggrieved party be unable to testify because of minority, incompetency or other incapacity.

The result of removing these special requirements would appear to place public tort cases in the same category as all other civil cases. If this is the case, such special immunities as statutory limits and other exclusions might also be challenged directly, or be subjected to an erosion process. We believe this is counter to the State's interest and the public policy which has been followed by prior Legislative Assemblies.

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(a) "Nonsalaried or courtesy physician or dentist" means a physician or dentist who receives a fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. The term does not include a physician or dentist described under paragraph (a) of subsection (1) of this section.

(b) "Volunteer physician or dentist" means a physician or dentist who does not receive a salary, fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. [1977 c.851 §2]

30.268 Liability for certain medical treatment at facilities other than University of Oregon Health Sciences Center. (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation that are provided at a location other than the University of Oregon Health Sciences Center campus or one of the University of Oregon Health Sciences Center clinics are within the scope of state employment or duties when:

(a) Provided by members of the University of Oregon Health Sciences Center faculty or staff, University of Oregon Health Sciences Center students under prior written express authorization from the President of the University of Oregon Health Sciences Center or his representative to provide those services at that location;

(b) The services provided are within the scope of the express authorization; and

(c) The University of Oregon Health Sciences Center:

(A) Derives revenue in the same amount as it would for fee-for-services care rendered on the University of Oregon Health Sciences Center campus or at a University of Oregon Health Sciences Center clinic; or

(B) Is performing a salaried, nonfee-generating or volunteer public community or nonfee-generating educational service by providing the services.

(2) For the purposes of ORS 30.260 to 30.300, services constituting patient care that are provided at a location other than the University of Oregon Health Sciences Center campus or one of the University of Oregon Health Sciences Center clinics are not within the scope of state employment or duties when:

(a) Such services constitute an exclusively private relationship between the patient and a person described in paragraph (a) of subsection (1) of this section; and

(b) The requirements of subsections (b) and (c) of subsection (1) of this section are not met. [1977 c.851 §3]

30.270 Amount of liability. (1) Liability of any public body or its officers, employes or agents acting within the scope of their employment or duties on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) $50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

(b) $100,000 to any claimant for all other claims arising out of a single accident or occurrence.

(c) $300,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds $300,000, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims arising out of the occurrence.

(4) Liability of any public body and one or more of its officers, employes or agents, or two or more officers, employes or agents of a public body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (1) of this section. [1967 c.627 §4; 1969 c.429 §2; 1975 c.609 §13]

30.275 Content of notice of claim; who may present claim; time of notice; time of action. (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity. [1967 c.627 §5; 1969 c.429 §3; 1975 c.604 §1a; 1975 c.609 §14; 1977 c.823 §3; 1979 c.284 §64]

30.280 [1967 c.627 §6; repealed by 1975 c.609 §25]

30.282 Local public body insurance against liability; payment of assessment to state Liability Fund. (1) The governing body of any local public body may procure insurance against liability of the public body and its officers, employes and agents acting within the scope of their employment or duties, and in addition to, or in lieu thereof, may establish a self-insurance fund against such liability of the public body and its officers, employes and agents and if the public body has authority to levy taxes, it may include in its levy an amount sufficient to establish and maintain such a fund on an actuarially sound basis.

(2) Notwithstanding any other provision of law, two or more local public bodies may jointly provide by intergovernmental agreement for anything which subsection (1) of this section authorizes individually.

(3) As an alternative or in addition to establishment of a self-insurance fund or purchase of insurance or both, the governing body of any local public body and the Department of General Services may contract for payment by the public body to the department of assessments determined by the department to be sufficient, on an actuarially sound basis, to cover the potential liability of the public body and its officers, employes or agents acting within the scope of their employment or duties under ORS 30.260 to 30.300, and costs of administration, or to cover any portion of potential liability, and for payment by the department of valid claims against the public body and its officers, employes and agents acting within the scope of their employment or duties.

(4) Assessments paid to the Department of General Services under subsection (3) of this section shall be paid into the Liability Fund created under ORS 278.100, and claims paid and administrative costs incurred under subsection (3) of this section shall be paid out of the Liability Fund, and moneys in the Liability Fund are continuously appropriated for those purposes. Assessments made under subsection (3) of this section shall be determined on the same basis as contributions of state agencies are determined under ORS 278.110 unless otherwise provided by agreement between the local public body and the Department of General Services, and after notice of any claim is furnished as provided in the agreement the claim shall be handled and paid, if appropriate, in the same manner as a claim against a state agency, officer, employe or agent, without regard to the amount the local public body has been assessed. [1975 c.609 §19; 1977 c.428 §1]

30.285 Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees. (1) The

EXHIBIT C

CASES RE ORS 30.275:

035.80

PERTINENT FACTS: Student at Southern Oregon State College was treated by a doctor at the student health center in October of 1978. She advised the doctor she was allergic to sulfa; he subsequently prescribed two drugs both containing sulfa. She thereafter contracted Stevens-Johnson Syndrome which damages vision, in her case appreciably in one eye, slightly in the other. Contacted an attorney.

RELATIONSHIP TO 30.275: Attorney notified doctor by letter, first class mail, within the statutory time limit that he was investigating this claim; proceeded with investigation which extended byond the 180 days; upon conclusion of investigation attorney sent a copy of signed complaint to the doctor with request for settlement to avoid lawsuit; Attorney General denied claim on basis of insufficient notice.

STATUS OF CASE: Attorney has proceeded with suit and will appeal if necessary.

049.80

PERTINENT FACTS: Motorcycle accident occurred on 7/15/78 in Washington County resulting in serious injuries to both motorcycle passengers. Suit for young woman asks for $100,000 for damages; she has serious permanent injuries including brain damage. Suit claims Washington County negligent in failure to repair road.

RELATIONSHIP TO 30.275: Attorney sent proper notice by first class mail to Board of Washington County Commissioners, to County Clerk and to Road Department on 12-20-78. County acknowledges receipt of letter on 12-28-78. Suit filed, defendant's attorney filed motion for summary judgment on basis notice was defective....regular rather than certified mail or personal service.

STATUS OF CASE: Judge allowed defendant's motion for summary judgment; case now on appeal.

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094.80

PERTINENT FACTS: Woman injured by Tri Met bus on 7/18/79. At the direction of Tri Met central office, she and a witness to the accident went to Tri Met Claims Office on 7/23/79 where they were given a claim form which they completed; were then told to wait for proper party to receive the form to return from court; upon his return he read the claim form and said he didn't "see any problem". Woman then sought attorney.

RELATIONSHIP TO 30.275: (Last date to give notice: 1/18/80) Attorney had several conversations and correspondence with Industrial Claim Service (no dates in our file) representing Tri Met; this communication indicated awareness of the accident and injury and that claim could be settled. After considerable negotiation, ICS denied settlement; suit was subsequently filed; Tri Met then claimed (4/30/80) no notice and filed for summary judgment.

STATUS OF CASE: Summary judgment denied; case still pending.

316.80

PERTINENT FACTS: Automobile accident with Tri Met bus on 1/07/80 in which woman sustained serious injuries and damage to vehicle. Contacted an attorney.

RELATIONSHIP TO 30.275: Attorney sent notice of claim by certified mail to Tri Met, addressed as "Tri County Metro Trans. District of Oregon, 540 SW Yamhill, etc. Mailed 1-14-80. acknowledged on on 1-17-80 by Ling Chan of Tri Met, receipt returned to lawyer. Matter was referred to ICS who negltiated with lawyer and on 3-18-80 paid \$650 in property damages. Lawyer then purused personal injury claim for injured party. On 11-14-80 made demand on ICS for \$20,000 + \$350 specials; ICS, by phone, told lawyer his notice had been defective as it was not served on proper person at Tri Met and they were denying claim.

5. 252.80

PERTINENT FACTS: A collision occurred on 7-11-79 in Yamhill County between two cars at an intersection. Suit alleges that collision was a result of Yamhill County's failure to replace a missing stop sign at the intersection. Injured party retained a lawyer; suffered damages to vehicle and extensive physical injuries including punctured lung and broken ribs; suit asks $30,000 +.

RELATIONSHIP TO 30.275: On 10-23-79 lawyer sent regular first class mail letters to Executive Secretary of Yamhill County Board of Commissioners, and to each individual Commissioner. They acknowledge receipt of same. Subsequently the lawyer was contacted by Elliott Snedecor as adjuster for Yamhill County insurance company. Much correspondence ensued including a letter indicating on 3-27-80 that Yamhill County was still investigating. On 7-9-80 Snedecor denied the claim and told the lawyer to file suit. (Last date for proper service 1-11-80) Lawyers for County pleading imrpoper service...not certified mail or personal service.

STATUS OF CASE: Still pending.

308.80

PERTINENT FACTS: Lawyer received Writ of Attachment which he gave to the Clerk of Multnomah County Court for service. Clerk's office failed to deliver to process server (no date in our file) until the fund of the garnishee had all been dispersed. Lawyer then filed against Multnomah County on theory of negligence.

RELATIONSHIP TO 30.275: (No dates given in file) Gave notice by certified mail to the Clerk of the Board of Commissioners for Multnomah County; County filed for summary judgment on basis of improper service....not served on proper party.

STATUS OF CASE: Pending.

Exh. C

7. 163.80

PERTINENT FACTS: On 2-26-79 woman was injured when Tri Met bus hit a pothole and threw her from her seat; suffered serious back injuries resulting in loss of more than 700 hours of work and some $7000.00 in medical bills. Woman was contacted by Tri Met and was sent a form to be completed. (One of the questions on the form is "Are you making claim against Tri Met?" to which she marked "Yes") This form was completed by the injured woman and then taken to an attorney, who added the words"doctor indicates possible permanent impairment" and the form was returned in the self-addressed envelope provided (unsure whether the form and envelope came from Tri Met or from the insurance adjuster for Tri Met) This was completed and mailed from the office of the attorney on 5-21-79. Negotiations began almost immediately between the lawyer and the insurance adjuster for Tri Met; considerable correspondence on both sides, including an offer from the insurance company representative in the amount of $2500.00 on 9-26-79. This was rejected immediately and in November doctors determined the injuries were perhaps more serious than origianlly thought and surgery was a possibility. Conference with insurance adjuster, and further meds sent as requested. New meds to adjuster nearly every month untilMay 14 1980 at which time the adjuster indicated that anything more than $30,000 would require a lawsuit. On 5-15-80 adjuster indicated to lawyer they would be in touch with the authorities and make an offer by 5-27-80.(this was in personal interview with the adjuster) Last date to give notice was 8/26/79.

RELATIONSHIP TO 30.275: In June, 1980, a different adjuster for Tri Met told the lawyer in this case that the letter they had received from the client was not sufficient notice and they were therefore denying the claim.

STATUS OF CASE: Pending.

8. 263.79

PERTINENT FACTS: On 9-11-77 woman was involved in auto accident with a Tri Met bus, sustaining some injuries(undetermined) She contacted lawyer on 10-10-77. Lawyer sent letter to "Tri Met Industrial Claims Service" on 10-10-77. On 10-13 ICS acknowledge receipt of the claim and suggested it could be settled once they were furnished a list of special damages. The injured woman did not pursue this matter and did not provide the necessary medical information to this lawyer. Nearly one year later (date unspecified) the injured woman hired a different attorney to pursue her claim.

RELATIONSHIP TO 30.275: Tri Met advised the new attorney that the first attorney had not met specific requirements of notice, therefore the claim could not be pursued. When questioned about earlier willingness to negotiate response was "no comment".

9. 044.79

PERTINENT FACTS: 9-09-77 accident occurred between Tri Met Bus and a bicyclist. Bicyclist claimed injuries, contacted lawyer on 9-28-77. Injuries minor indicated by investigation by lawyer, also that injured party had contributed in large degree to the accident; lawyer determined injured young man probably due at least to medical costs, in the amount of $805.68.

RELATIONSHIP TO 30.275: on 7-29-78 lawyers office discovered that letter of notice of claim had been prepared for Tri Met but had never been mailed. However question of "notice"arises on the following basis: on 10-3-77 Tri Met insurance adjuster wrote to the injured man acknowledging that the accident had occurred and requested that the injured man contact them for discussion. Also, when lawyers investigator attempted to talk to the bus driver, driver indicated he had been told to say nothing.

10. 012.78

PERTINENT FACTS: Woman injured in slip on defective sidewalk in Ashland, on November 3, 1977. Contacted attorney (date contact made not known); at that time she advised the attorney that she had notified the City of her injury and they had referred her to their insurance adjuster. Lawyer contacted the adjuster who denied the claim on the basis of no liability. After some further investigation he contacted the adjuster again and was advised that the claim was further being denied on basis of no notice.

RELATIONSHIP TO 30.275: Lawyer misunderstanding of the statute... felt that the fact that City had referred client to their adjuster constituted notice by the City.

11. 013.79

PERTINENT FACTS: Man injured in automobile accident in Klamath County on 11-9-76. Sustained moderate injuries, missed two months of work. During period of investigation and recuperation much correspondence took place among carriers for various individuals involved. Attorney contacted Klamath County on 11-13-78 (by telephone message with county attorney) and was advised that he would be in touch with county insurance carrier as it had at this time been determined that the driver of the car that injured this man was employed at the time of the accident by Klamath County and was driving his own car on a Klamath County errand. Suit asking $12,000 was filed in 11-78 naming only the driver; motion then filed to include County. County then filed motion to dismiss on basis of no notice given to County within the 180 days.

RELATIONSHIP TO 30.275: Injured person contacted a second attorney who brought claim against first attorney. All concerned express that the lack of clarity in statute led to confusion re responsible party.

STATUS OF CASE: No presently pending claim.

12. 081.79
082.79

PERTINENT FACTS: These cases involve two people injured in a van in Clackamas County. Sustained serious back injuries with some permanent disability (6/3/78). Contacted attorney on 9/22/78 and brought suit against Clackamas County for failure to adequately sign a very steep grade on the highway and against Jefferson High School for inadequate work on the brakes of the van in their repair shop.

RELATIONSHIP TO 30.275: Lawyer sent notice of claim by first class mail to Clerk of the Portland School District and to the Clerk of the County, Clackamas County Courthouse and the Clackamas County Highway Division (Notice to School District 9-29-78; Highway Div 9-27-78; Clerk 10-16-78) . Lawyer received written acknowledgement of the notices and investigation continued. When case filed defendants demurred on basis of improper notice (served on wrong parties and not certified mail or personal service)

STATUS OF CASES: Appealed to the Appellate Court where affirmed; now on appeal to Supreme Court.

EXHIBIT D

STATEMENT IN OPPOSITION TO SENATE BILL 86

Office of the City Attorney
for the City of Portland,
Oregon

Bureau of Risk Management
City of Portland

The Oregon State Bar has proposed Senate Bill 86, the principal thrust of which is to repeal ORS 30.275 in its entirety. The immediate consequences, among others, of passage of Senate Bill 86 would be (1) the elimination of the jursidictional requirement of the filing of a Tort Claim Notice within 180 days of the claimant's injury (or when it was discovered), and (2) the elimination of the two year statute of limitations presently applicable to both personal injury and property damage actions against public bodies. Based on five years of experience in adjusting tort claims and defending tort lawsuits, the City of Portland strongly opposes the passage of this bill.

The Tort Claim Notice requirement set forth in ORS 30.275 has been present, in varying forms, since the passage of the Oregon Tort Claims Act in 1968. Presumably, in order to justify outright repeal of this section, the proponents of SB 86 should be able to establish that the notice requirement has not served the principal remedial function of the Tort Claims Act. In light of the statistics we present to this committee today, it is our feeling that the proponents cannot make such a showing. In short, the notice requirement has resulted in the speedy and expeditious adjustment of a vast majority of tort claims that would otherwise result in costly and time consuming litigation.

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The result is net financial gains to both tort claimants and local governments.

Over the last 12 years, the Oregon Appellate Courts have had numerous occasions on which to construe the provisions of ORS 30.275 regarding notice. As has been frequently stated by the Oregon courts, the principal purpose of the notice statute is to provide public bodies an opportunity to investigate promptly the merits of a claim and to aid in obtaining liability insurance protection and adjusting claims.[1] In one of its most recent pronouncements on the question of notice, the Oregon Supreme Court endorsed the following characterization of the purpose of the notice requirement:

> "To protect against dissipation of public funds by requiring that the municipality be promptly furnished with information concerning a claim against it so that full opportunity is provided to investigate it, to settle those of merit without litigation, and to correct any deficiency in municipal functions revealed by the occurance. By timely service of notice the municipality is also afforded protection against sale or fraudulent claims or the connivance of corrupt employees or officials."[2]

In light of the foregoing objectives, we offer for this committee's consideration the attached statistical experience of the self-insurance program for the City of Portland over the previous five years. The figures pretty well speak for themselves. Of a total of 3,244 claims filed, including both general and fleet liability claims, slightly over 3,000 were settled out of court. An additional 226 claims are still open. Additionally, of the total number of claims filed, 347 lawsuits have been filed against the City or its employees over the same five year period. By comparing the number of claims filed and subsequently settled with the number of lawsuits filed, it will be seen that the vast majority of claims are settled short of litigation. Indeed, one of the principal purposes of the notice requirement, that of obviating costly and time consuming litigation, has in fact been met in Portland over the last five years. We have no reason to suspect that the experience of Multnomah County, Clackamas County, and other public bodies has been any different.

From a claims adjustment viewpoint, one of the principal advantages of the six month notice requirement is that it enables the City to complete its investigation of a given claim while the evidence is still fresh. With the passage of time, memories fade, witnesses leave, and it becomes increasingly difficult to make intelligent settlement decisions. Aided by the speedy collection of data, the City's adjustors are presently able to make critical settlement decisions early in the case. Otherwise, as any trial lawyer knows, those decisions frequently await the day of trial itself.

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It is occasionally questioned by some, in the context of tort litigation, why a public body should be treated any differently than an individual faced with the same litigation. In response, we offer at the outset the simple fact that public bodies, both in terms of their financial structure and reasons for existence, are entirely different than private individuals or corporations. As has been noted by one commentator,

> "The exposures of a government to claims for injury or damage differ from the exposures of a private business in several important ways. First, governments are confronted with difficulty in controlling risks of harm from such geographically disbursed systems as streets, sewers, parks, and schools. Furthermore, public bodies must engage in many high-risk activities, such a police and fire protection for which there is no counterpart in private business. Judicial, legislative, and administrative officers are charged with a variety of discretionary responsibilities which inevitably cause harm to innocent people from time to time.[3]

In anticipating an argument to the effect that the six month notice requirement of ORS 30.275 is too short, the committee should be aware of two recent

Oregon Supreme Court cases dealing with the so-called discovery doctrine insofar as it applies to both the notice requirement and the statute of limitations set forth in ORS 30.275.[4] In these cases, the Oregon Supreme Court held that neither the 180 day notice period nor the two year statute of limitations will begin to run until the claimant knew or should have known of his injury. These decisions protect those claimants who may not have realized they have been injured in a given situation. Once again, in light of the decisional trends in the Oregon courts, there is simply no convincing evidence that the central remedial purpose of the Oregon Tort Claims Act is being thwarted by the continuing requirement of providing notice to public bodies.

Our testimony thus far has centered on SB 86's proposed repeal of the notice requirements. However, it should not be overlooked that passage of this bill will also automatically place tort litigation against public bodies back into the general limitations of actions sections of the Oregon Revised Statutes. With respect to personal injury claims there would not be much difference: The underlying statute of limitations is two years in each case. However, there are other significant differences between the general provisions and those set forth in the present ORS 30.275. For example, the statute of limitations applicable to injuries to personal property is six years in the general provisions. As will be seen from the attached statistics, nearly half of all tort claims filed against the City of Portland over the previous five years are so-called fleet claims involving personal injury

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and property damage claims arising out of vehicular accidents. At least with respect to the property damages claims, the passage of Senate Bill 86 would result in a governing six year statute of limitations. That result would unquestionably impair a public body's ability to investigate and adjust the inevitable flow of such vehicular property claims.

In summary, we suggest to this committee that the notice requirement has proved to be enormously effective in serving both the goals of compensating individuals injured by the actions of public bodies as well as reducing the costs of handling those claims by local governments. The Tort Litigation Staff of the City Attorney's Office in Portland has doubled in the last 15 months. This is an indication of a general increase in litigation nationwide. However, we feel safe in advising this committee that without the availability of claims adjustment by non-lawyer personnel, the increase in legal costs for the City of Portland would be immediate and staggering. Without the notice requirement, it is sirply unrealistic to expect that claimants will voluntarily file written claims with the local governments. The inevitable result of this bill is more litigation with no certainty whatsoever that compensation for injured persons will be increased.

The City of Portland therefore vigorously opposes the passage of Senate Bill 86.

Peter R. Mersereau
Deputy City Attorney
Portland

Exh. D

FOOTNOTES

[1] Urban Renewal Agency v. Lackey, 275 or. 35, 549 P.2d 657 (1976); Dowers Farms v. Lake County, 288 Or. 669, 607 P.2d 1361 (1980).

[2] Brown v. Portland School District No. 1 and Clackamas County, Civil No. A7906-03047 (1980).

[3] 48 Or. L. Rev. p. 100 (1968).

[4] Dowers Farms v. Lake County, 288 Or. 669 (1980); Adams v. Oregon State Police, 289 Or. 233 (1980).

Exh. D

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LIABILITY CLAIMS AND LAWSUITS AS OF JANUARY 19, 1981,

PRESENTED AGAINST THE CITY OF PORTLAND

	NUMBER FILED	NUMBER SETTLED OUT OF COURT	NUMBER SETTLED IN COURT	NUMBER STILL OPEN
Fiscal Year 1976/77 Claims				
General Liability	369	365	4	
Fleet Liability	322	321		1
Fiscal Year 1977/78 Claims				
General Liability	413	394	3	16
Fleet Liability	349	345	3	1
Fiscal Year 1978/79 Claims				
General Liability	518	476		42
Fleet Liability	298	297		1
Fiscal Year 1979/80 Claims				
General Liability	587	442		145
Fleet Liability	388	368		20
Total General Liability	1,887	1,677	7	203
Total Fleet Liability	1,357	1,331	3	23
TOTAL CLAIMS	3,244	3,008	10	226

	Number Filed	Number Closed	Number Open
Total Lawsuits	337	240	97

(Tort Litigation)
1976-1981

Senate Comm. on Justice
EXHIBIT G, SB-86, 1-20-81
1 PAGE

WITNESS REGISTRATION

SENATE Committee on JUSTICE

Date: 20 JANUARY 1981 Time: 3:00 P.M. Room: 346

Public Hearing on SB 86
Measure No.

Please register if you wish to testify on the above-named measure.

Name and address	Representing	For	Against
✓ Dan O'Leary	Or. State Bar	✓	
✓ ~~Luther Jensen~~	Dept of Justice		✓
Peter Kranitz	Or State Bar PLF Liability Fund	✓	
✓ Clayton Patrick	Oregon Trial Lawyers Assn	✓	
✓ Leo E Birnie	American Insurance Assn. Tri-County Water Distrl Assn		✓
✓ Frank Bales	Dept. of General Services		✓
✓ Bill Blair	League of Oregon Cities City of Salem		X
✓ Peter Mersereau David Fleming	City of Portland		X
Mike Montgomery	Clackamas County		X
~~[illegible]~~	~~City of Eugene~~		~~X~~

DAVE FROHNMAYER
ATTORNEY GENERAL

EXHIBIT B

Senate Committee on Justice
Testimony-Dept. of Justice
2-10-81 - 11 pages

Senate Bill 86

DEPARTMENT OF JUSTICE
HIGHWAY LEGAL
113 Transportation Building
Salem, Oregon 97310
Telephone: (503) 378-4259

FEB 16 1981

February 13, 1981

Kris LaMar
Co-Counsel
Senate Justice Committee
Room 347 Capitol Bldg.
Salem, Oregon 97310

Re: Revised Proposed Amendment
Senate Bill 86

Dear Kris:

Enclosed please find a copy of the revised proposed amendment to SB 86. I have added to the proposed amendment previously submitted by the Department of Justice language expanding the area of notification to the local public body to include their administrative office, executive office, chief administrative officer or any member of the governing body. I have also added some language to restore language on page 2, lines 9 and 10 and page 3 lines 2 and 3 that would have to be done if the amendment is accepted by the committee. I have made some other minor revisions in the amendment to take out some conflicting language by reason of the new amendments.

As you will note, I have sent copies of this material to Bill Blair from the City of Salem and Mike Montgomery from Clackamas County and we would be most happy to meet with you at your convenience to discuss the proposed amendments and if necessary make some other revisions in order to solve the problems that were raised in testimony before the committee.

Sincerely,

Jack L. Sollis
Assistant Attorney General
and Chief Counsel

JLS:mk
Encl.

cc: Bill Blair
Mike Montgomery

PROPOSED AMENDMENT SB 86

On page 1 of the printed bill, line 2 after "30.287" delete "and" and insert a comma.

On the same line after 278.120 delete the semicolon.

On the same line after the second "and" delete "repealing".

On the same page, line 5 after "is" delete "repealing" and insert "amended to read:".

On the same page after line 5 insert the following:

30.275 (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the local public body in accordance with ORCP 7 D. (3) (d), to the administrative office of the local public body, to the executive officer or chief administrative officer of the local public body or any member of the governing body of the local public body. Notice of claim shall be served upon the Attorney General or local public body['s representative for service of process] either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, [except] provided, however, that if the Attorney General or local public body has been provided with timely written notice, substantially in compliance with the foregoing, and has in writing acknowledged service of such notice, the notice shall not be invalidated, and provided further, that failure to state the amount of compensation or other relief demanded does not invalidate the notice. The claimant shall have the burden of proving that timely notice was provided in compliance with this section, and that any variance from the requirements of this section did not operate to the prejudice of the public body.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse

or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence. The time for giving such notice does not include the time not exceeding 90 days, during which the person injury is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

On page 2 of the printed bill, lines 9 and 10 restore the bracketed material.

On page 3 of the printed bill, lines 2 and 3 restore the bracketed material.

Dept of Justice

PROPOSED AMENDMENTS TO SB 86

On page 1 of the printed bill, line 2 after "30.287" delete "and" and insert a comma. On the same line after 278.120 delete the semicolon. On the same line after the second "and" delete "repealing". On the same page, line 5 after "is" delete "repealing" and insert "amended to read" on the same page after line 5 insert the following:

30.275(1) every person who claims damage from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice [stating] containing a clear statement of the fact that a claim is asserted, the time, place and circumstances thereof, the nature and extent of the loss or injury so far as then known to the claimant and the name and address of the claimant [and of the representative or attorney, if any, and the amount of compensation or other relief demanded]. Such notice need not specify a particular dollar amount claimed as compensation. [Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D. (3) (d). Notice of claim shall be served upon the Attorney General or local public body's representative

for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.]

(2) Notices of claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Notices of claims against any local public body or an officer, employee or agent thereof shall be presented to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body; or

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(3) Notice of claim shall be served upon an appropriate individual as specified in subsection (2) of this section either personally or by certified mail return receipt requested. The claimant shall have the burden of proving that notice conforming to this section was actually received by the person to whom it was presented, or by a secretary or clerk employed at such person's regular office.

(4) If the Attorney General or the local public body's representative having the responsibility for reviewing and adjusting claims obtains the information specified in subsection (1) of this section from the claimant or the claimant's representative within the time provided in this section, and such person acknowledges in writing or verbally under oath that such information was, in fact, received within the time provided in this section, notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

(5) A notice of claim which does not contain the information required by subsection (1) of this section, or which is presented in any other manner than or beyond the time provided in this section is invalid.

[(2)] (6) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (7) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] of the alleged loss or

injury. <u>As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of such injury or loss.</u>

The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

30.275(1) Every person who claims damages from a public body or from an officer, employee or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice containing a clear statement of the fact that a claim is asserted, the time, place and circumstances thereof, the nature and extent of the loss or injury so far as then known to the claimant, and the name and address of the claimant. Such notice need not specify a particular dollar amount claimed as compensation.

(2) Notices of claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Notices of claims against any local public body or an officer, employee or agent thereof shall be presented to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body; or

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(3) Notice of claim shall be served upon an appropriate individual as specified in subsection (2) of this section either personally or by certified mail return receipt requested. The claimant shall have the burden of proving that notice conforming to this section was actually received by the person to whom it was presented, or by a secretary or clerk employed at such person's regular office.

(4) If the Attorney General or the local public body's representative having the responsibility for reviewing and adjusting claims obtains the information specified in subsection (1) of this section from the claimant or the claimant's representative within the time provided in this section, and such person acknowledges in writing or verbally under oath that such information was, in fact, received within the time provided in this section, notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

(5) A notice of claim which does not contain the information required by subsection (1) of this section, or which is presented in any other manner than or beyond the time provided in this section is invalid.

(6) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

(7) No action shall be maintained unless notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of some injury or loss. The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

EXHIBIT B

Senate Comm. on Justice – SB 86
Kris LaMar, Counsel proposed Amendmnts.
2-10-81, 4 pages

OREGON STATE SENATE
SALEM, OREGON
97310

Senate Committee on Justice

February 11, 1981

TO: Persons interested in SB 86 (Relating to public body tort liability

FROM: Kristena A. LaMar, Legal Counsel

Please find attached a three page suggested amendment to ORS 30.275, for discussion purposes in light of the testimony heard by the Committee on February 10, 1981. Please feel free to transmit any suggestions or changes to this proposal to me at your earliest convenience.

30.275

(1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting with the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.330 shall [cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.] give notice, as defined in this subsection, to the public body or officer, as required in this subsection, within 180 days after the alleged loss or injury.

(a) Notice required under this section shall be:

(1) a written statement of the time, place, and circumstances of the loss or injury, the claimant's name and the name of the claimant's representative or attorney, if any, and the amount claimed as compensation. The statement shall be mailed by certified or registered mail, return receipt requested, or by personal delivery of such notice.

(2) by any other method which actually notifies the public body or officer of the information contained in Paragraph (1)(a)(1), and which substantially complies with the requirements of Paragraph (1)(a)(1). A claimant alleging notice under this subsection shall have the burden of proof of substantial compliance and actual notice, as used in this subsection. "Actual notice" ~~may be~~ proven by the payment of a claim or claims to the claimant or the claimant's representative by the public body or officer within 180 days from the loss or injury, overt steps by the public body or officer, employe or agent thereof to investigate such claim, or the receipt by any other agency or officer of the notice described in subparagraph (a), which the claimant reasonably believed to be the proper agency or officer to be notified hereunder.

(3) No notice shall be invalid for its failure to include the amount claimed as compensation.

(b) Notice to the public body or officer shall be given:

(1) If the claim is against the State of Oregon or a state officer, employe or agent, to the Attorney General.

(2) If the claim is against any local public body,

<u>or an officer, employe or agent thereof, to any officer, director, managing agent, clerk or secretary thereof.</u>

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice. <u>Notice, as used in this subsection, shall mean the same as used in subsection (1) of this section.</u>

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence.

<u>(4)</u> The time for giving [such] notice <u>as required in this section</u> does not include the time, not exceeding 90 days, during which the person injured in unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

S.B. 86

TESTIMONY OF JOHN J. HIGGINS

ATTORNEY FOR TRI-MET

Throughout the development of English and American law it has been recognized that the common welfare requires that governmental bodies be accorded some different treatment with regard to claims and lawsuits.

The areas of exposure to liability of governmental bodies are so pervasive that public interests would be jeopardized if there were not requirements of notice prerequisite to bringing suit against governmental bodies. Practically all governmental bodies have some such notice requirement.

The notice requirements serve two important purposes: They (a) give the local government an opportunity to investigate the facts of the accident while the information is fresh in the minds of witnesses; and (b) inform the government so that it can correct the defect giving rise to the injury before others are injured by it.

In Oregon the Tort Claims Act (ORS) was enacted in 1968 to clarify a maze of case law as to when and in what circumstances a governmental body could be sued. The notice requirement was originally 45 days and has been e xtended to 180 days by subsequent amendments. (The time periods for notice in other jurisdictions ranges from 30 days to a maximum of 180 days.)

Approximately 50% of Tri-Met's claims are claims in which the first notice is received from the claimant. This not only assists Tri-Met but assists more than half of those claimants whose claims would otherwise be uncorrobated.

Tri-Met sets forth the statutory notice requirements on the form which it sends to claimants as soon as they notify TriMet of a claim.

While the notice requirement may work to the disadvantage of an occassional claimant, the notice works to the great advantage of a significant percentage of all claimants and certainly to the advantage of all Tri-Met riders and the public in general by permitting the prompt remedy of defects.

File No. ____________

Occurrence Date __________ Time _______ Location ______________________________

Where were you on the bus ____

Your Name ______________________________ Spouse's Name __________________

Your Address ____ Phone ________

Your Age _____ Your Driver's License No. ________ Social Security No. ____________

Bus Involved: Bus Number ____________ Route Number ______________

Names, Addresses & Phone Nos. of Witnesses ______________________________

____

____

____

____

Description of Occurrence (directions, speeds of travel, etc.) ______________

____

____

____

____

____

Cause of Accident ____

Were you Injured: ( ) No ( ) Yes Extent of Injuries: ______________________

____

Have you seen a doctor: ( ) No ( ) Yes Name & Address of Dr. ______________

____

Name & Address of Your Employer ____________________________________ Phone ________

Lost Time From Work: ( ) No ( ) Yes If so, Dates: ________________ Rate of Pay ________

Are you making a claim against Tri-Met: ( ) No ( ) Yes Amount: ______________

If you wish to continue to assert your claim against Tri-Met after 180 days from the date of your accident, Oregon Statutes impose certain requirements which must be met. Those statutes are set forth on the reverse side of this form. Neither this form nor any further contact with Tri-Met or their representatives shall constitute any waiver by Tri-Met of the requirements of those statutes.

Dated ________________________ Signature ______________________________

ORS 30.275 Content of notice of claim; who may present claim; time of notice; time of action. (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence. The time for giving such notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

ORCP 7 D.(3) Particular defendants. Service may be made upon specified defendants as follows:

D.(3)(d) Public bodies. Upon any county, incorporated city, school district, or other public corporation, commission, board or agency, by personal service or office service upon an officer, director, managing agent, clerk, or secretary thereof. When a county is a party to an action, in addition to the service of summons specified above, an additional copy of the summons and complaint shall also be served upon the district attorney of the county in the same manner as required for service upon the county clerk.

EXHIBIT D

Senate Committee on Justice
Testimony-J. Janzen, 2-10-81
1 page Senate Bill 86

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

RESOLUTION

(IN THE MATTER OF OPPOSING
(PROPOSED STATE LEGISLATION
(TO CHANGE PUBLIC TORT
(LIABILITY LAW

WHEREAS, the Statutes of the State of Oregon currently provide reasonable and equitable due process for its citizens to make tort claims against public bodies, and

WHEREAS, changes in these provisions to diminish or eliminate notice requirements or reasonable allowance for timely claims would weaken Lane County's ability to prepare adequate defense for potential lawsuits, and

WHEREAS, such changes would incur unreasonably significant legal and fiscal liabilities to Lane County, and

WHEREAS, other Oregon counties and the Association of Oregon Counties strongly oppose changes in notice requirements and time limitations in current public tort statutes,

NOW, THEREFORE, be it resolved that the Lane County Board of Commissioners strongly opposes changes in public tort liability law which would remove or diminish existing provisions for notice and timely filing of claims.

Dated this 5th day of February, 1981.

Harold D. Rutherford

Harold Rutherford, Chairman
Lane County Board of Commissioners

Senate Comm. on Justice
Testimony-F. Soth, 2-10-81
3 pages - Senate Bill 86

TEXT OF REMARKS BY MR. FORREST C. SOTH
CITY COUNCILOR, CITY OF BEAVERTON, OREGON
BEFORE THE SENATE JUSTICE COMMITTEE

FEBRUARY 10, 1981

Mr. Chairman, Members of the Committee:

I am Forrest C. Soth, member of the City Council of Beaverton, Oregon. I am not a lawyer. The City of Beaverton is in opposition to Senate Bill 86 in its present form for several reasons. These include the potential for increased claims against public bodies due to removal of time frames within which claims must be filed; the major impacts upon city programs; and the major impacts upon our city's fiscal policies and position.

Most public bodies and the persons who appear before them have time frames within which actions of various sorts must be filed -- whether it be a ten day action for an appeal to the governing body on a land use decision, a 30-day action time on a notice of public hearing; or, as set by statute, 30 days to file for review of city land use decisions. The argument that additional time is required for filing of claims because of short notice requirements does not bear scrutiny when observed in the context of all the other notice requirements of public bodies. It is our position that the present requirements of written notice to the city of an accident or occurrence, and that the action be filed within two years, are sufficient. Without this protection, the City, its officers, and employes would lose their official warning of possible actions, and in certain cases the action could be filed up to ten years after the occurrence. This would serve only to provide opportunity for someone with a claim against a government body to delay action until a very late date, which may put that government at a distinct disadvantage.

In most cases, if a claim is filed promptly, or at least notice of that claim, personal recollection of facts is much more clearly established; the written records as applicable are more reliable; and those persons upon whose testimony the claim depends are more readily available. In short, the sooner a government receives notice and, if necessary, the faster it gets to court, the more reliable the facts upon which claims can be either substantiated, disallowed, or resolved in court.

The impacts upon city programs could result in the necessity for the city to self-insure for this type of liability. However cost efficient a self insurance program may be, few communities could withstand the impacts of one or a series of catastrophic losses. If umbrella insurance were prohibitively expensive or unavailable, exposure to these types of claims by the City, its officers, and employes could materially affect the willingness of citizens to serve their community and could well result in cutbacks in those services which are of a high risk nature, even though they are essential to the public safety and welfare. It could be that if this measure is passed, it would add substantially to the cost of liability insurance generally and self-insurance particularly, with the consequent addition of an increased tax burden for the citizens of the community. The nature of these claims and the context in which filed must also be considered. An individual who files a claim against the "government" agency, and the attorney who represents him or her, should be made aware that the taxpayers generally, including the plaintiff if a resident of the jurisdiction against whom the claim is made, will eventually be the responsible parties -- so in one sense the claimant is initiating an action against himself.

The fiscal impacts should be readily apparent -- if insurance is unavailable (I might add that in the past the industry considered a complete withdrawal from insuring municipal corporations) the costs would surely increase as a result of delayed processing of claims. Defense costs are a major contributing factor in the costs of insurance coverage. It is our view that public funds should not have to be subject to the filing of untimely claims. There has seldom, if ever, been a contention that 180 days is insufficient time to give notice. The apparent concern of those who initiated this proposal is that claimants are either unaware of the requirements or that someone forgets, or gives improper notice.

In conclusion, then, for all the above factors and reasons, the City of Beaverton urges that this committee take no action toward further consideration of Senate Bill 86, as not being in the best interests of public bodies or the citizens of the State of Oregon.

Thank you very much for your courtesy and consideration in this matter.

CITY
OF SALEM,
OREGON
City Hall / 555 Liberty St. S. E.
Zip Code 97301
LEGAL DEPARTMENT
Telephone (503) 588-6003
William J. Juza
City Attorney

February 10, 1981

Hon. Jan Wyers, Chairman
Senate Justice Committee
Room 346, Capitol Building
Salem, Oregon 97310

Re: SB 86

Senator Wyers and Committee Members;

Thank you for your attention and concern at the recent committee hearing on SB 86. Please accept this letter as a written compendium of my testimony, and of my own responses to the arguments made by proponents of this bill. While it may seem lengthy, I beg your indulgence as this is a critical piece of legislation from our perspective, and I am attempting to fairly address the questions and concerns which you have expressed as well as the arguments propounded by the lawyers supporting the bill.

HISTORY OF ORD 30.275, TO 1977

Prior to 1967, the State and its public bodies enjoyed full sovereign immunity. Ore. Const. Art. IV, Sec. 24.

Governmental officers, agents and employees, however, enjoyed no such broad immunity, and could be sued in their personal capacity for nearly anything except the performance of discretionary acts, a common law immunity. The public body was under no obligation to indemnify and defend its representatives.

Toward the sunset of sovereign immunity, Oregon Supreme Court decisions and law reviews criticized the failure of the Legislature to provide a general waiver of immunity.3 The Court found backroads around sovereign immunity, such as holding that the purchase of liability insurance by a public body amounted to a waiver of immunity up to the limits of the policy.

The Legislature responded to this criticism by exploring the "Tort Claims" acts of several states and the federal government. They finally settled on the Minnesota act as a model, and ORS 30.260 to 30.300, the Oregon Tort Claims Act came to be in 1967.

ORS 30.275, as enacted in 1967, contained both the requirement for notice of claim and a statute of limitations. The notice of claim had to be given to the governing body of the public body against which claim was made, and was required within 45 days. The statute of limitations was one year.

Over the next year or so, criticism of the short notice period and statute of limitations prompted a 1969 compromise amendment extending the notice period to 180 days, relatively common in other states with notice requirements, and extending the statute of limitations to two years. At the same time, the amendments provided for delivery of the notice to the Attorney General for claims against the State, and for delivery to the person on whom summons could be served for claims against local public bodies.

In 1971, and again in 1973, ORS 30.275 went unchanged. In 1975 the Legislature obligated State and local government to indemnify and defend public officers, employees and agents from claims arising out of their duties. At the same time, a requirement for notice of claim against State officers and employees was added to ORS 30.275, but no such requirement was included for claims against officials of local government.

Between 1967 and 1977, court decisions dealing with ORS 30.275 waffled back and forth between aspects of strict compliance and substantial compliance, but for ten years attorneys and claimants lived and functioned within the bounds of a notice requirement and special statute of limitations.

THE 1977 AMENDMENTS

In 1977 I appeared before the House and Senate Judiciary Committees on behalf of Salem and the League in support of a package of amendments to the Tort Claims Act and Insurance Code. The basis of our concern, which the Legislature was wise enough to understand and generous enough to alleviate, was the skyrocketing cost to the taxpayer of the cost of tort liability.

We were then in a disasterous insurance market. Mr. Rawls was quite correct in pointing out that the insurance market has its pendulum swing, and cycles fairly reguarly between "hard" and "soft." The situation in 1977, however, was far worse and damaging than any other in the past 30 years. Liability coverage was impossible to obtain for many local governments at any price. Others were unable to market critical specialty coverages such as false arrest. Those who could find coverage were forced to pay exhorbitant premiums, and many times had to turn to poorly rated carriers.

Parenthetically, I should note that Mr. Rawls is again correct in pointing out that the insurance market has softened significantly since the 1977 crisis, but there are strong indications that the market is beginning to harden once again, and we cannot afford to be unprepared to react to another crisis.

Faced in 1976-77 with a very hard market, local government had no choice but to explore self-insurance. We became keenly aware of a concept called "risk management," which is a management discipline having as its goal minimizing and stabilizing the total cost of risk. ("Risk" being the potential and consequences of exposure to insurable-type claims, mainly tort claims.)

The City of Salem hired a consultant to study all of the ramifications of a full or partial self-insurance program for us. The League and the Association of Oregon Counties hired a similar study of the feasibility of a statewide local government pool. Several other cities, counties and districts also independently explored these options.

One of the key factors in a successful self-insurance and risk management program which we all independently arrived at was the necessity for clarifying the provisions of the Tort Claims Act relating to immunities, notice, limits of liability, and payment of judgments. The result was ultimately codified as Ch. 823, Or Laws 1977. That Act did four important things to ORS 30.275:

1. Added a requirement for notice to the local public body of claims against its officers, employees and agents.

2. Required the notice to specify the name of the claimant and his or her attorney, if any.

3. Required the notice to be presented in writing, by certified mail or personal service.

4. Stated clearly the legislative intent to require strict observance of the notice requirement.

Other than housekeeping amendments in 1979, the statute is in the same form as amended in 1977.

THE NEED FOR NOTICE

The Attorney General mentioned one very important purpose served by the notice requirement: that of opportunity for prompt remedial action. If top management knows that a situation, policy or lack of policy has provoked a claim, the public body can respond to cure the situation so that future claims do not arise.

That purpose ties in very closely with the critical need for timely notice unique to the self-insured public body. A privately insured public body may feel the need for remedial action to be less important because it pays out a fixed sum each year for someone else to pay these claims. The actual loss history and prevention programs of any individual insured have only a marginal effect on premiums, thereby diluting incentives for active loss prevention.

Successful self-insurance, however, demands without forgiveness an active risk management program. There are four necessary elements of any risk management program:

1. Risk identification - analyzing and monitoring all operations to identify potential areas where insurable-type claims may arise, and evaluating past history to identify types of claim as to frequency and severity.

2. Loss prevention - eliminating risk-involved operations, or at least structuring them to minimize the possibility of an occurrence resulting in injury or damage; i.e., reducing "frequency" of claims.

3. Loss control - structuring operating procedures and equipment and claims adjusting and defense procedures to minimize the dollar cost of those occurrences which do result in claims, i.e., reducing "severity" of claims.

4. Risk financing - finding that means of paying for the total cost of risk (i.e., settlements and judgments, adjusting costs, defense costs, insurance premiums, loss control and prevention programs, and administrative expense) which will provide the lowest and most stable expenditure of dollars.

From that perspective, "remedial action" is only one concern in which prompt notice is a critical factor. Since 1977 the City of Salem has enjoyed a successful (in terms of minimizing and stabilizing the total cost of risk) risk management program. Remedial action is a key component in that program; but notice is critical to loss control and financing as well. Our claims management program is dependent upon prompt reaction to a potential claim. We have several programs designed to quickly investigate and marshal evidence relating to any claim; and we employ experienced adjusters to actively pursue settlement of claims which appear to be either legitimate, or to carry significant potential for plaintiffs' recovery in litigation.

Experience continues to teach us that prompt efforts to settle legitimate claims result in the most fair and favorable disposition. Experience also teaches that the earlier a claim can be investigated, the better our chance for successful defense in court.

Government "enjoys" both a relative high employee turnover, and a very high workload per employee. As time passes, employees resign, memories dim; records become hard to locate, physical evidence cannot be preserved. Early notice is critical to effective claims management.

Financing a self-insurance program is no easy task. Once a claim is made and a preliminary investigation done, a reserve is established. That reserve is our budget for all costs directly associated with that claim. Early notice of the claim allows a more accurate and manageable prediction of those costs, and is critical to our reserving procedure.

PUBLIC POLICY CONCERNS

We have so far touched on the necessity of early notice of claim to a self-insured public body. I frankly don't know, and would be as interested as the Committee in finding out to what extent these concerns are shared by insurance carriers in deciding whether to insure public bodies, and what premium rates will be. From my first involvement with the insurance industry on these issues in 1976 until the present day I have received conflicting and sometimes evasive answers to the question of what impact the notice requirement - or the Tort Claims Act, for that matter - has on underwriting decisions.

Because of the growing number of self-insured public bodies, and other concerns mentioned below, that question, though interesting, is largely academic. Whether risk is financed directly through self-insurance, or indirectly (more or less) through purchased coverage, it is public dollars and public claims which are at issue here.

The public policy issue has been well stated by the Supreme Court of Minnesota (upon whose statute the original ORS 30.275 was modeled), quoted with approval by the Oregon Supreme Court in two cases. The Minnesota Court said the purpose of the notice requirement is:

> "...[T]o protect against dissipation of public funds by requiring that the municipality be promptly furnished with information concerning a claim against it so that full opportunity is provided to investigate it, to settle those of merit without litigation, and to correct any deficiency in municipal functions revealed by the occurrence. By timely service of notice, the municipality is also afforded protection against stale or fradulent claims or the connivance of corrupt employees or officials."

Although politicians occasionally campaign with rhetoric to the tune of "let's run government like a business," that simile can never be wholly implemented. Unlike a business, government cannot unilaterally and arbitrarily increase its revenue no matter how high its costs rise. It cannot unilaterally and arbitrarily discontinue or radically alter its "products" or operations to cut its losses. Its business practices and the services it provide are dictated not by an oligarchy of owners or stockholders, but by its customers. Nearly everything it does is open to public inspection and debate. Its "services" are motivated solely by a political response to the public need most effectively lobbied by interested citizens; not profit.

General Motors can stop making Corvairs to cut its risk; the City of Beaverton cannot abandon fire or police protection. Pacific Northwest Bell can close its Salem office to the public; the City of Salem cannot close City Hall.

Many municipal services such as police protection, fire protection, mass transit, street maintenance, airport operation, even sewage disposal are very high risk operations which the public demands, and which private enterprises either could not duplicate, or could provide only at enormously greater cost than a public agency.

The very process and time frame by which public bodies budget and allocate their revenues is radically different from private enterprise.

The nature of the risks to which a public body such as Bend is exposed, the alternatives available to prevent and control losses, the nature of its decision-making process, and the sources of its risk financing are unique to public bodies as compared with even the largest private enterprise in the world, AT&T.

It is therefore simplistic and unreal to suggest that because AT&T might, for its own different reasons, also share the need for remedial action, speedy investigation and prompt adjustment, ORS 30.275 should be scrapped.

Public dollars, spread so thin among services the public demands, must be conserved, protected, allocated and accounted for by a process utterly irrelevant to private dollars. ORS 30.275 is a necessary part of that process.

ABUSES OF THE NOTICE REQUIREMENT

The proponents of SB 86 have suggested that their perception of fairness would be the repeal of ORS 30.275. Other than the indefensible equation of claims against a public body to claims against a private person or corporation, they have pointed out only three areas in which ORS 30.275 has actually been abused. (By "abused" I mean that its legitimate intent has been thwarted and the technical requirements used to defeat otherwise valid claims which have been asserted promptly.):

1. The certified mail requirement.

2. The identity of the official to whom notice may be given.

3. Cases where an adjuster has received actual written notice.

In their testimony, the proponents mentioned unspecified insurance carriers and self-insured public bodies, but the universally mentioned abuser was Tri-Met.

I have no personal knowledge of the practices of any insurance carriers, or of Tri-Met. I do not speak for them, and would agree that if the stories told at your last hearing are substantially accurate, the intent of ORS 30.275 is being cruelly violated.

I can speak from intimate first-hand knowledge about the City of Salem's practice; and from reliable hearsay about Portland, Eugene and Multnomah County. All of us try to fairly meet the intent of ORS 30.275.

Let me cite some statistics from Salem as an example.

From the time we went self-insured in 1977 to July 1, 1980, we received 358 claims. Of those claims, 75% (268) involved some property damage. SB 86 would extend the statute of limitations on PD claims from two to six years. Of those 358 claims, 80% (286) were fully adjusted and settled within six months from the accident. Those claims represented $148,809 in tax dollars; an average (probably meaningless) of just over $500 per claim. We presently have in excess of $50,000 reserved on outstanding claims. The per claim average of our reserves is slightly but not greatly higher than the $500 per claim settlement average. We have not been found liable in any action filed against us since we became self-insured.

Of those 358 claims, less than one percent (three, to be exact) have been denied on the basis of ORS 30.275. Each of those claims was denied on the merits of the claim as well. One of them, a soft-tissue injury case, resulted in litigation, but was settled for $15,000 prior to trial. That was more than I thought it was worth, less than the plaintiff's lawyer thought it was worth, and probably as fair as any compromise can be.

My point in these statistics is two-fold:

1. The notice of claim requirement can be fairly and reasonable administered, and works well if so handled.

February 10, 1981

2. The needs for prompt investigation and adjustment are borne out in our experience.

THE FUTURE OF ORS 30.275

If the existing statute is poorly written and subject to abuse, we are willing to work with the Bar, the Professional Liability Fund, the Committee or anyone else to readjust the balance as originally intended.

I am not wedded to certified mail delivery. I am not enthralled with the "person upon whom summons could be served" specification. I believe it may be possible to build in a workable "actual notice" provision. These are my personal opinions.

Speaking for the City of Salem and the League of Oregon Cities, ORS 30.275 must not be repealed. The timely notice requirement and the two year statute of limitations are necessary; and, like the baby, must not be tossed out with the bath water.

Thank you for your patience and consideration.

Yours very truly,

William G. Blair
Assistant City Attorney

WGB:ss

EXHIBIT G

Senate Committee on Justice
Testimony - OTLA, 2-10-81
one page - SB 86

Oregon Trial Lawyers Association

1178 Chemeketa St., N.E., Suite 206 • P.O. Box 2064
Salem, Oregon 97308
Phone (503) 399-8207

February 10, 1981

Sen. Jan Wyers, Chairperson
Senate Justice Committee
State Capitol
Salem, OR 97310

Re: SB 86

Dear Sen. Wyers and members of the Committee:

I wish to pass along this additional information regarding the 180 day notice requirement which would be abolished by SB 86.

The State of Washington had a similar statute providing a 120 day notice requirement. In the case of Cook v. State, 83 Wash. 2d 599, 521 P.2d 725 (1974), the Washington Supreme Court first modified that requirement by saying that illness or disability of the claimant extended the notice period.

Then in Hunter v. North Mason School Dist., 85 Wash. 2d 810, 539 P.2d 845 (1975), the Washington Supreme Court held the entire 120 day notice requirement invalid and unconstitutional as a violation of the equal protection clause of the Constitution. I believe our Oregon statute would be subject to the same infirmity.

If I can be of further assistance on this bill, please let me know.

Sincerely,

Clayton C. Patrick
Attorney at Law
Executive Director

CCP:hs

EXHIBIT H

Senate Committee on Justice
Testimony-J. Tegger, 2-10-81
one page - SB 86

OREGON SCHOOL BOARDS ASSOCIATION

1201 COURT STREET N.E.
SALEM, OREGON 97301
PHONE (503) 588-2800
MAILING ADDRESS: P.O. BOX 1068
SALEM, OREGON 97308

TESTIMONY AGAINST SENATE BILL 86

Presented to the Senate Justice Committee
February 10, 1981

Chairperson Wyers, members of the committee, my name is Judith Tegger. I am representing the Oregon School Boards Association, 1201 Court Street NE, Salem, Oregon. I am appearing before you today in opposition to Senate Bill 86.

The Oregon School Boards Association represents most of the 312 school districts in Oregon. We are concerned about the proposed changes in the Tort Claim Act as proposed by Senate Bill 86.

The basis in law for this Act is the Oregon Constitution, Article IV, Section 24. Procedural protections and limits on liability are reasonable components of legislation which grants citizens the right to sue their government. The notice provision has been amended previously, to allow the current 180 days to file a claim, rather than the original 45 days. We oppose any bill which would eliminate the notice requirement. It is reasonable and necessary to protect governmental units' self-insurance plans and rates.

Other statutes which allow citizens' actions are even more stringent on time. A writ of review must be filed within 60 days of the order to be appealed and a notice of appeal of a land use decision is required in 30 days. The 180 days under consideration now is significantly longer than other actions against the state or its units.

The elements of SB 86 were presented to the Oregon State Board Association at its convention in October. The major argument for Bar support of the elimination of the notice requirement was that failure to provide notice was a significant drain of the Bar's Professional Liability Fund. The answer to that problem is better informed attorneys rather than the elimination of the notice.

Six months is sufficient time for potential claimants to be aware of their claims. If the committee finds that hyper-technical details are thwarting justice, then consideration of those details would be more reasonable than would total abandonment of the notice requirement. Please give your careful consideration to the impact of this legislation on local government.

EXHIBIT J -Senate Comm. on Justice
SB 86 - Witness Sheet, 2-10-81
1 Page

WITNESS REGISTRATION

Senate Committee on Justice

Date: Feb 10, 1981 Time: 3:00 PM Room: 346

Public Hearing on SB 86
Measure No.

Please register if you wish to testify on the above-named measure.

Name and address	Representing	For	Against
✓ Jeffrey K. McCollum 837 E. Main / Medford	Self / Members of Jackson Co. Bar Assoc. / OTLA	✓	
✓ JOHN HIGGINS 3100 1ST NATL TWR Ptlnd	Tri MET		✓
✓ John T. Lang LANE Cty	Risk Mgr		✓
~~JOHN E. JANZEN CITY OF EUGENE~~	~~CITY OF EUGENE~~		
✓ FORREST C. SOTH.	City Councilman BEAVERTON		✓
JOHN JANZEN	RISK MANAGER City OF EUGENE		✓
✓ BILL BLAIR	LEAGUE OF OREGON CITIES City of SALEM		✓
✓ PAUL SNYDER	ASSOC. OF OREGON COUNTIES		✓
✓ JUDITH TEGGER	OR. SCHOOL BOARDS ASSOC		✓
✓ Luther Jensen	Dept of Justice		✓
✓ JACK L. SOLLIS	" "		✓
✓ Michael Montgomery	Clackamas County		✓

Senate Committee on Justice

Amendments to ORS 30.275, prepared by Legal Counsel

ORS 30.275 would be amended to read:

(1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting with the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.330 shall [cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.] give notice, as defined in this subsection, to the public body or officer, as required in this subsection, within 180 days after the alleged loss or injury.

(a) Notice required under this section shall be:

(1) a written statement of the time, place, and circumstances of the loss or injury, the claimant's name and the name of the claimant's representative or attorney, if any, and the amount claimed as compensation. The statement shall be mailed by certified or registered mail, return receipt requested, or by personal delivery of such notice; or

(2) by any other method which actually notifies the public body or officer of the information contained in Paragraph (1)(a)(1), and which substantially complies with the requirements of Paragraph (1)(a)(1). A claimant alleging notice under this subsection shall have the burden of proof of substantial compliance and actual notice, as used in this subsection. "Actual notice" may be proven by the payment of a claim or claims to the claimant or the claimant's representative by the public body or officer within 180 days from the loss or injury; overt steps by the public body or officer, employe or agent thereof to investigate such claim; or the receipt by any other agency or officer of the notice described in subparagraph (a), which the claimant reasonably believed to be the proper agency or officer to be notified hereunder.

(3) No notice shall be invalid for its failure to include the amount claimed as compensation.

(b) Notice to the public body or officer shall be given:

(1) If the claim is against the State of Oregon or a state officer, employe or agent, to the Attorney General.

(2) If the claim is against any local public body,

or an officer, employe or agent thereof, to any officer, director, managing agent, clerk or secretary thereof.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice. Notice, as used in this subsection, shall mean the same as used in subsection (1) of this section.

(3) No action shall be maintained unless such notice has been given and unless the action is commenced within two years after the date of such accident or occurrence.

(4) The time for giving [such] notice as required in this section does not include the time, not exceeding 90 days, during which the person injured in unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

PROPOSED AMENDMENTS TO SB 86

On page 1 of the printed bill, line 2 after "30.287" delete "and" and insert a comma. On the same line after 278.120 delete the semicolon. On the same line after the second "and" delete "repealing". On the same page, line 5 after "is" delete "repealing" and insert "amended to read" on the same page after line 5 insert the following:

30.275(1) every person who claims damage from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice [stating] containing a clear statement of the fact that a claim is asserted, the time, place and circumstances thereof, the nature and extent of the loss or injury so far as then known to the claimant and the name and address of the claimant [and of the representative or attorney, if any, and the amount of compensation or other relief demanded]. Such notice need not specify a particular dollar amount claimed as compensation. [Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D. (3) (d). Notice of claim shall be served upon the Attorney General or local public body's representative

for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.]

(2) Notices of claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Notices of claims against any local public body or an officer, employee or agent thereof shall be presented to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body; or

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(3) Notice of claim shall be served upon an appropriate individual as specified in subsection (2) of this section either personally or by certified mail return receipt requested. The claimant shall have the burden of proving that notice conforming to this section was actually received by the person to whom it was presented, or by a secretary or clerk employed at such person's regular office.

(4) If the Attorney General or the local public body's representative having the responsibility for reviewing and adjusting claims obtains the information specified in subsection (1) of this section from the claimant or the claimant's representative within the time provided in this section, and such person acknowledges in writing or verbally under oath that such information was, in fact, received within the time provided in this section, notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

(5) A notice of claim which does not contain the information required by subsection (1) of this section, or which is presented in any other manner than or beyond the time provided in this section is invalid.

[(2)] (6) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (7) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] of the alleged loss or

injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of such injury or loss.

The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

30.275(1) Every person who claims damages from a public body or from an officer, employee or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice containing a clear statement of the fact that a claim is asserted, the time, place and circumstances thereof, the nature and extent of the loss or injury so far as then known to the claimant, and the name and address of the claimant. Such notice need not specify a particular dollar amount claimed as compensation.

(2) Notices of claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Notices of claims against any local public body or an officer, employee or agent thereof shall be presented to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body; or

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(3) Notice of claim shall be served upon an appropriate individual as specified in subsection (2) of this section either personally or by certified mail return receipt requested. The claimant shall have the burden of proving that notice conforming to this section was actually received by the person to whom it was presented, or by a secretary or clerk employed at such person's regular office.

(4) If the Attorney General or the local public body's representative having the responsibility for reviewing and adjusting claims obtains the information specified in subsection (1) of this section from the claimant or the claimant's representative within the time provided in this section, and such person acknowledges in writing or verbally under oath that such information was, in fact, received within the time provided in this section, notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

(5) A notice of claim which does not contain the information required by subsection (1) of this section, or which is presented in any other manner than or beyond the time provided in this section is invalid.

(6) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

(7) No action shall be maintained unless notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of some injury or loss. The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

EXHIBIT C

Senate Comm. on Justice — SB 86
2-24-81, one page from Robert C. Guile

MARION COUNTY

RISK MANAGEMENT DEPARTMENT

BOB GUILE
Risk Manager

RAY DWYER
Loss Control Manager

Board of Commissioners
County Courthouse
Salem, Oregon 97301

503-588-5294

February 24, 1981

Senator Jan Wyers
Chairperson
Senate Justice Committee
Oregon State Capital
Salem, Oregon 97310

Re: Senate Bill 86

Dear Senator Wyers:

It is the position of Marion County, which is a Self-Insured Municipal Entity, that it have actual written notice of tort claims brought against it. The written notice is to be either by Certified Mail or by hand delivery and is to be served upon the Marion County Clerk.

We would not object to an admendment to ORS 30.275 that the notice, by Certified Mail or hand delivered, be served upon the governing body of the Municipality. The reasoning being that for the sake of consistency the number of persons be limited upon whom notice can be served.

Marion County furthermore takes the position that the requirement, under ORS 30.275, that notice be given within 180 days, plus an additional 90 days for certain cases, should not be removed. The restriction of when notice must be given is especially important to Marion County as it is Self-Insured. It could be disastrous to the County if it had not had notice of a claim within a reasonable length of time and, hence, did not set aside a reserve for that claim. The present time requirement for notice gives the County a chance to investigate a claim while the facts are still fresh, witnesses are still available and, a realistic amount of money can be reserved for the claim.

Deletion of ORS 30.275 could prove a financial disaster to Marion County as a Self-Insured Municipality.

Respectfully yours,

Robert C. Guile
Risk Manager

RCG/gd

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT A
March 17, 1981
2 pages
Ralph W. Haley, City of Salem

CITY OF SALEM, OREGON
City Hall / 555 Liberty St. S.E.
Zip Code 97301
CITY MANAGER'S OFFICE
Telephone (503) 588-6254

March 16, 1981

The Honorable Jan Wyers
Chairman
Senate Justice Committee
Capitol Building
Salem, Oregon 97310

Re: SB 86, Fiscal Impact

A

Dear Senator Wyers;

In response to your request at the last work session on this bill, the following is the best assessment that the City of Salem can make of the effect on our risk management program of a repeal of ORS 30.275. In making this assessment, we are proceeding on the assumption that the bill will be amended to at least retain the two year statute of limitations for tort claims against public bodies. If the two year statute of limitations is repealed as well, the fiscal impact will be considerably greater.

To attempt to estimate in hard dollars the increase in claim costs resulting from repeal of the 180 day notice requirement is basically akin to trying to estimate how many persons would commit murder if the murder statute were repealed. We know that there must be some, we must assume that there would be many, who would assert claims well beyond six months from the date of loss. Our response to your request is therefore not an assessment of how much the actual cost would be in terms of dollars paid out because of stale claims, but rather a projection of what the cost of our budgeting in response to the potential for stale claims will be.

In making this assessment we have analyzed both the probable cost of a fully insured program, and the cost of the steps that would be taken to prudently budget for and reserve dollars under a self-insured program to fund the increased risk. Had we purchased a fully insured program last year, our annual premium would have been approximately $310,000. Because of decrease in premium in our excess policy and savings through our inhouse administration of claims, we realized a net savings through a self-insured retention amounting to approximately $180,000. Based upon the best information we can obtain from the insurance industry, our insurance rate for a fully insured program would increase by a minimum of 12 percent based solely on the repeal of ORS 30.275. Since an insurer can effectively spread its risk among far greater numbers of claims than the City of Salem is able to, and further spread its risk through reinsurance, our self-insurance program would necessitate a much greater budget hike, and we would therefore project a 25 percent increase in the cost of our own program. The bottom line is that if we were to purchase insurance under a fully insured program, our annual premium would be approximately $346,000. Our budgeted self-insurance cost if ORS 30.275 were repealed would be $265,000. The difference between purchased and self-insurance would amount to $81,000 per year.

The difference between our present program and our budget based upon the repeal of ORS 30.275 would therefore be $100,000 per year, or $181,000 if we were to abandon our self-insurance program and purchase insurance.

Although the increased budget for self-insurance does not mean actual dollars paid out, it does mean that an additional $100,000 per year of public funds would no longer be available to pay salaries and conduct programs. That $100,000 translates to 8 police officers or firefighters (6 percent of our police department), or at least 10 clerical or maintenance positions in our AFSCME bargaining unit.

It is important to emphasize that these figures represent the steps that the City of Salem would have to take based solely on the repeal of the 180 day notice requirement, not on the repeal of the 2 year statute of limitations; and certainly these figures do not consider the impact of other bills presently before the Legislature such as pre-judgment interest and increase in the limits of liability under the Tort Claims Act.

I trust that this information is responsive to your concerns. Thank you for your consideration.

Yours very truly,

RGAhalton

Ralph W. Hanley
City Manager

RWH:WGB:sb

SENATE COMMITTEE ON JUSTICE
SENATE BILL 86 - EXHIBIT B
March 17, 1981
9 pages
William G. Blair, Asst. City Attorney,
City of Salem

CITY OF SALEM, OREGON
City Hall / 555 Liberty St. S. E.
Zip Code 97301
LEGAL DEPARTMENT
Telephone (503) 588-6003
William J. Juza
City Attorney

March 17, 1981

The Honorable Jan Wyers
Chairman
Senate Justice Committee
Capitol Building
Salem, Oregon 97310

Re: SB 86, Response to Senator Fadeley's Concerns

Dear Senator Wyers;

B

This letter is in response to Senator Fadeley's suggestion that we consider Ms. LaMar's proposed amendments as a basis for suggesting our own. For reasons which I hope will be readily apparent from the following analysis of these amendments, we do not feel that minor modifications of this proposal are possible. In order for the proposal to work from anyone's standpoint, wholesale redrafting would be necessary.

In brief summary, our problems with the draft are:

1. Subsection (1) is cumbersome. There are too many levels of subdivisions of this subsection.

2. The meaning is in several particulars unclear, and can only lead to needless litigation.

3. "Actual notice" may be proven by constructive or imputed notice.

4. The list of persons on whom notice may be served is as confusing as the present statute because the titles are private sector terms of art having no relation to the organization of local public bodies.

5. The amendment to subsection (2) creates an unnecessary potential for confusion as to the notice period for wrongful death claims.

6. Substantively, the "overt steps...to investigate such claim" and the "receipt by any other agent or officer" provisions are subversive of the basic need for the notice of claim.

A detailed analysis of counsel's draft follows.

DETAILED ANALYSIS

In analyzing this draft, we approach it from two aspects: the first being problems with form, format and clarity; the second from the standpoint of substance.

Form, Format and Clarity

As to form, these amendments lump the entirety of the basic notice requirement into a single subsection, the second subsection being essentially the same as the present statute with the addition of a new sentence which might cause confusion. The third and fourth subsections in her draft are merely a separation of the existing subsection (3) into two subsections.

A minor and easily remedied point at the outset is that the format used in Oregon Revised Statutes for subheadings under sections is for subsections to be designated by Arabic numerals in parenthesis, paragraphs under subsections to be designated by small case letters in parenthesis, and subparagraphs under paragraphs under subsections to be designated by capital letters in parenthesis. Her draft departs from this format by having subparagraphs designated by Arabic numerals in parenthesis.

As a matter of clarity and readability for both the lawyers as well as laymen who have occasion to try to understand our statutes, I believe that the fewer subheadings under subsections the easier the statute is to understand. By that I do not mean that a number of paragraphs under a subsection might not be used, but rather that if possible no more than two levels of subdivision of a section should be used. Subsection (1) contains too many subsections and further untitled subheadings with the probable result of confusing the reader whether the reader be legally trained or not.

Subsection (1) contains a general requirement for 180 day notice of a tort claim. Paragraph (a) under subsection (1) contains nothing substantive and is simply a device to further break up the continuity of the subsection into subparagraphs. Subparagraph (1) under paragraph (a) provides for the necessary information in a notice of claim and the manner in which the notice must be served. Both are substantially the same as the existing statute and carry on the requirement that the notice include a statement of the amount of compensation demanded.

Subparagraph (2) contains two standards which must be met in order that a deviation from subparagraph (1) would be acceptable: the first is actual notice and the second is substantial compliance with subparagraph (1). Subparagraph (2) defines the method by which "actual notice" may be proven, but does not define "substantial compliance". We assume, although the question is certainly unclear, that substantial compliance with subparagraph (1) would mean written notice by certified mail without a return receipt request, or perhaps even written notice by regular mail.

Subparagraph (2) then defines the method by which actual notice (not "substantial compliance") may be proven in terms of:

1. Payment of the claim to the claimant within 180 days;

2. Overt steps to investigate "such claim" (the phrase "such claim" having no clearly defined antecedent); or

3. Receipt by someone ("any other agency or officer") of notice; i.e., "actual notice" may be notice to someone else who never tells the person against whom actual notice is sought to be established. To call this proof of actual notice is nothing short of a contradiction in terms; it is calling a spade a tulip.

Subparagraph (3) carries over the inconsistency in the present statute of in one sentence requiring that the notice contain the amount claimed as compensation and in a later sentence saying that requirement doesn't really mean anything because you don't have to state the amount of compensation.

Paragraph (b) sets forth the persons to whom notice may be given. This paragraph is apparently superfluous in view of the "actual notice" provisions of "(1) (a) (2)". Under subparagraph (1) the notice of claim against the state or its people is to be given to the attorney general as is provided in the present statute. Under subparagraph (2), claims against local bodies or officers are to be given to any of five named titles. While these five named titles are drawn directly from the Oregon Rules of Civil Procedure as to service of summons on public bodies, they are at best confusing, and certainly bear no rational relationship to the way local government is structured. These five titles are: "officer", "director", "managing agent", "clerk", or "secretary". All five are private sector terms of art applicable to private corporations but unrelated to the way local government is structured.

While this is certainly a problem in the Oregon Rules of Civil Procedure as well as the Tort Claims Act, the very nature of summons and complaint in a lawsuit is such as to obviate much of our concern as to who should receive the summons.

Subsection (2), as mentioned above, is the same as the present statute with the addition of a new sentence which provides that "notice" means notice as provided in subsection (1). Notice under subsection (1) is clearly specified as notice within 180 days. Notice under subsection (2) of the old statute was just as clearly notice within one year in the case of a wrongful death claim. In the suggested amendment, the ambiguity is now raised as to whether the notice for wrongful death claims is six months or one year. The addition of that sentence is superfluous.

Because of the cumbersome nature of the subdivision of subsection (1) and the serious problems of clarity and terminology contained in that lengthy subsection, we find that it would be difficult to use that format as a basis for suggesting amendments.

Substance

As to the substance of the suggested amendments, our biggest problem comes in subparagraph (2) of paragraph (a) of subsection (1). Wholly apart from the ambiguities and inconsistencies which we noted above, we cannot accept the provision for "overt steps by the public body or officer, employee or agent thereof to investigate such claim". Quite frankly, we don't know what that means, and if it means what it seems to say, it effectively subverts the entire reason for having a notice of claim. For example, suppose a police officer arrests a drunk driver. The police officer makes an "investigation" in connection with his arrest, that investigation being solely for the purpose of determining whether or not the individual is under the influence and was driving. It is common for a drunk driver sitting in the back seat of a police car on the way to jail to ramble at length as to how he is going to sue the police officer, the city and everyone else in sight for everything they own. Can it be construed that this individual has now given oral notice of claim and the "investigation" performed by the police officer to determine the question of probable cause to arrest is an "overt step" to investigate the claim? Such threats of lawsuit are so common as to be generally ignored by the police. During the hearings on Senate Bill 86 many of the questions and examples focused on vehicle accidents. In fact, in our experience, which is supported by the experience both of the State of Oregon, the City of Portland, and Clackamas County, traffic accidents involving publicly owned vehicles amount to less than half of the claims that are made. The remainder involve situations where the potential for a claim is not even recognized until the claimant informs us that he has a claim. In some of those cases there may have been some investigation performed by operating departments concerning the situation that gave rise to the claim, as for example a defective sidewalk, a plugged sewer, a malfunctioning traffic signal, etc., but that investigation is not conducted with any sort of concern for either liability or amount of damages. It is not conducted by the people who have the authority and responsibility to evaluate liability and damages and attempt to negotiate a settlement. In short, the "overt steps" language in the draft is unacceptable.

Of even greater concern is the "receipt by any other agent or officer" language. As we read this draft, if the City of Salem, on the 180th day of the notice period receives a notice of claim from someone who slipped and fell on an ice covered sidewalk on East Summer Street in the Capitol Mall, that notice of claim would be sufficient to satisfy the notice requirement as to the State of Oregon whose sidewalk it happens to be. If that notice of claim was directed to the City's sidewalk inspector, and said simply, "On January 3rd I slipped and fell on the ice on East Summer Street and I think you should do something about it," signed with the individual's name, the sidewalk inspector would in all likelihood simply write a letter back to that individual saying that this is not a City sidewalk and he has requested that the maintenance people from the State General Services Department pay more attention to putting rock salt on the ice. A year and a half later a lawsuit may be filed against the State of Oregon, and in all likelihood no one, either the City or the State would have any information relating specifically to the claim of John Doe or even any records of the condition of the sidewalk or efforts made to handle the ice problem if there was one at the time of occurrence. Although there may have been some remedial action resulting from the round-about notice, that action would probably not have been as great a concern as if the claim were received by the Attorney General; and the other very important reasons for a notice of claim (prompt investigation, aggressive settlement, and management of reserve funds) would be totally unsatisfied. This provision also is unacceptable.

As to the person to whom notice should be given in the case of a claim against a local public body, we believe that to avoid confusion it is possible to name certain individuals by title that are common to most, if not all local public bodies, and would give a claimant or a claimant's attorney simple and concise direction as to where to direct a notice of claim. We believe also that there is a possibility for a substantial compliance test (although not using the term "substantial compliance") which would allay all of the concerns expressed by the proponents of Senate Bill 86 in terms of particular abuses.

Because of the serious problems in form and style with the draft and our belief that the substantive problems with the current statute can be fully and fairly remedied in a way other than the draft's substantive provisions, we would again request that you consider carefully the proposed amendments which we have already submitted. To those amendments, we would add a safety clause clarifying when the amendments apply (Section 2 of the attached draft), and a provision deleting the remainder of SB 86. For your benefit, we are attaching a copy of those proposed amendments to this letter. Those amendments are captioned "Proposed Amendments to Senate Bill 86, on Behalf of Oregon Public Bodies," dated 3/17/81.

Again, thank you for your consideration.

Yours very truly,

William G. Blair
Assistant City Attorney

WGB:sb
Attach.

5

3/17/81

PROPOSED AMENDMENTS TO SB 86
ON BEHALF OF OREGON PUBLIC BODIES

On page 1 of the printed bill, line 2 after "30.287" delete "and" and insert a comma. On the same line after 278.120 delete the semicolon. On the same line after the second "and" delete "repealing". On the same page, line 5 after "is" delete "repealing" and insert "amended to read" on the same page after line 5 insert the following:

30.275(1) every person who claims damage from a public body or from an officer, employe or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged loss or injury a written notice [stating] containing a clear statement of the fact that a claim is asserted, the time, place and circumstances thereof, the nature and extent of the loss or injury so far as then known to the claimant and the name and address of the claimant [and of the representative or attorney, if any, and the amount of compensation or other relief demanded]. Such notice need not specify a particular dollar amount claimed as compensation. [Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D. (3) (d). Notice of claim shall be served upon the Attorney General or local public body's representative

for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.]

(2) Notices of claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Notices of claims against any local public body or an officer, employee or agent thereof shall be presented to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body; or

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(3) Notice of claim shall be served upon an appropriate individual as specified in subsection (2) of this section either personally or by certified mail return receipt requested. The claimant shall have the burden of proving that notice conforming to this section was actually received by the person to whom it was presented, or by a secretary or clerk employed at such person's regular office.

(4) If the Attorney General or the local public body's representative having the responsibility for reviewing and adjusting claims obtains the information specified in subsection (1) of this section from the claimant or the claimant's representative within the time provided in this section, and such person acknowledges in writing or verbally under oath that such information was, in fact, received within the time provided in this section, notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

(5) A notice of claim which does not contain the information required by subsection (1) of this section, or which is presented in any other manner than or beyond the time provided in this section is invalid.

[(2)] (6) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (7) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] of the alleged loss or

injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of such injury or loss.

(8) The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

Following Section 1, insert the following new Section 2, and delete the remainder of the printed bill:

Section 2. The amendments made to ORS 30.275 by Section 1 of this Act first become effective as to notices given on or after the effective date of this Act.

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT C
March 17, 1981 - 2 pages
Lester L. Rawls

Testimony of Lester L. Rawls before the Senate
Justice Committee

March 17, 1981

Members of the Justice Committee:

Thank you for the opportunity of again discussing with you Senate Bill 86. My testimony today will be concerned with the availability and cost of tort liability coverage for political units of government in Oregon. My testimony will be based upon past experience as Insurance Commissioner of the State of Oregon and also on having been employed for several years by the casualty insurance industry. During the time I was employed by the insurance industry, I had the opportunity to work with many of the municipalities and counties in and around Oregon and Washington with respect to their liability coverages and I draw knowledge gained from that experience.

You have heard testimony from some persons who have been advised by their insurance carriers that should the present bill (Senate Bill 86) be passed, their rates would increase dramatically and that the coverage could well become unavailable. This is an age-old technique used by the insurance industry when it is either concerned about the hazards of a newly-acquired risk or when changes are contemplated which would lessen their control over the hazards they insure.

In the insurance industry, to evaluate a risk before insuring it, one looks to other similar type risks and experiences, plus other variables to determine a rate or whether the insurer wishes to accept the risk or not. Then, to determine what the effect would be on Oregon political entities, if Senate Bill 86 would pass, one looks to the other states surrounding Oregon, such as Washington, Idaho, Montana and Utah, because of their similarities in geographic areas and population densities. I have personally checked with the insurance departments of each of these states and find that:

1. There is no problem in availability of coverage or affordability in <u>any</u> of these states with respect to tort liability for political entities;

2. Though premiums are always too high, the insurance departments advise me they have not in the past two or three years received any complaints as to premiums;

3. Washington had legislation similar to our

present bill with respect to tort limitation on political entities, but that was declared unconstitutional several years ago, yet Washington, as previously stated, has no problems in availability and the rates appear to be fairly comparable with the cities and counties of other states;

4. Idaho has rather liberal tort limitations. However, I was unable to get the exact amount from the Assistant Attorney General in time for this presentation;

5. Montana's limitation is 300,000/1,000,000 per occurrence with no notice requirements and the regular statute of limitations applies with the filing of actions of states as it does against other parties; and

6. Utah has a 300,000/500,000 occurrence policy with a rather liberal notice provision required to be given to the political subdivision and, in cases of the State, to the Attorney General prior to the commencement of an action.

Four or five years ago, Oregon was experiencing a tremendous problem in acquiring tort coverages for their cities and counties, school districts, etc. At that time, I was Commissioner of Insurance for Oregon and because of the urgency involved, I called a meeting of the major insurance companies writing insurance in Oregon to discuss the difficulty we were experiencing that was not being experienced by our neighboring states. Again, keeping in mind that we had a very strict limitation on tort liability and were experiencing an availability crunch while other states were not in the same predicament, it came out at that meeting that the real problem was not in the usual tort forms, but in the very liberal laws Oregon had adopted with respect to discrimination suits.

It would be my opinion that if there is any problem that has given rise to the increase in rates over any other states, it would be this, and since we have weathered that storm, it is my opinion that if Senate Bill 86 were passed in its entirety, we would not have any more difficulty in Oregon than have our sister states.

I would be very happy to answer any questions or to assist this committee in any way that I can.

Respectfully submitted,

Lester L. Rawls

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT D
March 17, 1981
1 page
Jack L. Sollis, Dept. of Just.

DAVE FROHNMAYER
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

HIGHWAY LEGAL
113 Transportation Building
Salem, Oregon 97310
Telephone: (503) 378-4259

March 16, 1981

Jan Wyers, Chairperson
Senate Justice Committee
State Capitol Building
Salem, Oregon 97310

Re: Senate Bill 86
Fiscal Impact

Dear Sir:'

In response to your direction to secure information relating to the fiscal impact of Senate Bill 86, the insurance consultant for the State, Marsh & McLennan has been contacted and Mr. Mike Channy has furnished the following information.

With the elemination of the 180-day notice requirement, his research of the market indicates that general liability insurance premiums would increase from 3% to 8% with the 8% increase being on the larger premiums and that auto insurance would increase from 6% to 14% with 14% on the larger premiums.

The State Department of General Services has budgeted $4,311,982. for the liability fund for the the 1981-83 biennium and has indicated that the local government liability fund will need $279,000 per year during the next biennium. Mr. Channy advised he would recommend to the State that its reserves be increased by as much as the insurance premiums would be in order to have proper reserves for the State Liability Fund and the Local Government Liability Fund.

Sincerely,

Jack L. Sollis
Assistant Attorney General
and Counsel

JLS:mk

TRI-COUNTY
METROPOLITAN
TRANSPORTATION
DISTRICT
OF OREGON

TRI-MET
4012 S.E. 17TH AVENUE
PORTLAND, OREGON 97202

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT E
March 17, 1981
6 pages
Tri-Met, Portland

Date: March 16, 1981

To: Jan Wyers, Chairman, Senate Committee on Justice

From: Douglas L. Capps, Director of Management Services

Re: ANALYSIS OF IMPACT OF S.B. 86 ON TRI-MET CLAIMS FUND & PROCEDURES

Tri-Met has analyzed suggested amendments to ORS 30.275, particularly the impact of S.B. 86, to determine the effect of changing the notice period or procedures in claims against public bodies. This memo hopefully provides some pertinent data about Tri-Met's current loss record, as well as some financial projections if the claim notice requirements were altered in one or more respects.

Background

Tri-Met is self-insured, which means that it maintans its own loss reserve fund for the defense and/or payment of claims arising out of personal injuries or property damage incurred where Tri-Met is involved. Our claims are administered under a contract with Industrial Claims Service. The volume of claims varies from time to time but the fact that 1,627 claim files were opened in f.y. 1979-80 provides a picture of the volume of claims handled in a given year. Tri-Met maintained a loss reserve fund of $1,285,250 during the same period.

Survey

An audit was conducted of claims files for f.y. 1979-80 to establish a case history of claims, against which we could measure changes in the notice requirements of ORS 30.275. Two hundred claims files were reviewed at random, divided equally between Personal Injury files and Property Damage files. All had been closed without payment (CWP), (usually in the month after the 6-month period.) Closing the file is a function of and related to the 180-day notice requirement.

The attached chart provides data from the survey. Here is what we found:

- Out of the 200 CWP case files, 28 were closed because liability was denied by Tri-Met.

- 172 of the 200 cases were closed simply because they extended beyond the 180 days for notice.

- In only two of those cases was there evidence of defective notice; one late claim by the claimants' insurance carrier, and one late claim by the claimant's attorney.

<u>What if the notice period were extended to, say, two years?</u>

As the above survey indicates, a large percentage of Tri-Met's claim files are closed when the 180-day notice period has elapsed. When a claim file is opened, a loss reserve amount for that claim is estimated and, together with the estimated values of other active claims, constitutes our loss reserve fund. That fund account is for the total accumulation of claim files opened within the time span a claim can be filed, defended, or paid by Tri-Met. If the time period increases, obviously the loss reserve refund must be increased to account for more claim files remaining open for possible action.

There are several ways to estimate a projected increase of the loss reserve fund to show the accumulation of claims over a longer period of time. One way is a straight line projection. Here is what happens if claims were to be accumulated (using 1979-80 reserves) without considering claims paid or other means of closing files during the two-year span.

	Actual Loss Reserve Fund	Projected Reserve Fund Level w/No 180 Day File Closing
6-30-79	(assume zero base)	(assume zero base)
12-31-79	641,450	641,450
6-30-80	1,285,250	1,576,805
12-31-80	1,368,400	2,199,075
6-30-81	1,423,456	2,540,686

Tri-Met's annual budget includes an estimate for one year of loss reserves. For fiscal year 1979-80, our budget reflected an amount (1,285,250) which is equal to the estimated reserves for that year. If an additional year of reserves must be accumulated because cases are not closing at the end of 180 days, but only at the end of two years, Tri-Met would be required to increase (on a straight-line projection) its reserve fund by $1,117,230.

In order to minimize the impact of over $1.0 million additional dollars on Tri-Met's annual budget, additional factors could be worked into the projection as an alternative way of calculating our loss reserve fund. For example, some claims will be paid at less than the reserved amount during the two-year period. Others will be denied. Others become clearly inactive during the two-year period, and can be dropped.

If we were to use an insurance industry factor of 20%, a more conservative projection could be made.

	Actual Loss Reserve Fund	20% Factor if Claims Remain Open For Two Years	Total Loss Reserve Without 180-Day File Closing
12-31-79	641,450	0	641,450
6-30-80	1,285,250	79,840	1,365,090
12-31-80	1,368,400	166,135	1,534,535
6-30-81	1,423,456	245,975	1,669,431

In this instance, the budgeted increase to bring the loss fund up to estimated values would be an additional $245,975.

Other methods can be used to project the increase in loss reserves. But it is clear that between a minimum of a quarter of a million dollars and a maximum of over one million dollars of public funds would need to be re-allocated within Tri-Met's budget to cover the cost of a simple extension of the notice requirement from 180 days to two years.

(NOTE: These increases use FY 1979-80 as the base year, with 1979-80 dollar values. Considering claim costs have increased by 10.8% per year over the last five years, the real costs would be considerably higher.)

Survey of litigated notice cases

As the attached summary shows, an audit of litigated notices cases was also made. Since only two out of two hundres cases in the random survey of CWP files involved defective notices, we felt it appropriate to review those claims which were closed by virtue of the notice requirement, but which were subsequently contested by claimant on the issue of notice.

Here is what our review of those cases shows:

- The total claim value of litigated notice cases for 1979-80 was $142,500.

- Our reserve fund includes $42,150 in projected costs to defend these claims on the merits. If we were successful in our use of notice as a defense, so that the costs for defending the case on the merits would not be used, a total savings of $184,650 could be realized.

- Considering Tri-Met's expenditure of $18,329 to defend cases on the issue of notice, the net savings to Tri-Met is $124,181 (or $166,331 if defense costs on the merits are included in the savings).

- Just over 1% of the total claim files opened in 1979-80 involved litigated notices.

Brown vs. Portland School District #1

Tri-Met is awaiting the outcome of a case on appeal which will, within the next 60 days, provide significant judicial guidance on the question of "strict" vs. "substantial" compliance with ORS 30.275. Of ten litigated notice cases still open, nine will be affected by the Supreme Court's decision. If the Court affirms the Court of Appeal's decision in favor of the lower court's ruling (strict construction), these cases can be closed.

If, on the other hand, "substantial compliance" is the Court's ruling, we would anticipate some effect on our loss reserves. Our survey indicates, for example, that at least 13 of the litigated notice cases from 1979-80 involved a technical defect, not lateness.

Summary/Reaction to proposed amendments

In light of the data collected, any relaxation of either the technical notice provisions or the notice period provided in ORS 30.275 would significantly increase Tri-Met's tort liability and defense costs. At a time of rising costs and diminishing resources, it is the dedicated policy of Tri-Met to conserve its valuable public resources to the greatest extent possible by pursuing productivity improvements and vigorous mechanisms of loss control. This policy is carried out diligently by our claims administrators and defense counsel.

This is not to say that it is Tri-Met's intent to "dodge" legitimate claims. Our survey indicates that while a large percentage of case files are closed because of the time limit, only a few cases (just over 1%) challenge that determination through legal processes.

If the Committee determines that the public interest is better served by a relaxation of notification provisions, Tri-Met's interest in protecting its public funds is better served by modifying the technical aspects of those provisions (method of delivery, who can receive notice, etc.) rather than extending the time period. (Of the 200 case files surveyed, for example, 24 involved the inability to identify the bus operators, making it increasingly difficult to defend the cases as time passes.)

Both the Committee's proposed amendments and the Attorney General's proposed amendments include relief from the technical content requirements of ORS 30.275 and provide for the protection of a claim when a public b ody has received actual notice. Tri-Met would favor Section 2 of the Attorney General's amendments over Section b(2) of the Committee's proposal in that it specifically states which public employees may receive notice under the statute. By enumerating members of the governing body, chief executive, general counsel, or official clerk or recorder, the amendments are broad enough to cover the most natural recipients of claim notification and specific enough to exclude any one of our 1,500 rank and file employees who may be unaware of the significance of a claim notice.

AUDIT OF CLAIM FILES FISCAL YEAR 1979 - 80
REFERENCE 30.275 (NOTICE)
Sampled 100 BI and 100 PD CWP Files

DEFECTIVE NOTICE PDs

	By Claimant	By Carrier	By Attorney Late/Tech.	Cost To Defend Notice	Exposure Value	Costs To Defend Exposure	Operator Known/Unkno
		X		500	300	300	X
			X	000	250	350	X
'D Sub Total		1	1	500	550	650	2

DEFECTIVE NOTICE BIs

None

3I Sub Total	None						
dit Total		1	1	500	550	650	2

AUDIT OF LITIGATED NOTICE CASES

				X	330	1400	750	X	
			X		300	15000	2500	X	
				X	200	30000	2500	X	
				X	300	20000	2500	X	
				X	1100	1000	2000	X	
				X	300	4000	2000	X	
			X		170	2500	2000	X	
			X		500	1500	750		X
		X			35	1850	750	X	
				X	994	250	400	X	
				X	1000	8500	3500	X	
				X	1500	7000	2000	X	
					750	3000	2000	X	
				X	750	3000	2000	X	
	X				4000	4000	3000	X	
				X	1000	10000	3000	X	
	X				1900	7500	2500	X	
				X	500	2000	1000	X	
				X	1000	10000	3000	X	
.itigation				X	1700	10000	4000	X	
otal	2	1	3	13	18,329	142,500	42,150	19	1
Overall Total	2	2	4	13	18,829	143,050	42,800	21	1

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT F
March 17, 1981 - 4 pages
Staff

AMENDMENTS TO SB 86

On page 1 of the printed bill, line 2, after "ORS", insert "30.275,".

In the same line, after "278.120", delete "and repealing ORS 30.275".

On line 4, delete "repealed", and insert "amended to read:

"30.275. (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or dutues for or on account of any loss or injury within the scope of ORS 30.260 to 30.330 shall [cause to be presented] give to the public body within 180 days after the alleged loss or injury a written notice stating that a claim is asserted, the time, place and circumstances thereof, the name and address of the claimant [and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded]. In lieu of the foregoing, notice may be given by completing and returning a claim form issued by the public body or its insurance carrier, at the claimant's option. [Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.]

(2) Notices of claims against the State of Oregon or a state officer,

employe or agent shall be given to the Attorney General. Notices of claims against any local public body or an officer, employe or agent thereof shall be given to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body;

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body; or

(e) Any individual who furnished a claim form to the claimant on behalf of the local public body; or the insurer or claims adjuster for the public body.

(3) Notice of claim shall be given to an individual specified in subsection (2) of this section. The claimant shall have the burden of proving that notice conforming to this section was mailed or personally delivered to an individual designated in subsection (2) of this section, or received by a secretary or clerk employed at such individual's regular office; or that actual notice as provided in subsection (4) of this section was received.

(4) If the Attorney General or a representative of the local public body or an insurer who has the responsibility of reviewing or adjusting claims within the scope of ORS 30.260 or 30.300 obtains the information specified in subsection (1) of this section on behalf of the claimant within the time provided in this section, and (1) such individual acknowledges in writing or verbally

that such information was actually received within such time; or (2) the claimant serves the public body with a complaint for the loss or injury within such time, then notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

[(2)] (5) When the claim is for death, the notice may be [presented] given by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has [presented] given a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (6) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of the injury or loss; or when the claimant has, or in the exercise of reasonable care should have discovered the identity of the public body, whichever occurs later.

(7) The time for giving notice does not include the time, now exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

Section 2. The amendments made to ORS 30.275 by this Act shall apply to

all alleged injuries or losses for which the time limits prescribed herein shall not have passed upon the effective date of this Act.

Delete the remainder of the printed bill.

March 17, 1981

Combination of
Amendments to ORS 30.275 as prepared by Legal Counsel for Justice Committee and amendments proposed by Department of Justice

SENATE COMMITTEE ON JUSTICE
SENATE BILL 86 - EXHIBIT G
3/17/81 - 3 pages
Justice Department Amendments

30.275

(1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting with the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.330 shall [cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.] give notice, as defined in this subsection, to the public body or officer, as required in this subsection, within 180 days after the alleged loss or injury.

(a) Notice required under this section shall be:

(1) by a written statement of the time, place, and circumstances of the loss or injury, the claimant's name, address, and the nature and extent of the loss, insofar as it is known to the claimant. The statement shall be mailed by certified or registered mail, return receipt requested, or by personal delivery of such notice; or

(2)by any other method which actually notifies the public body or officer of the information contained in paragraph (1)(a)(1), and which substantially complies with the requirements of paragraph (1)(a)(1). "Actual notice" may be proven by the payment of a claim or claims to or on behalf of the claimant; overt steps by the public body or officer, employe or agent thereof to investigate such claim; acknowledgement in writing or under oath by the public body or officer that such information was, in fact, received within the time provided therefor; or the receipt by the proper officer of the notice described in subparagraph (a), which the claimant reasonably believed to the the requisite agency or officer to be notified hereunder.

(b) Notice to the public gody or officer shall be given:

(1) if the claim is against the State of Oregon or a state officer, employe or agent, to the Attorney General.

(2) if the claim is against any local public body, or an officer, employe or agent thereof, to any of the following:

(i) A member of the governing body of the local public body;

(ii) The chief executive or administrative officer of the local public body;

(iii) An attorney for the local public body who is employed as general counsel to the public body; or

(iv) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(2) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice. Notice, as used in this subsection, shall mean the same as used in subsection (1) of this section.

(3) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such incident or occurrence] the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of such injury or loss. The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT H
3/17/81 - 1 page
ASSOCIATION OF OREGON COUNTIES

COMPARISON OF PROPOSED AMENDMENTS TO SENATE BILL 86

H

	PROPOSAL WITH STAFF COVER LETTER OF 2/11/81	PROPOSAL ENTITLED "PROPOSED AMENDMENTS TO SB 86"
[illegible] of Notice	Time, place, circumstances, claimant's attorney, amount claimed (though failure to state amount doesn't invalidate).	Time, place, circumstances, claimant's name, address, that a claim is asserted, nature and extent of loss (as known). Need not specify amount.
Upon Whom Served	State: Attorney General Local: Any officer, director, managing agent, clerk, secretary	State: Attorney General Local: Any member of governing body, chief executive or administrative officer, attorney (general counsel), the clerk, recorder or secretary (keeps minutes and records)
Substantial Compliance	1. Any other method if: a. Actually notifies the public body or officer; and b. Substantially complies with form of notice 2. Actual notice may be proven by: a. Payment of claim in 180 days; b. Overt steps to investigate by public body, officer, agent or employe; or c. Receipt of notice by any other agency or officer that claimant reasonably believed proper.	1. Actual notice to Attorney General or local public body's representative of responsibility to review and adjust claims if: a. Received within 180 days; and b. Acknowledged in writing or under oath that so received. 2. Payment of all or part of claim (waives notice).
Served	1. Personal; or 2. a. Certified, return receipt; or b. Registered, return receipt.	1. Personal; or 2. Certified, return receipt
Claim Accrues From	Date of accident or occurrence (Not defined	Date of loss or injury (defined as when claimant becomes aware, or reasonably should become aware).

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT I
3/17/81 - 5 pages
John C. McIntyre-Civil Claim's Adm., Clackamas County

DEPARTMENT OF ENVIRONMENTAL SERVICES
COUNTY OF CLACKAMAS
STATE OF OREGON

March 9, 1981

902 ABERNETHY ROAD
OREGON CITY, OREGON 97045
(503) 655-8521

JOHN C. McINTYRE
Director

WINSTON W. KURTH
Assistant Director
DON D. BROADSWORD
Operations Director
DAVID J. ABRAHAM
Utilities Director
DAVID R. SEIGNEUR
Planning Director
RICHARD L. DOPP
Development Services Administrator

Jan Wyers, Chairperson
Senate Justice Committee
State Capitol Building
Salem, Oregon 97310

SUBJ: Senate Bill 86 - Fiscal Impact

In response to your committee's concern as to the possible fiscal impact on counties should Senate Bill 86 become law, I requested that an analysis be done by our self-insurance-risk management consultant, Fred S. James & Co.

Their report to us states in part ...

> "Without the current limitations in the law, the County would be faced with unreported claims for which they carry no reserves. In the insurance industry these are called an Incurred But Not Reported claims, and underwriters allow at least an additional 20% loading on all claims..... We would estimate that the County's present casualty reserve fund should be increased by 25% or approximately $100,000, during the next fiscal year."

Although these reserves would draw interest in our self-insurance fund until expended, there would, of course, be a resulting decrease in funds available for County operational programs in the amount of $100,000 this coming year and 25% of all claim costs in years there-after.

JOHN C. McINTYRE - Civil Claims Administrator
Clackamas County

/rn

PUBLIC BODIES SB 86 AMENDMENTS 3-14-81
WORKING FROM COMMITTEE STAFF AMENDMENTS

On page 1 of the printed bill, line 2 after "ORS" delete "30.285, 30.287 and 278.120; and repealing ORS". On the same page, line 4 after "is" delete "repealed" and insert "amended to read;" on the same page after line 4 insert the following:

"30.275(1) Every person who claims damages from a public body or from an officer, employee or agent of a public body acting within the scope of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall [cause to be presented to the public body within 180 days after the alleged loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. Claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employee or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section, is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.] give notice as described in subsection (2) of this section within 180 days after the alleged loss or injury.

(2) Notice of claim required by subsection (1) of this section shall be a written statement containing a clear statement of the fact that a claim is asserted, the time, place and circumstances thereof, the nature and extent of the loss or injury so far as then known to the claimant and the name and address of the claimant. Such notice need not specify a particular dollar amount claimed as compensation.

(3) Notices of claims against the State of Oregon or a state officer, employee or agent shall be presented to the Attorney General. Notices of claims against any local public body or an officer, employee or agent thereof shall be presented to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body; or

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body.

(4) Notice of claim shall be served upon an appropriate

individual as specified in subsection (3) of this section either personally or by certified mail return receipt requested. The claimant shall have the burden of proving that notice conforming to this section was actually received by the person to whom it was presented, or by a secretary or clerk employed at such person's regular office.

(5) If the Attorney General or the local public body's representative having the responsibility for reviewing and adjusting claims obtains the information specified in subsection (1) of this section from the claimant or the claimant's representative within the time provided in this section, and such person acknowledges in writing or verbally under oath that such information was, in fact, received within the time provided in this section, notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

(6) A notice of claim which does not contain the information required by subsection (2) of this section, or which is presented in any other manner than or beyond the time provided in this section is invalid.

[(2)] (7) When the claim is for death, the notice may be presented by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (8) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] of the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of such injury or loss.

The time for giving notice does not include the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

Section 2. The amendments made to ORS 30.275 by section 1 of this Act first become effective as to notices given on or after the effective date of this Act."

Delete lines 5 through 29.

Delete pages 2 and 3.

MARION COUNTY

BOB GUILE
Risk Manager

RISK MANAGEMENT DEPARTMENT

RAY DWYER
Loss Control Manager

Board of Commissioners
County Courthouse
Salem, Oregon 97301

503-588-5294

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT J
March 17, 1981 - 1 page
Marion County Risk Dept.
Robert C. Guile, Risk Mgr.

March 9, 1981

The Honorable Jan Wyers, Chairman
Senate Justice Committee
Capitol Building
Salem, Oregon 97310

Re: Senate Bill 86

Dear Senator Wyers and Committee Members:

In response to Senator Wyers' request of February 24, 1981 that interested public bodies provide the Committee with economic impact statements in the event SB86 was made law, this is Marion County's presentation.

Present premium and claims cost under Self-Insured Retention program for Fiscal Year 80-81	$186,292
Projected premium and costs without Self-Insured Retention program for Fiscal Year 81-82 in the event SB86 passes and the 180 day notice of claim requirement is deleted	$361,394

The increased cost to Marion County would be $175,102 and would increase by approximately ten percent each following Fiscal Year. The $175,102 translates into approximately eight clerical plus two management positions the County would have to eliminate in order to meet the cost of purchasing First Dollar Insurance Coverage as opposed to purchasing Excess Insurance Coverage with a large Self-Insured Retention.

Because of the County's inability to reserve for claims which are unknown but could be presented any time after the end of a Fiscal Year up to six years on property damage and two years on bodily injury (longer for minors) in the event the 180 day notice requirement is deleted, it is economically unfeasable to carry a self-insured retention deductible. First Dollar Insurance Coverage would have to be purchased.

Very truly yours,

Robert C. Guile
Risk Manager

RCG/gd

SENATE COMMITTEE ON JUSTICE
SENATE BILL 86 - EXHIBIT K
March 17, 1981 - 1 page
City of Eugene
John Janzen, Risk Manager

CITY COUNCIL • P.O. BOX 1967 • ·5010

BILL HAMEL
ERIC HAWS
MARK LINDBERG
GRETCHEN MILLER
BRIAN OBIE
EMILY SCHUE
BETTY SMITH
CYNTHIA WOOTEN

City of EUGENE

March 16, 1981

TO: Paget Engen, Legislative Affairs

FROM: John Janzen, Risk Manager

RE: SB 86 - Removal of Tort Liability Limits

K

Regarding the hearing scheduled before the Senate Justice Committee on March 17, 1981 on SB 86, I believe it is important that the City of Eugene restate its position and concern regarding passage of this bill.

In earlier hearings the City expressed its concern that deletion of the notice requirement under ORS 30.275 would have serious financial repercussions on Oregon public entities, that it would jeopardize the public safety, and that it would be adverse to the public interest at a time when financial and service demands were beleaguered by declining revenues.

In a previous hearing, the committee asked us to identify the fiscal impact of the bill if passed in its original form. As I cited in our testimony, self-insured agencies are required to assign a value for our incurred but not reported (IBNR) cases. This is done by analyzing our 180-day pending file. Last fiscal year we forecasted a $50,000 IBNR cost which had to be appropriated into our reserve account - money which is then unavailable for other purposes. At that time, the claim count in the file was at 60 cases.

Because of the current two-year limit on commencing action, our "dead" file goes back two years only. Using 60 files equals $50,000 as a rule of thumb, a review of this file reflects 213 cases for a two-year period. The fiscal impact for anticipating a two-year IBNR would mean a cost increase of $127,650. However, the proposed six-year statutory limit on property damage suits and the three-year limit on wrongful death requires that a portion of the IBNR file carry an even greater reserve. Currently, potential property damage cases are about 80% of the frequency of the two-year file and account for about 40% of the file's "value". Personal injury and wrongful death incidents make up the rest. We have had one wrongful death case in the last two years.

Prepared by Kristena A. LaMar
Legal Counsel
March 25, 1981

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT A
3/25/81
4 pages
Committee Staff

AMENDMENTS TO SB 86

A

On page 1 of the printed bill, line 2, after "ORS", insert "30.275,".

In the same line, after "278.120", delete "and repealing ORS 30.275".

On line 4, delete "repealed", and insert "amended to read:

"30.275. (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or dutues for or on account of any loss or injury within the scope of ORS 30.260 to 30.330 shall [cause to be presented] give to the public body within 180 days after the alleged loss or injury a written notice stating that a claim is asserted, the time, place and circumstances thereof, the name and address of the claimant [and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded]. In lieu of the foregoing, notice may be given by completing and returning a claim form issued by the public body or its insurance carrier, at the claimant's option. [Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.]

(2) Notices of claims against the State of Oregon or a state officer,

employe or agent shall be given to the Attorney General. Notices of claims against any local public body or an officer, employe or agent thereof shall be given to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body;

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body; or

(e) Any individual who furnished a claim form to the claimant on behalf of the local public body; or the insurer or claims adjuster for the public body.

(3) Notice of claim shall be given to an individual specified in subsection (2) of this section. The claimant shall have the burden of proving that notice conforming to this section was mailed or personally delivered to an individual designated in subsection (2) of this section, or received by a secretary or clerk employed at such individual's regular office; or that actual notice as provided in subsection (4) of this section was received.

(4) If the Attorney General or a representative of the local public body or an insurer who has the responsibility of reviewing or adjusting claims within the scope of ORS 30.260 or 30.300 obtains the information specified in subsection (1) of this section on behalf of the claimant within the time provided in this section, and (1) such individual acknowledges in writing or verbally

that such information was actually received within such time; or (2) the claimant serves the public body with a complaint for the loss or injury within such time, then notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

[(2)] (5) When the claim is for death, the notice may be [presented] given by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has [presented] given a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (6) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of the injury or loss; or when the claimant has, or in the exercise of reasonable care should have discovered the identity of the public body, whichever occurs later.

(7) The time for giving notice does not include the time, now exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

Section 2. The amendments made to ORS 30.275 by this Act shall apply to

all alleged injuries or losses for which the time limits prescribed herein shall not have passed upon the effective date of this Act.

Delete the remainder of the printed bill.

TRI-COUNTY
METROPOLITAN
TRANSPORTATION
DISTRICT
OF OREGON

TRI-MET
4012 S.E. 17TH AVENUE
PORTLAND, OREGON 97202

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - Exhibit B
3/16/81 (Minutes 3/25)
6 pages - TRI-MET

B

Date: March 16, 1981

To: Jan Wyers, Chairman, Senate Committee on Justice

From: Douglas L. Capps, Director of Management Services

Re: ANALYSIS OF IMPACT OF S.B. 86 ON TRI-MET CLAIMS FUND & PROCEDURES

Tri-Met has analyzed suggested amendments to ORS 30.275, particularly the impact of S.B. 86, to determine the effect of changing the notice period or procedures in claims against public bodies. This memo hopefully provides some pertinent data about Tri-Met's current loss record, as well as some financial projections if the claim notice requirements were altered in one or more respects.

Background

Tri-Met is self-insured, which means that it maintans its own loss reserve fund for the defense and/or payment of claims arising out of personal injuries or property damage incurred where Tri-Met is involved. Our claims are administered under a contract with Industrial Claims Service. The volume of claims varies from time to time but the fact that 1,627 claim files were opened in f.y. 1979-80 provides a picture of the volume of claims handled in a given year. Tri-Met maintained a loss reserve fund of $1,285,250 during the same period.

Survey

An audit was conducted of claims files for f.y. 1979-80 to establish a case history of claims, against which we could measure changes in the notice requirements of ORS 30.275. Two hundred claims files were reviewed at random, divided equally between Personal Injury files and Property Damage files. All had been closed without payment (CWP), (usually in the month after the 6-month period.) Closing the file is a function of and related to the 180-day notice requirement.

The attached chart provides data from the survey. Here is what we found:

- Out of the 200 CWP case files, 28 were closed because liability was denied by Tri-Met.

- 172 of the 200 cases were closed simply because they extended beyond the 180 days for notice.

- In only two of those cases was there evidence of defective notice; one late claim by the claimants' insurance carrier, and one late claim by the claimant's attorney.

What if the notice period were extended to, say, two years?

As the above survey indicates, a large percentage of Tri-Met's claim files are closed when the 180-day notice period has elapsed. When a claim file is opened, a loss reserve amount for that claim is estimated and, together with the estimated values of other active claims, constitutes our loss reserve fund. That fund account is for the total accumulation of claim files opened within the time span a claim can be filed, defended, or paid by Tri-Met. If the time period increases, obviously the loss reserve refund must be increased to account for more claim files remaining open for possible action.

There are several ways to estimate a projected increase of the loss reserve fund to show the accumulation of claims over a longer period of time. One way is a straight line projection. Here is what happens if claims were to be accumulated (using 1979-80 reserves) without considering claims paid or other means of closing files during the two-year span.

	Actual Loss Reserve Fund	Projected Reserve Fund Level w/No 180 Day File Closing
6-30-79	(assume zero base)	(assume zero base)
12-31-79	641,450	641,450
6-30-80	1,285,250	1,576,805
12-31-80	1,368,400	2,199,075
6-30-81	1,423,456	2,540,686

Tri-Met's annual budget includes an estimate for one year of loss reserves. For fiscal year 1979-80, our budget reflected an amount (1,285,250) which is equal to the estimated reserves for that year. If an additional year of reserves must be accumulated because cases are not closing at the end of 180 days, but only at the end of two years, Tri-Met would be required to increase (on a straight-line projection) its reserve fund by $1,117,230.

In order to minimize the impact of over $1.0 million additional dollars on Tri-Met's annual budget, additional factors could be worked into the projection as an alternative way of calculating our loss reserve fund. For example, some claims will be paid at less than the reserved amount during the two-year period. Others will be denied. Others become clearly inactive during the two-year period, and can be dropped.

If we were to use an insurance industry factor of 20%, a more conservative projection could be made.

	Actual Loss Reserve Fund	20% Factor if Claims Remain Open For Two Years	Total Loss Reserve Without 180-Day File Closing
12-31-79	641,450	0	641,450
6-30-80	1,285,250	79,840	1,365,090
12-31-80	1,368,400	166,135	1,534,535
6-30-81	1,423,456	245,975	1,669,431

In this instance, the budgeted increase to bring the loss fund up to estimated values would be an additional $245,975.

Other methods can be used to project the increase in loss reserves. But it is clear that between a minimum of a quarter of a million dollars and a maximum of over one million dollars of public funds would need to be re-allocated within Tri-Met's budget to cover the cost of a simple extension of the notice requirement from 180 days to two years.

(NOTE: These increases use FY 1979-80 as the base year, with 1979-80 dollar values. Considering claim costs have increased by 10.8% per year over the last five years, the real costs would be considerably higher.)

Survey of litigated notice cases

As the attached summary shows, an audit of litigated notices cases was also made. Since only two out of two hundres cases in the random survey of CWP files involved defective notices, we felt it appropriate to review those claims which were closed by virtue of the notice requirement, but which were subsequently contested by claimant on the issue of notice.

Here is what our review of those cases shows:

- The total claim value of litigated notice cases for 1979-80 was $142,500.
- Our reserve fund includes $42,150 in projected costs to defend these claims on the merits. If we were successful in our use of notice as a defense, so that the costs for defending the case on the merits would not be used, a total savings of $184,650 could be realized.
- Considering Tri-Met's expenditure of $18,329 to defend cases on the issue of notice, the net savings to Tri-Met is $124,181 (or $166,331 if defense costs on the merits are included in the savings).

- Just over 1% of the total claim files opened in 1979-80 involved litigated notices.

Brown vs. Portland School District #1

Tri-Met is awaiting the outcome of a case on appeal which will, within the next 60 days, provide significant judicial guidance on the question of "strict" vs. "substantial" compliance with ORS 30.275. Of ten litigated notice cases still open, nine will be affected by the Supreme Court's decision. If the Court affirms the Court of Appeal's decision in favor of the lower court's ruling (strict construction), these cases can be closed.

If, on the other hand, "substantial compliance" is the Court's ruling, we would anticipate some effect on our loss reserves. Our survey indicates, for example, that at least 13 of the litigated notice cases from 1979-80 involved a technical defect, not lateness.

Summary/Reaction to proposed amendments

In light of the data collected, any relaxation of either the technical notice provisions or the notice period provided in ORS 30.275 would significantly increase Tri-Met's tort liability and defense costs. At a time of rising costs and diminishing resources, it is the dedicated policy of Tri-Met to conserve its valuable public resources to the greatest extent possible by pursuing productivity improvements and vigorous mechanisms of loss control. This policy is carried out diligently by our claims administrators and defense counsel.

This is not to say that it is Tri-Met's intent to "dodge" legitimate claims. Our survey indicates that while a large percentage of case files are closed because of the time limit, only a few cases (just over 1%) challenge that determination through legal processes.

If the Committee determines that the public interest is better served by a relaxation of notification provisions, Tri-Met's interest in protecting its public funds is better served by modifying the technical aspects of those provisions (method of delivery, who can receive notice, etc.) rather than extending the time period. (Of the 200 case files surveyed, for example, 24 involved the inability to identify the bus operators, making it increasingly difficult to defend the cases as time passes.)

Both the Committee's proposed amendments and the Attorney General's proposed amendments include relief from the technical content requirements of ORS 30.275 and provide for the protection of a claim when a public b ody has received actual notice. Tri-Met would favor Section 2 of the Attorney General's amendments over Section b(2) of the Committee's proposal in that it specifically states which public employees may receive notice under the statute. By enumerating members of the governing body, chief executive, general counsel, or official clerk or recorder, the amendments are broad enough to cover the most natural recipients of claim notification and specific enough to exclude any one of our 1,500 rank and file employees who may be unaware of the significance of a claim notice.

AUDIT OF CLAIM FILES FISCAL YEAR 1979 - 80
REFERENCE 30.275 (NOTICE)
Sampled 100 BI and 100 PD CWP Files

DEFECTIVE NOTICE PDs

	By Claimant	By Carrier	By Attorney Late/Tech.	Cost To Defend Notice	Exposure Value	Costs To Defend Exposure	Operator Known/Unkno
		X		500	300	300	X
			X	000	250	350	X
PD Sub Total		1	1	500	550	650	2

DEFECTIVE NOTICE BIs

None

BI Sub Total	None
udit Total	1 1 500 550 650 2

AUDIT OF LITIGATED NOTICE CASES

				X	330	1400	750	X	
			X		300	15000	2500	X	
				X	200	30000	2500	X	
				X	300	20000	2500	X	
				X	1100	1000	2000	X	
				X	300	4000	2000	X	
			X		170	2500	2000	X	
			X		500	1500	750		X
		X			35	1850	750	X	
				X	994	250	400	X	
				X	1000	8500	3500	X	
				X	1500	7000	2000	X	
					750	3000	2000	X	
				X	750	3000	2000	X	
	X				4000	4000	3000	X	
				X	1000	10000	3000	X	
	X				1900	7500	2500	X	
				X	500	2000	1000	X	
				X	1000	10000	3000	X	
itigation				X	1700	10000	4000	X	
otal	2	1	3	13	18,329	142,500	42,150	19	1
)verall Total	2	2	4	13	18,829	143,050	42,800	21	1

DAVE FROHNMAYER
ATTORNEY GENERAL

SENATE COMMITTEE ON JUSTICE
SENATE BILL 86 _ EXHIBIT C
March 16, 1981 (Min. 3/25)
1 page
Jack Sollis, Dept. of Justice

DEPARTMENT OF JUSTICE

HIGHWAY LEGAL
113 Transportation Building
Salem, Oregon 97310
Telephone: (503) 378-4259

C

March 16, 1981

Jan Wyers, Chairperson
Senate Justice Committee
State Capitol Building
Salem, Oregon 97310

Re: Senate Bill 86
Fiscal Impact

Dear Sir:'

In response to your direction to secure information relating to the fiscal impact of Senate Bill 86, the insurance consultant for the State, Marsh & McLennan has been contacted and Mr. Mike Channy has furnished the following information.

With the elemination of the 180-day notice requirement, his research of the market indicates that general liability insurance premiums would increase from 3% to 8% with the 8% increase being on the larger premiums and that auto insurance would increase from 6% to 14% with 14% on the larger premiums.

The State Department of General Services has budgeted $4,311,982. for the liability fund for the the 1981-83 biennium and has indicated that the local government liability fund will need $279,000 per year during the next biennium. Mr. Channy advised he would recommend to the State that its reserves be increased by as much as the insurance premiums would be in order to have proper reserves for the State Liability Fund and the Local Government Liability Fund.

Sincerely,

Jack L. Sollis
Assistant Attorney General
and Counsel

JLS:mk

SENATE COMMITTEE ON JUSTICE
Senate Bill 86 - EXHIBIT D
March 9, 1981 - (Min. 3/25)
1 page
McIntyre, Clackamas County

DEPARTMENT OF ENVIRONMENTAL SERVICES
COUNTY OF CLACKAMAS
STATE OF OREGON

March 9, 1981

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OREGON CITY, OREGON 97045
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JOHN C. McINTYRE
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Planning Director
RICHARD L. DOPP
Development
Services
Administrator

Jan Wyers, Chairperson
Senate Justice Committee
State Capitol Building
Salem, Oregon 97310

MAR 17 1981

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1981

SUBJ: Senate Bill 86 - Fiscal Impact

In response to your committee's concern as to the possible fiscal impact on counties should Senate Bill 86 become law, I requested that an analysis be done by our self-insurance-risk management consultant, Fred S. James & Co.

Their report to us states in part ...

> "Without the current limitations in the law, the County would be faced with unreported claims for which they carry no reserves. In the insurance industry these are called an Incurred But Not Reported claims, and underwriters allow at least an additional 20% loading on all claims..... We would estimate that the County's present casualty reserve fund should be increased by 25% or approximately $100,000, during the next fiscal year."

Although these reserves would draw interest in our self-insurance fund until expended, there would, of course, be a resulting decrease in funds available for County operational programs in the amount of $100,000 this coming year and 25% of all claim costs in years thereafter.

John C. McIntyre

JOHN C. McINTYRE - Civil Claims Administrator
Clackamas County

/rn

EXHIBIT A
SB 86
Senate Justice
4/8/81 - 33 pages
Insurance Div.

JR ATIYEH
GOVERNOR

Department of Commerce
INSURANCE DIVISION
COMMERCE BUILDING, SALEM, OREGON 97310 PHONE (503) 378-4271

APR 1 1981

December 10, 1979

Mr. Robert C. Elgin, Administrator
Services Division
Department of General Services
1257 Ferry Street SE
Salem, OR 97310

Re: Actuarial Review of the Tort Liability Fund

Dear Mr. Elgin:

The report on pricing or assessment practices of the Tort Liability Fund has been completed as you requested. The major findings are described in the summary at the beginning of the report.

The assessment processes should be reviewed by capable qualified persons every few years. Perhaps at about this time in each biennium prior to budgeting for the next would be appropriate timing.

I will be available for any questions you may have.

Sincerely,

R. Michael Lamb
Casualty Actuary

RML:rs

ACTUARIAL REVIEW OF THE TORT LIABILITY FUND

State of Oregon

Prepared By

R. Michael Lamb
Fellow of the Casualty Actuarial Society
Casualty Actuary
Insurance Division
State of Oregon

ACTUARIAL REVIEW OF THE TORT LIABILITY FUND

Contents

SUMMARY

The Tort Liability Fund is operated by the General Services Department and insures all state agencies plus approximately 120 cities, counties, school districts, water districts, and other local agencies. Claims are processed by the Liability Claims Division of the Department of Justice.

This report has been prepared at the request of the General Services Department and deals principally with the pricing or assessment practices of the Tort Liability Fund.

Given the resources available, the Tort Liability Fund rating practices are basically well designed and managed. This results from the resourcefulness of the staff members and their acquaintance with persons in the insurance industry willing to advise and assist.

Highlights

The combined loss and expense ratio for the local agency program during the first two years 1977-79 has been approximately 64%. However, the experience is too immature and the volume too small to justify any major rates reduction at this time.

The combined losses and expenses for state agencies have averaged $1,685,189 for each of the past three fiscal years. The total assessment should be approximately $2.8 million for fiscal year 1981-82 and $3.1 million for 1982-83. To these amounts must be added the budget from General Services for operating the Tort Liability Fund. Precise budgeting of Liability Claims Division expenses may moderately revise these projections.

Expanding the General Services staff to allow physical underwriting inspections of local agencies would be a logical first step in loss control as well as assuring equitable premium assessment.

The application forms and rating procedures for local agencies are appropriately designed. The few deficiencies from industry standards either have been corrected or are now in the process of being revised by Marsh and McLennan, the large brokerage and consulting firm which has provided these services.

The most serious criticism of the local agency rating process has been the adoption of experience rating. As a result of this review, most of the deficiencies have been corrected by Marsh and McLennan. The problems are explained in the text. For completeness of this record, there is a derivation of suggested credibility tables and adjusted expected loss ratios for automobile liability and for general liability.

A suggested procudure is described for allocating the total assessment to state agencies based on a credibility concept with intermediate classification of agencies to enhance credibilities.

Acknowledgments

This report was greatly assisted by the helpful cooperation of Kenneth Dory and Bruce Hoffmeister of General Services and John Owen and Michael Chaney of Marsh and McLennan, Incorporated.

ADEQUACY OF RATES AND ASSESSMENTS

The first of the appended exhibits displays the Tort Liability Fund loss experience evaluated as of October 16, 1979. Losses paid are shown after salvage and other recoveries to date. Losses incurred includes outstanding reserves, or estimates of unpaid liability for reported claims.

The nature of insurance is that costs are not known for some years after coverage ends. To review the adequacy of the Tort Liability Fund assessments, we must estimate the final value of losses incurred. The October 16 estimates should be expected to "develop" in a manner similar to historic patterns for other insurers. The Tort Liability Fund does not have its own experience data prepared in a useable way for any date prior to October 16, 1979.

Exhibit 2 describes the process of selecting reasonable loss development factors from the financial reports of several leading liability insurers. Development ratios were observed from 1977 and 1978 financial reports of these insurers to the Insurance Commissioner. Both paid loss and incurred loss development patterns were observed. Of these, the paid patterns are likely to be the more reliable for our purposes since the financial incurred loss data for these companies should be expected to involve allowances for development.

The observed ratios for each company were compounded to estimate ultimate development factors for each stage of "maturity". Each sheet of Exhibit 2 shows the highest of the factors, the lowest, and also a compound product of the average ratios for the surveyed companies. The financial reports display losses by calendar-accident year while the Tort Liability Fund losses are summarized by July-June fiscal-accident years. Hence, the October 16 data is approximately one quarter out of phase with the financial development patterns. Exhibit 2 shows development factors lagged one quarter by simple exponential curves between consecutive points.

Exhibit 3 displays ranges of estimates for the ultimate incurred losses. A footnote describes the final selection strategy.

Local Agencies

The actuarial section of the Insurance Division calculated earned premiums for the local agency accounts for the two latest fiscal-accident years. Fractional parts of months of policy terms ending each June 30 were rounded to the nearest half-month for determining pro-rata allocations. The combined experience for all coverages is described below:

	Incurred Losses	Earned Premium	Loss Ratio
1977-78	$ 65,992	$171,541	38%
1978-79	131,057	524,860	25%
	197,049	696,401	28%

Claim expenses must be included before deciding whether these ratios are appropriate. Exhibit 4 shows the history of legal expense allocated to claims by the Liability Claims Division. In addition to this, unallocated overhead expenses for the last four years has run approximately $800,000 or $197 per claim and 80% of losses paid to date. We have only a guideline adopted by the National Association of Insurance Commissioners for assignment of unallocated expenses to accident years: 45% to the most recent accident year, 5% to the first prior year, and the remaining 50% in proportion to loss payments made during the calendar year: The application of this simple formula is to apply half the paid unallocated expense ratio to the unpaid losses.

			Unallocated Expenses	Allocated Expenses	Losses and loss and Exp.
1977-78	Paid Losses	$ 6,154	.80	.40	$ 13,539
	Unpaid Losses	59,838	.40	.94	140,021
		$ 65,992			$153,560
1978-79	Paid Losses	$ 23,397	.80	.54	$ 54,749
	Unpaid Losses	107,660	.40	.83	240,082
		$131,057			$294,831

Now the combined ratios can be reviewed for the local agencies:

	Incurred Losses and Expenses	Earned Premium	Combined Ratio
1977-78	$153,560	$171,541	90%
1978-79	294,831	524,860	56%
	$448,391	$696,401	64%

From the review of experience rating, discribed later, the apparent redundancy in rates comes mostly from automobile liability. The experience is too immature and the volume too small to justify any major rates reduction at this time, however.

State Agencies

To complete this section of the report, the same process of "loading" losses for expenses should be given to state agency experience.

			Unallocated Expenses	Allocated Expenses	Losses and Loss Expenses
1975-76	Paid Losses	$142,260	.80	1.00	$ 398,328
	Unpaid Losses	132,301	.40	1.00	317,522
		$274,561			$ 715,850
1976-77	Paid Losses	$232,213	.80	.58	$ 552,667
	Unpaid Losses	267,655	.40	.93	623,636
		$499,868			1,176,303
1977-78	Paid Losses	$385,356	.80	.65	$ 944,122
	Unpaid Losses	526,791	.40	.89	1,206,351
		$912,147			$2,150,473
1978-79	Paid Losses	$182,258	.80	.35	$ 391,855
	Unpaid Losses	616,100	.40	.77	1,336,937
		$798,358			$1,728,792

Statistical methods for trying to project costs for 1981-83 are a little weak with only three data points of combined auto and public liability coverages. The 95% confidence interval goes from below zero to over $6 million per year! The expected value (most likely amount) is $2,790,000 for 1981-82 and $3,066,000 for 1982-83. To this must be added the budget from General Services for operating the Tort Liability Fund.

Perhaps that projection can be appreciated by averaging the costs of the latest three years and applying some modest trends over the 4 year period from the mid-point (1977-78) to 1981-82.

1.	Three year average costs	$1,685,189
2.	Modest annual cost trend factor	1.10
3.	Modest annual growth of state agencies	1.03
4.	Combined trend (2) x (3)	1.133
5.	Combined trend-compounded for four years	1.648
6.	Projected 1981-82 cost (1) x (5)	$2,777,191
7.	Projected 1982-83 cost (6) x (4)	$3,146,588

LOCAL AGENCIES

The Rating Process

The rating of local government agencies is accomplished using application forms and a rating manual developed for the Tort Liability Fund by Marsh and McLennan, a large reputable insurance brokerage firm. Advices on special rating problems have been available from the same source.

The rating manual and rates schedule is based on current commercial rating manuals published by the Insurance Services Office, the major rating organization for the insurance industry. ISO rates have been adjusted to statutory limits of liability and aggregated for the desired liability coverages. Rates were reduced to remove the tax, and sales and operating expense allowances. This process appears to be essentially sound. After a few years, the Tort Liability Fund may be able to do some rate-making on its own experience.

Besides a general comprehensive application form, there are specialized applications for airports, rural fire protection districts, and school districts.

The rating process begins when either the local agency contacts the Tort Liability Fund or a renewal quotation is triggered by a tickler system about two months before expiration of the current coverage. The relevant applications are then sent along with a list of applicable exposures for the particular type of entity. While this is somewhat like sending prospective insureds your underwriting guide, it seems to be a necessary step to seeing that exposures get reported.

It should go without being said- but is has not- that physical underwriting inspection would be useful. Besides generating more abundant premium revenues, such inspectors often serve to make insureds more aware of their exposure to various hazards. In times of favorable loss experience, the need for an inspection program may not be evident. However, the greater equity achieved should allow a greater rate reduction in the years ahead and would most especially benefit the conscientious insured who reports complete exposure data. The best time to hire an inspector is when you can afford it.

When the application is returned, a copy of the rate pages from the manual is used as a rating worksheet. All the reported exposures are checked off and a partial premium calculated quite conscientiously. The totals for automobile liability, medical professional liability, (including nurses, ambulances, and emergency medical technicians), police and airport liability, and other liability are entered into experience rating worksheets.

There were a few minor problems found between the rating manual and the application forms. Museums were left off the application. No provision was made for rating drawbridges, garbage dumps (premises exposure measured by acreage), or liqour liability. The latter is expected to be of very low concern for government agencies. For wharfs and waterfronts, the application did not distinguish "owned and occupied" from "leased to others." I have been told the application is being redesigned and these little problems will be remedied. At the same time, the items in the application and on the rating form will follow the same order to lessen the chance of overlooking some reported exposure.

Experience Rating of Local Agencies

The only aspect of the rating process which could be seriously criticized is the experience rating plan. Like the rating manual, the plan was adapted by Marsh and McLennan from ISO manuals to fit the Tort Liability Fund.

For the benefit of a record for the Tort Liability Fund, some background information on the design of experience rating plans should be given. The basic purpose is to modify the manual rates to give recognitionto the experience of the single risk - or local agency. The process begins with assembling premiums and losses for the past three years to calculate an actual loss ratio (ALR) for the individual risk. This is compared against an expected loss ratio adjusted (AELR) for loss limitations and formula off-balance. The basic formula is:

$$\text{Premium Modification} = \frac{ALR - AELR}{AELR} \times \text{Credibility} \times 100\%$$

If the formula produces a negative percentage, the risk is given a premium credit or reduction from manual rates. A positive percentage means a higher premium should be charged.

The credibility factor is looked up in a table. The ISO table is constructed from the formula: manual premium/(manual premium + K) for premiums up to \$353,571 for general liability and \$164,627 for automobile liability. The constant, K, is \$40,000 for automobile liability and \$75,000 for general liability.

With that background, the differences between the ISO rating plan and the Marsh and McLennan adaptation can be described. First of all, ISO includes only premiums and losses for basic limits of \$25,000 for bodily injury and \$5,000 for property damage per occurrence. Marsh and McLennan adjusted the premium intervals in the ISO table for the full statutory limits covered by the Tort Liability Fund. To be completely satisfactory, the K values should probably have been increased since a greater variation of loss ratios should be anticipated.

Some other differences which are quite important to the balancing of the experience rating plan should be described for this record to benefit the Tort Liability Fund management, but have been mostly recognized by recent revisions by Marsh and McLennan.

The ISO plan includes allocated claims expense and allowances for loss development in the actual loss ratio of each risk. Reducing the expected loss ratio instead will produce some different individual results, but is conceptually acceptable.

Marsh and McLennan reduced ISO manual rates to remove the provisions for general expenses, taxes, commissions, and the underwriting profit margin, but did not revise the expected loss ratio for experience rating. This offset the ommission of allocated expenses and loss development, but imprecisely.

The ISO credibility tables are entered at the total amount of premium from the experience period of one to three years. The Tort Liability Fund had always been entering their table at one-year of premium. In some instances of new government entities with no prior experience, the credit for having no losses was applied, when manual rates should have been used without modification. This will be easily corrected on the latest rating worksheets from Marsh and McLennan.

The most difficult difference to correct is the limitation of losses. ISO uses a maximum single loss which varies with premium size while the Tort Liability Fund uses the same limitation for all premium sizes. Losses above $50,000 are discounted to 75% of the actual amount, subject to a minimum of $50,000. Originally, the ISO credibility formula was designed to dampen actual loss experience for the effects of random variance in claim frequency only. A much smaller value of K was used. Variation in the amount of loss introduces much more random variance to losses. That is the reason for loss limitations-to dampen the influence of large losses on an individual risk premium.

The reason the ISO maximum single loss varies with premium size is easy to appreciate. A risk with $100 premium from manual rates is likely to have a loss ratio exceeding the expected ratio from even a single loss while a $100,000 risk may endure several losses and still be below the expected loss ratio. A single loss limitation for all sizes does not give the smaller risks as much protection against random loss ratio variation as it does larger risks.

When the loss limit varies by premium size, the adjusted expected loss ratio (AELR) must also vary. Each loss limit elimnates a different portion of the total expected losses from the rating process. Hence, the ISO credibility tables also show the maximum single loss and AELR for each premium range, with the AELR including adjustment from the ISO ratemaking expected loss ratio for formula off-balance and for the effect of the maximum single loss.

The Tort Liability Fund has been using a credibility table which has the credibility and AELR's from the ISO tables adapted to premium ranges at statutory limits of coverages. Since the loss limitation did not vary with premium size, the AELR should not also. Statistically, it would be more satisfying to follow the ISO pattern of varying the maximum single loss and AELR by premium size, but possibly adjusting the credibility values to restrict the random variance would be acceptable with the single loss limit and AELR.

As of the writing of this report, Marsh and McLennan is preparing tables and rating forms to satisfy these various problems. It is expected they will show a single AELR.

Again, for the sake of creating a record for future management of the Tort Liability Fund, the derivation of the AELR and credibility factors should be illustrated. The necessary steps are described in Exhibit 5. The allowances for allocated and unallocated expense were discussed in an earlier section on adequacy of rates. The off-balance factor was estimated. ISO estimated their off-balance in 1976 as .938 for automobile and .984 for general liability. The loss limitation factor was suggested by some materials from ISO showing the percentage of losses eliminated by various maximum single loss amounts. Five percent is approximately the average truncation effect of $50,000 and $100,000 maximums.

For loss development, Exhibit 2 is not useable since the financial data surveyed should include allowances for development. The ISO advisory loss development factors filed with the Insurance Commissioner suggest factors greater than 2.00 for general liability and somewhat less than 2.00 for automobile. During this review of the Tort Liability Fund, a compilation was made of all rating data for local agencies with coverage becoming effective in 1979, except for a couple December renewals for which an application had not yet been returned. This survey suggests the existing plan off-balance was approximately .969 for automobile and .915 for general liability. Simulation of alternative experience rating parameter on this same survey concluded that even when K is doubled, it is necessary to have AELR's near those used previously. The loss development factors shown in Exhibit 5 accomplish that purpose and are within the bounds of the ISO advisory factors.

In summary of this section, it is suggested that the experience rating plan for local agencies should be designed with adjusted expected loss ratios of approximately .391 for automobile liability and .245 for general liability and with K values doubled to $80,000 and $150,000 for determining credibility by the formula: P/(P+K). Suggested credibility tables are appended as Exhibit 6.

Forms and Procedures

There is a need for a readily available accounting ledger for premium transactions showing at least the date of accounting entry, account name and number, effective date of coverage, automobile liability premium, and general liability premium. Luxurious detail would include expiration date of coverage and refinement of general liability premium for police professional liability, airports, medical professional liability, and all other. The internal management of this ledger between the insurance management and accounting functions within General Services is more properly within the scope of the risk management study to be conducted by others.

The green sheets headed "Liability Fund-Applicable Exposures For ______________" function as underwriting guides to expected exposures for various types of risks. Copies of these are sent out with each application. The obvious danger is that exposures not described on such sheets may be unreported. Tort Liability Fund personnel maintain the greater problem is the opposite one - getting local agencies to be aware of the exposures which must be reported.

By nature, these sheets should be comprehensive. Several appear to be constructed, however, as minimum lists of exposures rating personnel should require on an application. These should be expanded to include an additional list of exposures which will apply in some cases.

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STATE AGENCIES

The adequacy of the total assessment was discussed earlier. The remaining problem is the apportionment to each agency. There is little economic reason for each agency assessment to be entirely accurate. However, like all service charges, proper allocation gives important information concerning the costs of providing various services to the people of Oregon.

The basic procedure apparently has been to assess a certain charge per employee - not to be less than the average losses for each of the last three or four years. Then an adjustment is made so the total balances to the predetermined required total. This procedure is basically acceptable except that it does not give sufficient recognition to random variation, which reduces the ability of past losses to predict future losses. Again, the smaller agencies are much more likely to have losses exceeding the per capita assessment than are large agencies. Hence, a credibility notion is suggested.

The ratio of claims to state employees is quite small. The only reasonable basis for 100% credibility is all state employees including higher education. The most scientific of the simple credibility formulas is:

$$\text{Credibility} = \sqrt{\frac{\text{Number of employees in agency}}{\text{Total number of state employees}}}$$

For many agencies, this will be a small factor and will greatly restirct the recognition of actual loss experience. If there are fifty thousand state employees, a 5-person agency would have one-percent credibility.

An intermediate stage is proposed to enhance the credibility. Agencies should be gathered into a few "rating classes". The agencies in each class may have a similar expectation of loss on a purely judgmental basis, recognizing that the reason for this step is that differences between agencies may be random.

A suggested classification scheme is appended as Exhibit 7. Some of the considerations in this listing are medical malpractice, ownership of buildings and grounds, law enforcement, and relation to private persons' lives, liberties, and properties. The Tort Liability Fund personnel are certainly encouraged to revise this list on the basis of their own conception of similarity.

The suggested process of devising a per capita rate for each agency is to first calculate the actual ratio of losses to employees for each agency, each class, and the state as a whole. Then determine the credibilities from the above formula for each agency and for each class. The credibility for each class is the weight to be given to its actual ratio, with the complement given to the state ratio. The weighted-average of the class and state ratios would be the indicated per capita rate for the class. The ratio for each agency would then be weighted by its credibility with the complement given to the indicated class rate. This second weighted-average would be the indicated per capita rate for the agency. A hypothetical illustration is alive on Exhibit 8. The process would be followed by an adjustment to the required state total.

A final suggestion is that the assessment base should be researched. Besides number of employees, the payroll of each agency may be a convenient and accurate base. Actual losses from recent fiscal years could be compared with actual payrolls and the ratio applied to budgeted payrolls which represent the best estimate of future payrolls.

If reported losses, number of employees, and payrolls can be compiled by agency for the latest two or three fiscal years, the actuarial section of the Insurance Division would be able to readily determine which assessment base would be more accurate.

TORT LIABILITY FUND

Losses evaluated as of October 16, 1979

	Net Losses Paid	Losses Incurred (1)
STATE AGENCIES		
1975-76		
Liability	$142,259.81	$243,309.81
1976-77		
Automobile	122,524.12(2)	139,163,76
Liability	109,688.41	185,738.41
	232,212.53	324,902.17
1977-78		
Automobile	169,180.63	230,465.63
Liability	216,175.33	454,322.09
	385,355.96	684,787.72
1978-79		
Automobile	148,632.37	297,209.96
Liability	33,625.25	499,367.36
	182,257.62	796,577.32
OTHER AGENCIES		
1977-78		
Automobile	$ 4,648.38	$ 4,648.38
Liability	1,505.52	57,005.52
	6,153.90	61,653.90
1978-79		
Automobile	13,405.27	22,129.67
Liability	9,991.31	81,681.21
	23,396.58	103,810.88

Notes:

(1) Losses incurred = net amount paid plus the sum of amounts reserved for reported cases.

(2) Includes $750 which had been coded to 1975-76, apparently in error.

Exhibit 2
Sheet of 4

Tort Liability Fund
Paid Loss Development Factors

AUTOMOBILE LIABILITY

nancial porting	(1) Development to Next Reporting: Average	(2) Std. Dev	(3) Reverse Compound Products of: Highest Ratios	(4) Lowest Ratios	(5) Average Ratios	(6)	(7) Selected Development Factor	(8) Development Factors Lagged 1-Quarter: Highest	(9) Lowest	(10) Selected
First	1.875	.086	3.251	2.507	2.828		2.90	2.78	2.16	2.48
Second	1.223	.031	1.736	1.385	1.508		1.55	1.64	1.32	1.47
Third	1.107	.020	1.366	1.154	1.233		1.25	1.32	1.13	1.22
Fourth	1.057	.017	1.196	1.063	1.114		1.12	1.17	1.06	1.10
Fifth	1.028	.010	1.098	1.028	1.054		1.06			
Sixth	1.016	.009	1.051	1.011	1.025		1.03			
Seventh	1.008	.003	1.014	1.003	1.009		1.01			
Eighth	1.001	.001	1.002	1.000	1.001		1.00			
Ultimate	--									

Companies included in survey:
Aetna Casualty and Surety
Hartford Accident and Indemnity
US Fidelity and Gauranty
Liberty Mutual
Firemen s Insurance Company of Newark
Fireman s Fund
Travelers Indemnity
Home Insurance Company

Tort Liability Fund
Incurred Loss Development Factors

AUTOMOBILE LIABILITY

...ancial ...porting	1 Development to Next Reporting Average	2 Std. Dev	3 Reverse Compound Products of: Highest Ratios	4 Lowest Ratios	5 Average Ratios	6	7 Selected Development Factor	8 Development Factors Lagged 1-Quarter Highest	9 Lowest	10 Selected
First	1.000	.030	1.094	.951	1.014		1.02	1.09	.96	1.02
Second	1.015	.020	1.060	.969	1.014		1.02	1.06	.97	1.01
Third	1.007	.012	1.050	.960	.999		1.00	1.04	.96	1.00
Fourth	.997	.009	1.026	.973	.992		1.00	1.02	.98	1.00
Fifth	.997	.004	1.012	.983	.995		1.00			
Sixth	.999	.005	1.010	.986	.998		1.00			
Seventh	.999	.002	1.002	.995	.999		1.00			
Eighth	1.000	.001	1.001	.999	1.000		1.00			
Ultimate	--									

Paid Tort Liability Fund
Loss Development Factors

PUBLIC LIABILITY

	1	2	3	4	5	6	7	8	9	10
nancial porting	Development to Next Reporting		Reverse Compound Products of:				Selected Development Factor	Development Factors Lagge 1-Quarter		
	Average	Std. Dev.	Highest Ratios	Lowest Ratios	Average Ratios			Highest	Lowest	Selectec
First	2.469	.342	14.520	6.231	10.089		10.00	11.12	5.13	7.95
Second	1.641	.091	4.977	2.664	4.086		4.00	4.39	2.58	3.56
Third	1.388	.095	3.018	1.877	2.490		2.50	2.75	1.77	2.33
Fourth	1.275	.068	2.076	1.477	1.794		1.90	1.93	1.41	1.78
Fifth	1.152	.041	1.543	1.237	1.407		1.45			
Sixth	1.129	.046	1.353	1.108	1.221		1.25			
Seventh	1.068	.020	1.130	1.052	1.082		1.10			
Eighth	1.013	.006	1.020	1.004	1.013		1.02			
Ultimate	--									

Companies included in survey:
Aetna Casualty and Surety
Hartford Accident and Indemnity
New Hampshire Insurance Company
U.S. Fire Insurance Company
Liberty Mutual
U.S. Fidelity and Gauranty
Travelers Indemnity
Firemen's Insurance Company of Newark

Exhib.
Sheet 4 of 4

Tort Liability Fund
Incurred Loss Development Factors

PUBLIC LIABILITY

inancial eporting	1 Development to Next Reporting Average	2 Std. Dev	3 Reverse Compound Products of: Highest Ratios	4 Lowest Ratios	5 Average Ratios	6	7 Selected Development Factor	8 Development Factors Lagg 1-Quarter Highest	9 Lowest	10 Selecte
First	.933	.120	1.384	.924	1.190		1.25	1.41	.95	1.25
Second	1.057	.080	1.487	1.046	1.283		1.25	1.47	1.05	1.24
Third	1.087	.073	1.435	1.070	1.214		1.22	1.38	1.07	1.20
Fourth	1.062	.032	1.241	1.057	1.138		1.15	1.22	1.04	1.13
Fifth	1.032	.026	1.160	1.008	1.071		1.08			
Sixth	1.031	.043	1.113	.982	1.038		1.05			
Seventh	.995	.015	1.025	.988	1.007		1.01			
Eighth	1.012	.012	1.037	.999	1.012		1.01			
Ultimate	--									

TORT LIABILITY FUND

ESTIMATION OF LOSSES INCURRED

STATE AGENCIES

ACC yr	Line	Projection Factor	Estimated Ultimate Losses Projected From Net Paid	Incurred	Final Selection
76-77	Auto	Highest	$161,732	$144,730	$144,730
		Lowest	138,452	133,597	
		Selected	149,479	139,164	
77-78	Auto	Highest	277,456	244,294	244,294
		Lowest	223,318	223,552	
		Selected	248,696	232,770	
78-79	Auto	Highest	413,198	323,959	323,959
		Lowest	321,046	285,322	
		Selected	368,608	303,154	
75-76	GL	Highest	274,561	296,838	274,561
		Lowest	200,586	253,042	
		Selected	253,222	274,940	
76-77	GL	Highest	301,643	256,319	
		Lowest	194,148	198,740	
		Selected	255,574	222,886	255,574
77-78	GL	Highest	949,010	667,853	667,853
		Lowest	557,732	477,038	
		Selected	769,584	563,359	
78-79	GL	Highest	373,913	704,108	
		Lowest	172,498	474,399	474,399
		Selected	267,321	624,209	

Explanation of final selection: The basic strategy was to use the larger of the two estimates projected by "selected" factors subject to range of projections - or the lower of the higher "selected" projection and the lower of "Highest" projections. Other constraints were the net amount paid-to-date and the higher of the "lowest projections.

TORT LIABILITY FUND

ESTIMATION OF LOSSES INCURRED

OTHER AGENCIES

ACC Yr	Line	Projection Factor	Estimated Ultimate Losses Projected From Net Paid	Incurred	Final Selection
77-78	Auto	Highest	$ 7,623	$ 4,927	
		Lowest	6,136	4,509	$ 6,136
		Selected	6,833	4,695	
78-79	Auto	Highest	37,267	24,121	
		Lowest	28,955	21,244	28,955
		Selected	33,245	22,572	
77-78	GL	Highest	6,609	83,798	
		Lowest	3,884	59,856	59,856
		Selected	5,360	70,687	
78-79	GL	Highest	111,103	115,171	
		Lowest	51,255	77,597	
		Selected	79,431	102,102	102,102

Tort Liability Fund
ESTIMATED ALLOCATED LEGAL EXPENSE RATIO

Line	Period	(1) Net Paid	(2) Legal Expense	(3) (2) ÷ (1)
Auto	1	$ 750	$ 216	.289
	2	121,774	24,843	.204
	3	178,477	16,850	.094
	4	175,443	4,008	.023
		SELECTED RATIO		.20
GL	1	$142,260	$126,623	.890
	2	109,688	203,163	1.852
	3	219,186	195,142	.890
	4	53,608	43,947	.820
		SELECTED RATIO		1.00

ILLUSTRATED DERIVATION OF
ADJUSTED EXPECTED LOSS RATIOS
(AELR)

		Automobile Liability	Public Liability
1.	Manual Premium base	1.000	1.000
2.	Unallocated claims expense	.450	.450
3.	Allocated claims expense	.200	1.000
4.	(1) ÷ [1.000 + (2) + (3)]	.606	.408
5.	Off-Balance Factor	.950	.950
6.	Loss Limitation Factor	.950	.950
7.	(4)x(5)x(6)	.547	.368
8.	Loss Development	1.400	1.500
9.	Indicated AELR =(7) ÷ (8)	.391	.245

TORT LIABILITY FUND
SUGGESTED CREDIBILITY TABLE
AUTOMOBILE LIABILITY
(K= $80,000)

Assessment from Manual	Credibility	Assessments from Manual	Credibility
$ 0- 402	.00	67,789- 69,532	.46
403- 1,218	.01	69,533- 72,380	.47
1,219- 2,051	.02	72,381- 75,339	.48
2,052- 2,901	.03	75,340- 78,415	.49
2,902- 3,769	.04	78,416- 81,616	.50
3,770- 4,656	.05	81,617- 84,948	.51
4,657- 5,561	.06	84,949- 88,421	.52
5,562- 6,486	.07	88,422- 92,043	.53
6,487- 7,431	.08	92,044- 95,824	.54
7,432- 8,397	.09	95,825- 99,775	.55
8,398- 9,385	.10	99,776-103,908	.56
9,386-10,395	.11	103,909-108,235	.57
10,396-11,428	.12	108,236-112,771	.58
11,429-12,485	.13	112,772-117,530	.59
12,486-13,567	.14	117,531-122,531	.60
13,568-14,674	.15	122,532-127,792	.61
14,675-15,808	.16	127,793-133,333	.62
[illegible]5,809-16,969	.17	133,334-139,178	.63
[illegible]6,970-18,159	.18	139,179-145,352	.64
18,160-19,378	.19	145,353-151,884	.65
19,379-20,628	.20	151,885-158,805	.66
20,629-21,910	.21	158,806-166,153	.67
21,911-23,225	.22	166,154-173,968	.68
23,226-24,575	.23	173,969-182,295	.69
24,576-25,960	.24	182,296-191,186	.70
25,961-27,382	.25	191,187-200,701	.71
27,383-28,843	.26	200,702-210,909	.72
28,844-30,344	.27	210,910-221,886	.73
30,345-31,888	.28	221,887-233,725	.74
31,889-33,475	.29	233,726-246,530	.75
33,476-35,107	.30	246,531-260,425	.76
35,108-36,788	.31	260,426-275,555	.77
36,789-38,518	.32	275,556-292,093	.78
38,519-40,300	.33	292,094-310,243	.79
40,301-42,137	.34	310,244-330,256	.80
42,138-44,031	.35	330,257-388,600	.82
44,032-45,984	.36	388,601-437,000	.84
45,985-48,000	.37	437,001-485,400	.86
48,001-50,081	.38	485,401-533,800	.88
50,082-52,231	.39	533,801-582,200	.90
52,232-54,453	.40	582,201-630,600	.92
54,454-56,752	.41	630,601-679,000	.94
[illegible]6,753-59,130	.42	679,001-727,400	.96
[illegible]9,131-61,592	.43	727,401-775,800	.98
61,593-64,144	.44	775,801 and over	1.00
64,145-66,788	.45		

TORT LIABILITY FUND
SUGGESTED CREDIBILITY TABLE
GENERAL LIABILITY
(K= $150,000)

Assessment from Manual	Credibility	Assessment from Manual	Credibility
$ 0- 753	.00	125,230- 130,373	.46
754- 2,284	.01	130,374- 135,714	.47
2,285- 3,846	.02	135,715- 141,262	.48
3,847- 5,440	.03	141,263- 147,029	.49
5,441- 7,068	.04	147,030- 153,030	.50
7,069- 8,730	.05	153,031- 159,278	.51
8,731- 10,427	.06	159,279- 165,789	.52
10,428- 12,162	.07	165,290- 172,580	.53
12,163- 13,934	.08	172,581- 179,670	.54
13,935- 15,745	.09	179,671- 187,078	.55
15,746- 17,597	.10	187,079- 194,827	.56
17,598- 19,491	.11	194,828- 202,941	.57
19,492- 21,428	.12	202,942- 211,445	.58
21,429- 23,410	.13	211,446- 220,370	.59
23,411- 25,438	.14	220,371- 229,746	.60
25,439- 27,514	.15	229,747- 239,610	.61
27,515- 29,640	.16	239,611- 250,000	.62
29,641- 31,818	.17	250,001- 260,958	.63
31,819- 34,049	.18	260,959- 272,535	.64
34,050- 36,335	.19	272,536- 284,782	.65
36,336- 38,679	.20	284,783- 297,761	.66
38,680- 41,082	.21	297,762- 311,538	.67
41,083- 43,548	.22	311,539- 326,190	.68
43,549- 46,078	.23	326,191- 341,803	.69
46,079- 48,675	.24	341,804- 358,474	.70
48,676- 51,342	.25	358,475- 376,316	.71
51,343- 54,081	.26	376,317- 395,454	.72
54,082- 56,896	.27	395,455- 416,037	.73
56,897- 59,790	.28	416,038- 438,235	.74
59,791- 62,765	.29	438,236- 462,244	.75
62,766- 65,827	.30	462,245- 488,297	.76
65,828- 68,978	.31	488,298- 516,666	.77
68,979- 72,222	.32	516,667- 547,674	.78
72,223- 75,563	.33	547,675- 581,707	.79
75,564- 79,007	.34	581,708- 619,230	.80
79,008- 82,558	.35	619,231- 728,625	.82
82,559- 86,220	.36	728,626- 819,375	.84
86,221- 90,000	.37	819,376- 910,125	.86
90,001- 93,902	.38	910,126-1,000,875	.88
93,903- 97,933	.39	1,000,876-1,091,625	.90
97,934-102,100	.40	1,091,626-1,182,375	.92
102,101-106,410	.41	1,182,376-1,273,125	.94
106,411-110,869	.42	1,273,126-1,363,875	.96
110,870-115,486	.43	1,363,876-1,454,625	.98
115,487-120,270	.44	1,454,626 and over	1.00
120,271-125,229	.45		

Exhibit 7

TORT LIABILITY FUND
SUGGESTED CLASSIFICATION OF STATE AGENCIES

Class 1
All others not otherwise classified

Class 2
General Services
State Fair
Division of State Lands
Mental Health Division

Class 3
Fairview
School for the Deaf
School for the Blind
Higher Education

Class 4
Revenue
Environmental Quality
Adult & Family Services Division
Vocational Rehab. Division
Children's Services Division
Penitentiary Industries
Corrections Division
Land Conservation & Development
Motor Vehicles Division

Class 5
Military Department
Forestry
Fish & Wildlife
Water Resources
Highway Division

Class 6
Eastern Oregon Hospital
Dammasch State Hospital
U of O Health Sciences Center
Oregon State Hospital

Class 7
State Police
State Penitentiary
Correctional Institution

Exhibit 8

TORT LIABILITY FUND
DERIVATION OF PER CAPITA STATE AGENCY ASSESSMENT
HYPOTHETICAL DATA FOR ILLUSTRATION ONLY

1.	Number of employees in Insurance Division*	60
2.	Number of employees in "All Other" Class	6,500
3.	Total number of state employees	50,000
4.	Credibility for Insurance Division	.035
5.	Credibility for "All Other" Class	.361
6.	Average reported losses for Insurance Division	$ 100
7.	Average reported losses for "All Other" Class	$ 26,000
8.	Average reported losses for all state agencies	$600,000
9.	per capita ratio for Insurance Division	$ 1.667
10.	per capita ratio for "All Other" Class	$ 4.00
11.	per capita ratio for state total	$ 12.000
12.	Indicated rate for "All Other" Class = (5)x(10) + [1.00-(5)] x (11)	$ 9.112
13.	Indicated rate for Insurance Division = (4)x(9) + [1.00-(4)] x (12)	$ 8.851

* The Insurance Division would actually be rated as part of the Commerce Department and not as a separate agency.

Prepared by Kristena A. LaMar
Legal Counsel
March 25, 1981

EXHIBIT B
SB 86
Senate Justice
4/8/81 - 4 pgs
Legal Counsel

AMENDMENTS TO SB 86

On page 1 of the printed bill, line 2, after "ORS", insert "30.275,".

In the same line, after "278.120", delete "and repealing ORS 30.275".

On line 4, delete "repealed", and insert "amended to read:

"30.275. (1) Every person who claims damages from a public body or from an officer, employe or agent of a public body acting within the scope of employment or dutues for or on account of any loss or injury within the scope of ORS 30.260 to 30.330 shall [cause to be presented] give to the public body within 180 days after the alleged loss or injury a written notice stating that a claim is asserted, the time, place and circumstances thereof, the name and address of the claimant [and of the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded]. In lieu of the foregoing, notice may be given by completing and returning a claim form issued by the public body or its insurance carrier, at the claimant's option. [Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a person upon whom process could be served upon the public body in accordance with ORCP 7D.(3)(d). Notice of claim shall be served upon the Attorney General or local public body's representative for service of process either personally or by certified mail, return receipt requested. A notice of claim which does not contain the information required by this subsection, or which is presented in any other manner than provided in this section is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate the notice.]

(2) Notices of claims against the State of Oregon or a state officer,

employe or agent shall be given to the Attorney General. Notices of claims against any local public body or an officer, employe or agent thereof shall be given to any of the following:

(a) A member of the governing body of the local public body;

(b) The chief executive or administrative officer of the local public body;

(c) An attorney for the local public body who is employed as general counsel to the public body;

(d) The clerk, recorder, secretary or similar official charged with keeping the minutes and records of official acts of the governing body of the local public body; or

(e) Any individual who furnished a claim form to the claimant on behalf of the local public body; or the insurer or claims adjuster for the public body.

(3) Notice of claim shall be given to an individual specified in subsection (2) of this section. The claimant shall have the burden of proving that notice conforming to this section was mailed or personally delivered to an individual designated in subsection (2) of this section, or received by a secretary or clerk employed at such individual's regular office; or that actual notice as provided in subsection (4) of this section was received.

(4) If the Attorney General or a representative of the local public body or an insurer who has the responsibility of reviewing or adjusting claims within the scope of ORS 30.260 or 30.300 obtains the information specified in subsection (1) of this section on behalf of the claimant within the time provided in this section, and (1) such individual acknowledges in writing or verbally

that such information was actually received within such time; or (2) the claimant serves the public body with a complaint for the loss or injury within such time, then notice shall be deemed sufficient. Payment of all or any part of a claim by or on behalf of a public body constitutes waiver of notice as to that claimant.

[(2)] (5) When the claim is for death, the notice may be [presented] given by the personal representative, surviving spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim is made has [presented] given a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

[(3)] (6) No action shall be maintained unless [such] notice meeting the requirements of this section has been given and unless the action is commenced within two years after the date of [such accident or occurrence] the alleged loss or injury. As used in this section, the date of the alleged loss or injury is the date when the claimant was, or in the exercise of reasonable care should have been aware of the injury or loss; or when the claimant has, or in the exercise of reasonable care should have discovered the identity of the public body, whichever occurs later.

(7) The time for giving notice does not include the time, now exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.

Section 2. The amendments made to ORS 30.275 by this Act shall apply to

all alleged injuries or losses for which the time limits prescribed herein shall not have passed upon the effective date of this Act.

Delete the remainder of the printed bill.

SENATE COMMITTEE ON JUSTICE
SB 86 - EXHIBIT G
April 30, 1981 - 2 pages
Amendments

A PROPOSED ACTUAL NOTICE OF CLAIM

Substantive Amendment to SB 86

April 30, 1981

Offered by the City of Salem, Oregon

(1) No action arising from any act or omission of a public body or an officer, employee or agent thereof within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim was given as required by this section. Notice of claim shall be given within the following period of time, not including the period not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity:

(a) For wrongful death, within one year of the alleged loss or injury.

(b) For all other claims, within 180 days of the alleged loss or injury.

(2) As used in subsection (4) of this section "notice of claim" means a communication from a claimant or claimant's representative given as provided in subsection (4) or (5) of this section, and containing the following information:

(a) A statement that a claim for damages is or will be asserted against the public body or an officer, employee or agent thereof;

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and

(c) The claimant's name and mailing address to which correspondence concerning the claim may be sent.

(3) Notice of claim may be satisfied by either formal notice, as provided in subsection (4) of this section; by actual notice, as provided in subsection (5) of this section; by commencement of an action on the claim by or on behalf of the claimant within the time provided in subsection (1) of this section; or by payment of all or any part of the claim by or on behalf

of the public body at any time.

(4) Formal notice of claim shall be given in writing, by mail or personal delivery, to any of the following:

(a) If the claim is against the State of Oregon, or an officer, employee or agent thereof, formal notice of claim shall be given to the office of the Attorney General.

(b) If the claim is against a local public body or an officer, employee or agent thereof, formal notice of claim shall be given to the public body at its principal administrative office; to any member of the governing body; or to an attorney designated by the governing body of the public body as its general counsel.

(5) Actual notice of claim shall consist of any communication, ~~written or oral,~~ by which ~~a~~ any indiv. mentioned in sub (4) of this sec. or any person responsible for administering claims on behalf of the public body acquires actual knowledge ~~that a particular person intends to assert a claim,~~ of a claim and the communication & ~~and~~ the time, place and circumstances (giving rise to a claim) ~~thereof~~. As used in this subsection, "administering claims" means the investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300; furnishing or accepting forms for claimants to provide claim information; or supervising any of the foregoing activities; either as an employee of a public body or as an employee or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300.

* is such that a reasonable person would conclude that [illegible] to [illegible] claim

(6) The burden of proving that notice was given as required by this section shall rest on the plaintiff.

(7) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS Chapter 12 or other statute providing a limitation on the commencement of an action, any action for damages within the scope of ORS 30.260 to 30.300 shall be commenced within two years from the alleged loss or injury.

SENATE COMMITTEE ON JUSTICE
SB 86 - EXHIBIT H
April 30, 1981 - 2 pages
Testimony, Bill Blair

OF SALEM, OREGON
City Hall / 555 Liberty St. S. E.
Zip Code 97301
LEGAL DEPARTMENT
Telephone (503) 588-6003
William J. Juza
City Attorney

April 30, 1981

The Honorable Jan Wyers, Chairman
Senate Justice Committee
Oregon State Senate
Capitol Building
Salem, Oregon 97310

Re: SB 86

Dear Senator Wyers and Members of the Committee;

As we understand the action taken on the floor of the Senate with regard to this legislation, this Committee is now given the opportunity to amend ORS 30.275 by including "actual notice" as a means by which the 180 day notice of claim requirement may be met.

Committee counsel has distributed a "proposed amendment" to SB 86. It does not indicate the genesis of the proposal, but since it has been distributed we are obliged to comment on that proposal before offering our own.

The amendment proposed by Committee counsel indicates a clear policy choice of abdicating any attempt to define a procedure whereby claimants, public bodies, or the courts can understand the meaning of "notice of claim" or the process by which that notice may be given. It does not specify what the notice must consist of, or even that the notice is a notice of claim. It leaves the court without any direction as to what "reasonably advises" means, or whether that is even in fact the "actual notice" suggested by the Senate's action on reconsideration of SB 86.

Much was made during the Committee's hearings on the original form of SB 86 of the fact that the present statute is confusing and difficult to follow. The same criticism applies manyfold to the April 22nd amendments proposed by Committee counsel.

I was informed by Tom Howser, President of the Oregon State Bar, that the Bar's Legislative Committee and Board of Govenors, when they considered the amendments proposed by the Attorney General and other public bodies, felt that those amendments would promote considerable litigation to define what they said. I disagree with that assessment, but must assume that the position of the Bar on these proposed amendments would recognize the probability of many years of litigation in efforts by the courts to fill the void which would be created by the adoption of those amendments.

Turning from those proposed amendments, we once again request that the Committee at least consider the amendments drafted by Committee counsel following the efforts by Senator Gardner to promote a compromise on this bill. We believe that the amendments resulting from Senator Gardner's efforts are fair to the public at large, both in its capacity as potential claimant and in its capacity as taxpayer. Notwithstanding the concern expressed by the Bar's Legislative Committee, we believe that they must certainly be clearly understandable to any attorney who might have occasion to follow them.

The City of Salem as well as other representatives of public bodies with whom I have discussed this problem stay open-minded and flexible concerning the language by which actual notice may be engrafted into the statute. We believe that the amendments resulting from Senator Gardner's efforts are fair and adequate, but we are also willing to attempt to achieve the ultimate goal of reasonable notice in any other matter. We understand that representatives of the Bar Association have discussed and are planning to propose tentative amendments to ORS 30.275, and would be delighted to work with Committee counsel and any members of the Committee who may be interested in evaluating and refining those amendments.

In addition, we have attempted to restructure the statute by way of further amendments which we do not desire to burden the Committee with unnecessarily if there are other avenues of compromise open. We would certainly appreciate knowing any comments or concerns which the Committee has as to the amendments resulting from our meeting with Senator Gardner, and stand ready at any time to work constructively with anyone interested in this legislation to achieve a fair and workable amendment to ORS 30.275.

Thank you for your consideration.

Yours very truly,

William G. Blair
Assistant City Attorney

WGB:sb

SENATE JUSTICE
SB 86
Exhibit C
5/7/81 - 3 pages
staff

Legislative Counsel
SB 86A-2
05/07/81 (45) (44)

PROPOSED AMENDMENTS TO A-ENGROSSED SENATE BILL 86

On page 1 of the printed A-engrossed bill, delete lines 24 and 25.

On page 2, delete lines 1 through 3.

After line 5, insert:

"(1) No action arising from any act or omission of a public body or an officer, employe or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this section.

"(2) Notice of claim shall be given within the following applicable period of time, not including the period, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity:

"(a) For wrongful death, within one year after the alleged loss or injury.

"(b) For all other claims, within 180 days after the alleged loss or injury.

"(3) Notice of claim required by this section is satisfied by:

"(a) Formal notice of claim as provided in subsections (4) and (5) of this section;

"(b) Actual notice of claim as provided in subsection (6) of this section;

"(c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of time provided in subsection (2) of this section; or

"(d) Payment of all or any part of the claim by or on behalf of the public body at any time.

"(4) Formal notice of claim is a written communication from a claimant or representative of a claimant containing:

"(a) A statement that a claim for damages is or will be asserted against the public body or an officer, employe or agent of the public body;

"(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and

"(c) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.

"(5) Formal notice of claim shall be given by mail or personal delivery:

"(a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney General or to a deputy or assistant of the Attorney General.

"(b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its principal administrative office, to any member of the governing body of the public body, or to an attorney designated by the governing body as its general counsel.

"(6) Actual notice of claim is any communication by which any individual to whom notice may be given as provided in subsection (5) of this section or any person reponsible for administering claims on behalf of the public body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the public body or an officer, employe or agent of the public body. A person responsible for administering claims on behalf of a public body is

γ

one who, as an officer, employe or agent of a public body or as an employe or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

"(7) In an action arising from any act or omission of a public body or an officer, employe or agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was given as required by this section.

"(8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any act or omission of a public body or an officer, employe or agent of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury.".

Senate Committee on Justice
Senate Bill 86 EXHIBIT A
May 12, 1981
1 page

VICTOR ATIYEH
GOVERNOR

Department of General Services

GENERAL SERVICES BUILDING, SALEM, OREGON 97310 PHONE 503—378-2663

May 12, 1981

Senator Jan Wyers, Chairman
Senate Justice Committee
S210 State Capitol
Salem, Oregon 97310

Dear Senator Wyers:

The proposed Legislative Counsel amendments to A-Engrossed Senate Bill 86, dated May 7, 1981, will result in the amendment of ORS 30.275 and 278.120. Both of these statutes were also amended in Senate Bill 131 which has passed both the Senate and the House. Although the proposed conflict amendments dated May 12, 1981 corrects the problem related to ORS 278.120, the discrepancy continues to exist in ORS 30.275.

A basic issue contained in SB 131 is the transfer of responsibility for the processing and management of liability claims from the Department of Justice to the Department of General Services. Fundamental to this management concept is for claims to be filed with the Department of General Services rather than with the Attorney General's office. The Attorney General has agreed to this program change.

The Department of General Services requests that the conflict amendment to A-Engrossed Senate Bill 86 be further amended to accommodate the change desired in ORS 30.275. This may be accomplished by inserting a new Section 1a which would amend Section 1 if engrossed SB 131 becomes law and would substitute "Director of General Services" for "Attorney General or to a deputy or assistant of the Attorney General". This language is contained on page 2, lines 13 and 14 of the proposed amendments dated May 7, 1981.

We also note that the effective date of SB 86 is January 1, 1982, whereas Senate Bill 131 contains an emergency clause and is effective July 1, 1981. We believe this difference in effective dates will not create any administrative problems in implementing the two acts.

My staff is available to assist you.

Sincerely,

Frank E. Baker, Deputy

for Darrell Ralls
Director

FEB:sd

1

PLEASE IDENTIFY ANY MATERIAL SUBMITTED WITH YOUR NAME, WHOM YOU REPRESENT ANI BILL NUMBER

WITNESS REGISTRATION

EXHIBIT J
SB 84
Senate Justice
3/10/81 - 1 page

Senate Committee on JUSTICE

Date: MARCH 10, 1981 **Time:** 3:00 - 5:30 PM **Room:** 346

Public Hearing on SB 84
Measure No.

Please register if you wish to testify on the above-named measure.

Name and address	Representing	For	Against
JAMES PERRY	ORE STATE BAR	✓	

015 CHAIRPERSON MASON withdrew his motion. He stated that they would move to take them from the table as the bills came up.

WORK SESSION

SB 873

030 STEVE GRIFFITH, Legal Counsel, briefed the committee on the bill.

060 MOTION: CHAIRPERSON MASON moved SB 873 to the floor with a "do pass" recommendation.

065 The motion carried 5-1 with Rep. Cohen, Courtney, Lombard, Springer and Chairperson Mason voting aye. Rep. Hendriksen voted nay. Rep. Bugas, Smith and Rutherford were excused.

SB 86B

076 STEVE GRIFFITH briefed the committee on the bill. He submitted and read proposed amendments to SB 86B (Exhibit C, SB 86B).

100 MOTION: REP. COHEN moved to adopt the proposed amendments to SB 86B (Exhibit C, SB 86B).

There were no objections.

110 MOTION: REP. COHEN moved SB 86B, as amended, to the floor with a "do pass" recommendation.

General discussion followed.

164 The motion carried 7-0 with Rep. Cohen, Courtney, Hendriksen, Lombard, Springer, Rutherford and Chairperson Mason voting aye. Rep. Smith and Bugas were excused. Rep. Springer carried SB 86B to the floor.

HB 3272

178 CHAIRPERSON MASON briefed the committee on the bill.

194 MOTION: CHAIRPERSON MASON moved HB 3272 to the floor with a "do pass" recommendation.

197 The motion carried 6-0 with Rep. Cohen, Courtney, Hendriksen, Springer, Rutherford and Chairperson Mason voting aye. Rep. Bugas, Lombard and Smith were excused. Rep. Courtney carried HB 3272 to the floor.

HB 2677

230 REP. RUTHERFORD briefed the committee on the bill.

TAPE H-81-JUD-470, SIDE A

002 CHAIRPERSON COHEN convened the meeting at 1:40 p.m.

PUBLIC HEARING

SB 86B - Relating to public body tort liability

027 M. D. VAN VALKENBURGH, Oregon Trial Lawyers Association, testified in favor of the bill stating advice has always been given municipal corporation clients that they have an obligation and duty to their patrons, taxpayers and constituents to be responsible for the injuries they cause and he believes the bill is fair to the constituents and urged the committee to support it in its present form.

045 KEITH SWANSON, Oregon Trial Lawyers Association, testified in favor of the bill and stated, in answer to question, that there were a lot of agonies in bringing the bill this far because it is a compromise between the Association and municipal entities and organizations.

064 In response further to question, he stated the notice of claim could be oral as well as written.

070 ROBERT RINGO, Oregon Trial Lawyers Association, testified in favor of the bill stating his firm in Corvallis represents municipalities and he believes the bill is fair to the people and to the organizations of the community.

092 FRANK BALES, Department of General Services, testified that a letter from the director of the Department had been sent to the committee suggesting proposed amendments (Exhibit A, SB 86B), and that the bill is in conflict with SB 131 (Exhibit B, SB 86B).

130 JACK SOLLIS, Department of Justice, testified that the the Attorney General's office concurs with the proposed conflict amendments and the need therefor.

148 SEN.ROBERT F. SMITH, Oregon Legislature, testified in favor of the bill and that it has found a reasonable position. He urged the committee to be cognizant that there are, however, changes that would not be beneficial.

178 In response to question, he stated he did not know about the conflict amendments but is assuming they make no substantive changes.

186 MR. SOLLIS stated the conflict amendments that are SB 86B-4 do not address the question which Mr. Bales brought up on page 2 of his letter.

193 There was discussion as to where the LC SB 86B-4 amendments came from and no one seemed to know and CHAIRPERSON COHEN stated the committee would have to take time to verify that these amendments were appropriate.

200 MR. SOLLIS, in response to question, stated the amendments address changes in ORS 278.120 but do not address the changes to ORS 030.275.

208 LES RAWL, Oregon State Bar Professional Libility Fund, testified in favor of the bill stating it has had good work and gives the people the benefits they deserve.

227 In answer to question, he stated the bill would correct the technicality in the present statute in regard to proper notice of claim.

262 PAUL SNIDER, Association of Oregon Counties, testified in favor of the bill stating previous testimony had pretty well covered his points with the exception of possible fiscal impact which he feels is speculative at this point.

WORK SESSION

SB 86B

299 MOTION: REP. SMITH moved SB 86B to the full committee with a "do pass" recommendation with the understanding that the conflict amendments, LC SB 86B-4, will be double checked to see that nothing more than what is necessary has been done.

The motion carried 5 - 0 with Rep. Hendriksen, Smith, Springer, Mason, and Cohen voting aye. Rep. Bugas and Courtney were excused.

HB 2400

341 CHAIRPERSON COHEN reviewed the bill and work done and referred to a memo from Jim Nass, Mental Health Division (Exhibit Q, 5/29/81, HB 2400).

379 Discussion followed.

433 JIM NASS, Mental Health Division, joined the discussion.

TAPE H-81-JUD-471, SIDE A

128 BOB LOCKWOOD, Metropolitan Public Defenders Office, joined the discussion stating he was the one responsible for doing the mental committment hearings.

HOUSE JUDICIARY COMMITTEE
Subcommittee 3, June 12, 1981
Exhibit A, SB 86B, 2 pages
Frank Bales, Dept. of General Services, testimony

VICTOR ATIYEH
GOVERNOR

Department of General Services

GENERAL SERVICES BUILDING, SALEM, OREGON 97310 PHONE 503—378-2663

June 5, 1981

Representative Tom Mason, Chairman
House Judiciary Committee
Room 351 State Capitol
Salem, Oregon 97310

Dear Representative Mason:

B-Engrossed **Senate Bill 86**, which has been assigned to your Committee, amends ORS 30.275 and 278.120. Both of these statutes were also amended by Senate Bill 131 which has passed both the House and the Senate and has been signed by the Governor (Chapter 109, O.L. 1981). Although the Senate Justice Committee was aware of the need for a conflict amendment to SB 86 it elected to pass the bill out of committee without the amendment because the changes were considered to be only technical in nature, and could be made later in the legislative process.

Senate Bill 131 was introduced at the request of the Department of General Services to improve the accountability and administration of the State's tort liability insurance program. The bill was the outgrowth of a comprehensive study of the state's insurance management practices which was authorized by the 1979 Legislature. Although General Services commissioned the study, the private consultant's activities were directed by a steering committee composed of the Attorney General and his staff, risk management experts from the private and public sector, and representatives from local government and this department.

A basic issue contained in SB 131, and an important recommendation of the study report, is the transfer of responsibility for the processing and management of the state's liability claims from the Department of Justice to the Department of General Services. Fundamental to this management concept is for claims to be filed with the Department of General Services rather than with the Attorney General's office. The Attorney General has agreed to this changed program concept, and this provision is included in SB 131.

The amendments to ORS 30.275 and 278.120 as contained in B-Engrossed SB 86 would reverse this planned management change by reinstating the Attorney General as the source with whom claims against the state should be filed. The Department of General Services therefore recommends the development of a conflict amendment to sustain the program objectives contained in SB 131. Legislative Council earlier had proposed an amendment to correct the problem relating to ORS 278.120 (Legislative Council, SB 86A-3, 05/12/81). This change is satisfactory. The changes which are yet required in SB 86-B to correct ORS 30.275 are basically as follows:

- On page 2, line 26, delete "Attorney General" and insert "Director of the Department of General Services".
- Delete line 27.

An additional concern involves the effective dates of the two measures. SB 131 contains an emergency clause with a July 1, 1981, effective date, whereas SB 86 has a January 1, 1982 effective date. If the above recommended conflict amendments are adopted, however, the two different effective dates will not create administrative problems. Considerable confusion would result though if B-Engrossed SB 86 were to pass in its present form, as the filing responsibility would change from the Attorney General to General Services on July 1, and then revert back to the Attorney General six months later. As SB 86 may soon be considered by your Committee, please advise me if my staff or I may be of assistance in the preparation of necessary conflict amendments.

Sincerely,

Darrell P Ralls

Darrell Ralls
Director

FB:jb
6809B

HOUSE JUDICIARY COMMITTEE
Subcommittee 3, June 12, 1981
Exhibit B, SB 86B, 3 pages
Legislative Counsel SB 86B-4
Amendments

Legislative Counsel
SB 86B-4
06/11/81 (38) (44)

PROPOSED CONFLICT AMENDMENTS TO B-ENGROSSED SENATE BILL 86

On page 1 of the printed B-engrossed bill, line 2, before the second "and" insert "repealing section 3, chapter 109, Oregon Laws 1981;".

On page 3, after line 7, insert:

"SECTION 1a. Section 3, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131), is repealed.".

Delete lines 13 through 37 and insert:

"Section 3. ORS 278.120, as amended by section 16, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131) is further amended to read:

"278.120. (1) Upon receipt by the Department of General Services of a claim for damages [as provided in ORS 30.275] against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the claim is covered by insurance, the department shall tender defense of the claim to the insurer, and if such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If the claim is not covered by insurance or if the tender is rejected, the department shall cause an investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of ORS 30.260 to 30.300. The Attorney General may conduct the investigation if requested by the department. If the department determines that the state or a state officer, agent or employe is or may be liable to the claimant under ORS 30.260 to 30.300, the department may negotiate, compromise and settle with the claimant. The Attorney General shall defend all lawsuits after the department has determined that a reasonable settlement cannot be achieved. The department shall pay from the Special Liability Revolving Fund authorized in section 20, chapter 109 Oregon Laws 1981 (Enrolled Senate Bill 131), [of this 1981 Act] or the Liability Fund the amount of any judgment, and, if the department determines such action to be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.

"(2) The department shall submit quarterly reports to the Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board listing all claims settled which have an aggregate cost in excess of $10,000.

"(3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be paid on a claim, and there are no funds available under section 21, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131), [of this 1981 Act] the amount remaining in the Liability Fund shall be paid towards satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

"(4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the indebtedness of the Liability Fund in not more than 10 years.

"(5) In order to assure that the moneys advanced to the Liability Fund are repaid as specified in subsection (4) of this section, the department shall make such assessments as are necessary against those local public bodies or state agencies, or their legal successors, which were participants in the program when the claim or claims arose that necessitated the advancement of moneys to the fund.".

HOUSE JUDICIARY COMMITTEE
Full Committee 3 pages
Exhibit C, SB 86B
Steve Griffith
Legal Counsel
Proposed amendments, June 15. 19

PROPOSED CONFLICT AMENDMENTS TO B-ENGROSSED SENATE BILL 86

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