

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President

(at the request of Oregon State Bar Association)
 repealing section 3, chapter 109, Oregon Laws 1981;
 creating new provisions; amending ORS 30.275 and 278.120; and
 repealing ORS 30.287 and 278.120; and repealing ORS 30.275
 Relating to public body tort liability; A amending ORS 30.285
 30.287 and 278.120; and repealing ORS 30.275
 creating new provisions and effective date.

SENATE ACTION		HOUSE ACTION	
READ FIRST TIME, REFERRED TO PRESIDENT'S DESK	1/13/81	READ FIRST TIME, REFERRED TO SPEAKER'S DESK	MAY 19 1981
REFERRED TO	Justice	REFERRED TO	JUD
REPORTED BACK WITH THE RECOMMENDATION THAT IT	5/11/81	REPORTED BACK WITH THE RECOMMENDATION THAT IT	JUN 23 1981
<input checked="" type="checkbox"/> DO PASS WITH AMENDMENT		<input checked="" type="checkbox"/> DO PASS WITH AMENDMENT	
READ THIRD TIME AND	4/14/81	READ SECOND TIME	JUN 25 1981
REPORTED BACK WITH THE RECOMMENDATION THAT IT	5/11/81	REPORTED BACK WITH THE RECOMMENDATION THAT IT	
<input checked="" type="checkbox"/> DO PASS WITH AMENDMENT TO		<input type="checkbox"/> DO PASS WITH AMENDMENT	
READ THIRD TIME AND	APRIL 16, 1981	READ SECOND TIME AND	JUN 26 1981
REPORTED BACK WITH THE RECOMMENDATION THAT IT		REPORTED BACK WITH THE RECOMMENDATION THAT IT	
SIGNED	Markell Cadmus	SIGNED	Markell Cadmus
SENATE CONCURRED IN HOUSE	DATE July 2, 1981	CHIEF CLERK	
AMENDMENTS AND REPASSED		SECRETARY OF SENATE	
SECRETARY OF SENATE	Markell Cadmus	SECRETARY OF SENATE	Markell Cadmus

- Engrossed
- Printed A
- Re-engrossed
- Printed B
- Eng Re-eng by House
- Printed C
- Re-eng Re-eng
- Printed D
- Eng Re-eng Re-eng
- Printed E
- ENROLLED

ADDITIONAL ACTION

DATE	ACTION
4/16/81	Motion to refer to Committee on Justice failed.
4/16/81	Subject changed from "age" to "race" of several Justice of Peace reappointments.
4/20/81	Motion to reappoint carried on voice vote. Not reconsidered. Bill referred to Committee on Justice by voice vote.
5/18/81	Bill amended. Carried. Motion to change Sec. of Senate

HOUSE COMMITTEE REPORT

Salem, Oregon June 22, 19 81

Mr. Speaker:

B-Engrossed

Your Committee on Judiciary to whom was referred SB 86 having had the same under consideration, respectfully reports it back with the recommendation that it:

- Do pass. Do pass with _____ House amendments () and be printed engrossed.
- Be adopted. Be adopted with _____ House amendments () and be printed engrossed.
- Be referred to: () Ways and Means by prior reference.
- () _____

See attached amendments:

Legislative Counsel
 SB 86B-5
 06/12/81 (31) (44)
 (3--pages)


FOR INFORMATION ONLY--NOT PART OF COMMITTEE REPORT

Voting no: _____

Voting aye: Cohen, Courtney, Hendriksen, Lombard, Mason, Rutherford, Springer

Excused: Bugas, Smith

4 copies if no amendments
 9 copies if amendments
 9 copies if to be printed engrossed
 1 copy for committee file

 Chairman
Tom Mason
 Rep. Springer will lead floor discussion on this measure.

1 PROPOSED CONFLICT AMENDMENTS TO B-ENGROSSED SENATE BILL 86

2 On page 1 of the printed B-engrossed bill, line 2, before the
3 second "and" insert "repealing section 3, chapter 109, Oregon Laws
4 1981;".

5 On page 2, line 26, delete "Attorney General" and insert
6 "Director of the Department of General Services. " .

7 Delete line 27.

8 On page 3, after line 7, insert:

9 SECTION 1a. Section 3, chapter 109, Oregon Laws 1981 (Enrolled
10 Senate Bill 131), is repealed. " .

11 Delete lines 13 through 37 and insert:

12 "Section 3. ORS 278.120, as amended by section 16, chapter 109,
13 Oregon Laws 1981 (Enrolled Senate Bill 131), is further amended to
14 read:

15 "278.120. (1) Upon receipt by the Department of General
16 Services of a claim for damages [as provided in ORS 30.275] against
17 the State of Oregon or a state officer, employe or agent within the
18 scope of ORS 30.260 to 30.300, if the claim is covered by insurance,
19 the department shall tender defense of the claim to the insurer, and
20 if such tender is accepted ORS chapter 180 and the remaining
21 provisions of this section shall not be applicable. If the claim is
22 not covered by insurance or if the tender is rejected, the
23 department shall cause an investigation to be conducted to determine
24 whether the claim is meritorious and comes within the provisions of
25 ORS 30.260 to 30.300. The Attorney General may conduct the
26 investigation if requested by the department. If the department
27 determines that the state or a state officer, agent or employe is or
28 may be liable to the claimant under ORS 30.260 to 30.300, the

1 department may negotiate, compromise and settle with the claimant.
2 The Attorney General shall defend all lawsuits after the department
3 has determined that a reasonable settlement cannot be achieved. The
4 department shall pay from the Special Liability Revolving Fund
5 authorized in section 20, chapter 109, Oregon Laws 1981 (Enrolled
6 Senate Bill 131), [of this 1981 Act] or the Liability Fund the
7 amount of any judgment, and, if the department determines such
8 action to be appropriate, the amount of any settlement subject to
9 the provisions of subsection (2) of this section.

10 " (2) The department shall submit quarterly reports to the Joint
11 Ways and Means Committee of the Legislative Assembly, if the
12 legislature is in session, or the Emergency Board listing all claims
13 settled which have an aggregate cost in excess of \$10,000.

14 " (3) If there is no balance in the Liability Fund, or if the
15 balance is insufficient to cover the amount to be paid on a claim,
16 and there are no funds available under section 21, chapter 109,
17 Oregon Laws 1981 (Enrolled Senate Bill 131), [of this 1981 Act] the
18 amount remaining in the Liability Fund shall be paid towards
19 satisfaction of the total amount payable and the balance thereof may
20 be advanced through the Liability Fund under the provisions of ORS
21 293.205 to 293.225. Prior to any advancement to the Liability Fund
22 under the provisions of ORS 293.205 to 293.225, approval of the
23 advancement shall be obtained from the Joint Ways and Means
24 Committee of the Legislative Assembly, if the legislature is in
25 session, or the Emergency Board.

26 " (4) Money advanced to the Liability Fund as provided in this
27 section shall be repaid from the Liability Fund in annual
28 instalments, with interest as provided in ORS 293.220. The amount of

1 the instalments shall be fixed by the Department of General Services
2 at such amount as can be reasonably expected to liquidate the
3 indebtedness of the Liability Fund in not more than 10 years.

4 "(5) In order to assure that the moneys advanced to the
5 Liability Fund are repaid as specified in subsection (4) of this
6 section, the department shall make such assessments as are necessary
7 against those local public bodies or state agencies, or their legal
8 successors, which were participants in the program when the claim or
9 claims arose that necessitated the advancement of moneys to the
10 fund." .

OREGON STATE SENATE
61st Legislative Assembly
STAFF MEASURE ANALYSIS

Measure: SB 86

Title: Relating to public body tort liability

Committee: Justice

Hearing Dates: 1/20; 2/10; 2/24; 3/17; 3/25; 4/8

Explanation Prepared By: Kristena A. LaMar, Legal Counsel

Problem addressed.

The law presently requires that any person injured by the acts of public body officers, agents or employees, notify the public body within 180 days from the date of the injury. The proponents of the bill as introduced wished to eliminate this requirement, which is jurisdictional to being able to recover on the claim, in order that those members of the public who are injured would not have a claim defeated for their failure to comply with the requirement by their failure to know of it. **Function and purpose of measure as reported out.**

The measure would eliminate the 180 notice requirement, but would retain the two year statute of limitations for any tortious injury. Public bodies would then be different from private defendants, in that all torts would have a two-year statute of limitations, and would not be governed by the general statute of limitations laws.

No one who had failed to notify the public body of an injury, whose time had expired prior to the effective date of the act, would be allowed to reinstate his or her claim, by the passage of this bill, which would become effective on January 1, 1982. By the later effective date, the public bodies will be liable for injuries suffered by claimants who did not file notices of such, prior to the expiration of their 180 notice period. For those persons who, under the present law, have the notice period extended due to the injury, majority or incapacity, for a maximum of 90 days more, the measure would continue the validity of the claims if the injury occurred after April 6, 1981.

Major issues discussed.

1. The fiscal impact of passage of the bill to public bodies participating in the state liability fund, as well as those bodies who are self-insurers.
2. The impact of the notice requirement on knowledgeable members of the public, whose otherwise valid claims are defeated by such ignorance of the rule.

Effect of committee amendments.

The original bill would have deleted the two-year statute of limitations, as well as the 180 day notice requirement. In order to clarify and make standard the statute of limitations for public bodies, the committee amended ORS 30.275 to create a standard 2-year limit on claims.

The committee limited application of the deletion of notice, by invoking an effective date of January 1, 1982, and amended the bill to ensure that no claims would be "resurrected" by passage of the measure.

Fiscal impact: Yes
Revenue impact: None (Attach additional sheets as necessary)

OREGON STATE SENATE
61st Legislative Assembly

STAFF MEASURE ANALYSIS

Measure: SB 86, A-Engrossed

Title: Relating to public body tort liability

Committee: Justice

Hearing Dates: 1/20; 2/10; 2/24; 3/17; 3/25; 4/8; 5/7 & 5/12

Explanation Prepared By: Kristena A. LaMar, Legal Counsel

Problem addressed. The notice provisions of the public body tort liability law are difficult to understand by the person injured or damaged, as well as for representatives of the person injured or damaged. A public body may have had actual notice of the injury or damage, and of the intention of the claimant to assert a claim, but because the notice was not mailed by registered mail, the public body can deny the claim after the notice period expires.

Function and purpose of measure as reported out.

1. The measure retains the present requirement that some form of notice be given to the public body before the claim may be enforced, in court, for example.
2. The measure provides for written notice to the body; actual notice as evidenced by communication to the public body or its representative of the circumstances of the injury and the intent to pursue the claim; or by payment of the public body of all or any part of the claim at any time.
3. The measure retains notice to the Attorney General if against the State, but modifies existing law by allowing delivery of notice to other public bodies at their administrative offices, to any member of their governing body, or to the public body's general counsel.
4. The measure specifically requires the plaintiff to carry the burden of proof on notice being made.

Major issues discussed.

1. Fiscal impact on public bodies.
2. Definitions of actual notice.
3. Need of public bodies for specifications of circumstances of claims.
4. Integration of measure with SB 131, if signed by Governor.

Effect of committee amendments.

1. Notice is defined in terms of formal notice, actual notice, commencement of suit, and payment of claim, rather than by mailing notice by certified or registered mail.
2. Persons eligible to receive notice are expanded to include public bodies' general counsel and claims adjusters, rather than by reference to ORCP.

Fiscal: Yes

Revenue: No

(Attach additional sheets as necessary)

SENATE COMMITTEE REPORT

①

Date May 12, 1981

Mr. President:

JUSTICE

Your Committee on _____ to whom was

referred Senate Bill 86 A-Engrossed, having had the same under consideration,

respectfully report it back recommending:

_____ (adoption) passage.

_____ that the measure be returned to the President's Desk for referral. (Letter of explanation attached.) (SR 9.05(1))

_____ (adoption) passage with amendments.

_____ (adoption) passage with amendments to resolve conflicts. (SR 9.35)

(adoption) passage with amendments to the
 passage with amendments to the
 engrossed measure.

_____ that _____ be substituted therefor. (SR 9.45)

_____ that the measure be printed engrossed and rereferred to committee for further consideration.

SEE AMENDMENTS ATTACHED

Other: _____

VOTING AYE: BROWN, FADELEY, GARDNER, JERNSTEDT, SMITH, WYERS
4/30/81 - DPAA
5/7/81 - Reconsidered by Committee

EXCUSED: SENATOR KULONGOSKI

NOT CONCURRING (SR 9.15 (2)) Senator(s) _____

_____ Referred to Committee on Ways and Means by prior reference.

JAN WYERS, CHAIRPERSON

Sen. *Jan Wyers* will lead floor discussion.

Submit:
2 copies if no amnds.
7 copies if amnds.

PROPOSED AMENDMENTS TO A-ENGROSSED SENATE BILL 86

1
2 On page 1 of the printed A-engrossed bill, delete lines 24 and
3 25.

4 On page 2, delete lines 1 through 3.
5 After line 5, insert:

6 "(1) No action arising from any act or omission of a public body
7 or an officer, employe or agent of a public body within the scope of
8 ORS 30.260 to 30.300 shall be maintained unless notice of claim is
9 given as required by this section.

"(2) Notice of claim shall be given within the following
11 applicable period of time, not including the period, not exceeding
12 90 days, during which the person injured is unable to give the
13 notice because of the injury or because of minority, incompetency or
14 other incapacity:

15 "(a) For wrongful death, within one year after the alleged loss
16 or injury.

17 "(b) For all other claims, within 180 days after the alleged
18 loss or injury.

19 "(3) Notice of claim required by this section is satisfied by:

20 "(a) Formal notice of claim as provided in subsections (4) and
21 (5) of this section;

22 "(b) Actual notice of claim as provided in subsection (6) of
23 this section;

24 "(c) Commencement of an action on the claim by or on behalf of
25 the claimant within the applicable period of time provided in
26 subsection (2) of this section; or

27 "(d) Payment of all or any part of the claim by or on behalf of
28 the public body at any time.

1 "(4) Formal notice of claim is a written communication from a
2 claimant or representative of a claimant containing:

3 "(a) A statement that a claim for damages is or will be asserted
4 against the public body or an officer, employe or agent of the
5 public body;

6 "(b) A description of the time, place and circumstances giving
7 rise to the claim, so far as known to the claimant; and

8 "(c) The name of the claimant and the mailing address to which
9 correspondence concerning the claim may be sent.

10 "(5) Formal notice of claim shall be given by mail or personal
11 delivery:

12 "(a) If the claim is against the state or an officer, employe or
13 agent thereof, to the office of the Attorney General or to a deputy
14 or assistant of the Attorney General.

15 "(b) If the claim is against a local public body or an officer,
16 employe or agent thereof, to the public body at its principal
17 administrative office, to any member of the governing body of the
18 public body, or to an attorney designated by the governing body as
19 its general counsel..

20 "(6) Actual notice of claim is any communication by which any
21 individual to whom notice may be given as provided in subsection (5)
22 of this section or any person responsible for administering claims on
23 behalf of the public body acquires actual knowledge of the time,
24 place and circumstances giving rise to the claim, where the
25 communication is such that a reasonable person would conclude that a
26 particular person intends to assert a claim against the public body
27 or an officer, employe or agent of the public body. A person
28 responsible for administering claims on behalf of a public body is

1 one who, as an officer, employe or agent of a public body or as an
2 employe or agent of an insurance carrier insuring the public body
3 for risks within the scope of ORS 30.260 to 30.300, engages in
4 investigation, negotiation, adjustment or defense of claims within
5 the scope of ORS 30.260 to 30.300, or in furnishing or accepting
6 forms for claimants to provide claim information, or in supervising
7 any of those activities.

8 "(7) In an action arising from any act or omission of a public
9 body or an officer, employe or agent of a public body within the
10 scope of ORS 30.260 to 30.300, the plaintiff has the burden of
11 proving that notice of claim was given as required by this section.

12 "(8) Except as provided in ORS 12.120 and 12.135, but
13 notwithstanding any other provision of ORS chapter 12 or other
14 statute providing a limitation on the commencement of an action, an
15 action arising from any act or omission of a public body or an
16 officer, employe or agent of a public body within the scope of ORS
17 30.260 to 30.300 shall be commenced within two years after the
18 alleged loss or injury."

LEGISLATIVE FISCAL OFFICE
Fiscal Impact Assessment

Bill No. SB 86 A-Eng.

This office has reviewed the proposed legislation and determined that
it has NO fiscal impact.

Notification of House Amendments to SB 86 B *

To: Sen. WYERS Date 6/22/81

Chairman, Committee on JUSTICE

~~cc/ Sen.~~ _____ Principal Sponsor

Message notifying of House passage with amendments read 6/22/81

Action on amendments governed by Senate Rule 11:01.

To assist in preparation of Agenda, would the Committee Chairman please advise the Secretary of action to be recommended.

Maribel Calmus
Secretary of the Senate

To concur _____ Not to concur

Senator WYERS _____ will lead discussion.

JAM WYERS
(Initial and return to Secretary of the Senate)



OREGON STATE SENATE
STATE CAPITOL
SALEM, OREGON

NOTICE OF MEASURES TABLED

March 30, 1981
(DATE)

To the Secretary of the Senate:

From the Committee on _____ JUSTICE _____

This is to inform you that SB 79, 85, 86, 167, 178, 186, 471 _____ has been:
(MEASURE NUMBER)

_____ Tabled.

Tabled by operation of SR 8.20.

_____ Taken from table.

JAN PETERS, CHAIRMAN
(CHAIRMAN)
PETERS, CHAIRPERSON

LEGISLATIVE FISCAL OFFICE

Fiscal Impact Assessment

Bill No. SB 86 B-Eng. and House Amendments to resolve conflict

This office has reviewed the proposed legislation and determined that it
has NO fiscal impact.



OREGON STATE SENATE
STATE CAPITOL
SALEM, OREGON

NOTICE OF MEASURES TABLED

April 8, 1981

(DATE)

To the Secretary of the Senate:

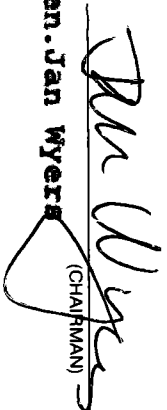
From the Committee on **JUSTICE**

This is to inform you that **SB 86** _____ has been:
(MEASURE NUMBER)

_____ Tabled.

_____ Tabled by operation of SR 8.20.

Taken from table.


Sen. Jan Myers
(CHAIRMAN)

1981 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Executive Department and the Legislative Fiscal Office

MEASURE NUMBER: SB 86

STATUS: Original

SUBJECT: Removes from public body tort liability law the required written notice to public body by person who claims damages. Also removes special two-year time period in which action for damages must be commenced.

GOVERNMENT UNIT AFFECTED: Department of Justice and/or Department of General Services

BUDGET AND MANAGEMENT ANALYST: Kathleen Dewoina 1-20-81

LEGISLATIVE FISCAL ANALYST: Steve Forrey 1-20-81

EFFECT ON EXPENDITURES:

1981-83

1983-85

Department of Justice and local governments participating in the state tort liability self-insurance program

Tort liability claims costs
Claims investigations

\$247,000 GF
indeterminate

\$296,400 GF
indeterminate

EFFECT ON REVENUES:

Tort liability insurance premiums paid by units of government participating in the state tort liability self-insurance program

indeterminate

indeterminate

ORGANIZATIONAL IMPACT: none

EFFECT ON POSITIONS:

Department of Justice

Additional staff will be required to handle increased workload expected from removing two-year limitation on filing claims.

COMMENTS:

The fiscal impact of the bill has two components -- removal of written notice requirements and removal of two-year claim limitation. Increased tort liability claims costs estimate assumes 10 percent of viable claims were turned down because notice of the claim was not properly delivered in accordance with ORS 30.275.

A small portion of claims costs may be recovered through tort liability insurance premiums paid by units of local government participating in the state's tort liability insurance programs. Since the inception of the self-insurance program, the loss experience ratio has been 18:1, state to local governments. (This estimate is rough since local governments have not participated in the state's tort liability insurance program as long as the state has been in the self-insurance business.)

Additional administrative costs, particularly for claims investigations, may be expected if the two-year limitation on filing claims is removed.

The Department of General Services is mentioned as an affected agency because the Governor's Recommended Budget proposed the Department assume administration of the state's self-insurance program.

This proposal is not anticipated in the Governor's Recommended Budget.

Engrossed
~~Engrossed~~

Senate Bill 86

Ordered by the Senate May 17, 1981.
(Including Amendments by Senate April 14 and May 14, 1981.)

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar)

SUMMARY

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

[Removes from] Revises notice provisions of public body tort liability law [the required written notice to public body by person who claims damages].

Takes effect January 1, 1982.

1
2 *Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and*
3 *prescribing an effective date.*
4
5 **Be It Enacted by the People of the State of Oregon:**

Section 1. ORS 30.275 is amended to read:

6 30.275. *[1] Every person who claims damages from a public body or from an officer, employe or agent of a*
7 *public body acting within the scope of employment or duties for or on account of any loss or injury within the*
8 *scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged*
9 *loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of*
10 *the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded.*
11 *Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney*
12 *General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a*
13 *person upon whom process could be served upon the public body in accordance with ORCP 7 D. (3)(d). Notice of*
14 *claim shall be served upon the Attorney General or local public body's representative for service of process either*
15 *personally or by certified mail, return receipt requested. A notice of claim which does not contain the*
16 *information required by this subsection, or which is presented in any other manner than provided in this section,*
17 *is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate*
18 *the notice.]*

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

24 *[(3) No action shall be maintained unless such notice has been given and unless the action is commenced*
25 *within two years after the date of such accident or occurrence. The time for giving such notice does not include*

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted; complete new sections begin with SECTION.

1 (7) In an action arising from any act or omission of a public body or an officer, employe or agent of a public
2 body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was
3 given as required by this section.

4 (8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12
5 or other statute providing a limitation on the commencement of an action, an action arising from any act or
6 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
7 shall be commenced within two years after the alleged loss or injury.

8 ~~SECTION 1a. Section 3, chapter 109, Oregon Laws 1981 (Enrolled~~

Senate Bill 131), is repealed, or which notice was not presented before the effective date of

11 this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired
12 before the effective date of this Act.

13 ~~Section 3-ORS 278-120 is amended to read:~~

14 ~~278.120. (1) Upon receipt by the Attorney General of a claim for damages [as provided in ORS 30.275]
15 against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the
16 claim is covered by insurance, [He] the Attorney General shall tender defense of the claim to the insurer, and if
17 such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If
18 the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an
19 investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of
20 ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is
21 or may be liable to the claimant under ORS 30.260 to 30.300, [He] the Attorney General shall defend or may
22 negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims
23 Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to
24 be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.~~

25 (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the
26 Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the
27 Emergency Board of the terms, conditions and reasons therefor.

28 (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
29 paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards
30 satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund
31 under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the
32 provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and
33 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

34 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
35 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
36 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
37 indebtedness of the Liability Fund in not more than 10 years.

38 SECTION 4. This Act takes effect on January 1, 1982.

glt

3

1

1 the instalments shall be fixed by the Department of General Services
2 at such amount as can be reasonably expected to liquidate the
3 indebtedness of the Liability Fund in not more than 10 years.

4 ⁽⁵⁾ In order to assure that the moneys advanced to the
5 Liability Fund are repaid as specified in subsection (4) of this
6 section, the department shall make such assessments as are necessary
7 against those local public bodies or state agencies, or their legal
8 successors, which were participants in the program when the claim or
9 claims arose that necessitated the advancement of moneys to the
10 fund. (3)

12 ⁽²⁾ Section 3. ORS 278.120, as amended by section 16, chapter 109,
13 Oregon Laws 1981 (Enrolled Senate Bill 131), is further amended to
14 read:

15 ~~278.120.~~ (1) Upon receipt by the Department of General
16 Services of a claim for damages [as provided in ORS 30.275] against
17 the State of Oregon or a state officer, employe or agent within the
18 scope of ORS 30.260 to 30.300, if the claim is covered by insurance,
19 the department shall tender defense of the claim to the insurer, and
20 if such tender is accepted ORS chapter 180 and the remaining
21 provisions of this section shall not be applicable. If the claim is
22 not covered by insurance or if the tender is rejected, the
23 department shall cause an investigation to be conducted to determine
24 whether the claim is meritorious and comes within the provisions of
25 ORS 30.260 to 30.300. The Attorney General may conduct the
26 investigation if requested by the department. If the department
27 determines that the state or a state officer, agent or employe is or
28 may be liable to the claimant under ORS 30.260 to 30.300, the

(1)

1 department may negotiate, compromise and settle with the claimant.
2 The Attorney General shall defend all lawsuits after the department
3 has determined that a reasonable settlement cannot be achieved. The
4 department shall pay from the Special Liability Revolving Fund
5 authorized in section 20, chapter 109, Oregon Laws 1981 (Enrolled
6 Senate Bill 131), [of this 1981 Act] or the Liability Fund the
7 amount of any judgment, and, if the department determines such
8 action to be appropriate, the amount of any settlement subject to
9 the provisions of subsection (2) of this section.
10 ⁽²⁾ The department shall submit quarterly reports to the Joint
11 Ways and Means Committee of the Legislative Assembly, if the
12 legislature is in session, or the Emergency Board listing all claims
13 settled which have an aggregate cost in excess of \$10,000.
14 ⁽³⁾ If there is no balance in the Liability Fund, or if the
15 balance is insufficient to cover the amount to be paid on a claim,
16 and there are no funds available under section 21, chapter 109,
17 Oregon Laws 1981 (Enrolled Senate Bill 131), [of this 1981 Act] the ^X
18 amount remaining in the Liability Fund shall be paid towards
19 satisfaction of the total amount payable and the balance thereof may
20 be advanced through the Liability Fund under the provisions of ORS
21 293.205 to 293.225. Prior to any advancement to the Liability Fund
22 under the provisions of ORS 293.205 to 293.225, approval of the
23 advancement shall be obtained from the Joint Ways and Means
24 Committee of the Legislative Assembly, if the legislature is in
25 session, or the Emergency Board.
26 ⁽⁴⁾ Money advanced to the Liability Fund as provided in this
27 section shall be repaid from the Liability Fund in annual
28 instalments, with interest as provided in ORS 293.220. The amount of
⁽¹⁾

1981 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Executive Department and the Legislative Fiscal Office

MEASURE NUMBER: SB 86 A-Engrossed

STATUS: Including Amendments by Senate April 14

SUBJECT: Removes from public body tort liability law the required written notice to public body by person who claims damages. Also requires that an action for damages must be commenced within two years after the date of the accidental occurrence.

GOVERNMENT UNIT AFFECTED: Department of General Services

BUDGET AND MANAGEMENT ANALYST: Kathleen Dewoina 4-15-81

LEGISLATIVE FISCAL ANALYST: Steve Forrey 4-15-81

EFFECT ON EXPENDITURES:

1981-83

1983-85

All Public Bodies including the Department of General Services and local governments participating in the state tort liability self-insurance program

Tort liability claims costs
Claims investigations

indeterminate
indeterminate

indeterminate
indeterminate

EFFECT ON REVENUES:

Tort liability insurance premiums paid by units of government participating in the state tort liability self-insurance program

indeterminate

indeterminate

ORGANIZATIONAL IMPACT: none

EFFECT ON POSITIONS:

Department of Justice

Additional legal staff may be required to handle increased workload expected from removing the 180 day written notice requirement and the substitution of an action for notice of claim.

COMMENTS:

Based on available data, it is difficult to develop creditable estimates of the costs associated with this bill. A small portion of claims costs may be recovered through tort liability insurance premiums paid by units of local government participating in the state's tort liability insurance programs.

The bill replaces a claim notice request with a legal action filing requirement. This may result in added legal costs due to increased legal processing.

This proposal is not anticipated in the Governor's Recommended Budget.

Senate Bill 86

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar Association)

SUMMARY

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

Removes from public body tort liability law the required written notice to public body by person who claims damages. Also removes special two-year time period in which action for damages must be commenced.

A BILL FOR AN ACT

Relating to public body tort liability; ~~amending ORS 30-285, 30-287 and 278-120; and repealing ORS 30.275; and~~ *Waiving a measure to be read; and 278120;*

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

- 1 *Section 1, ORS 30.275 to read:*
 - 2 *to read:*
 - 3 *Providing for the time limit.*
- 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

delete

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①

to

①

Section 1, ORS 30.260 to 30.300 to read:

①

§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 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.

P

[(3) No] An action [shall be maintained unless such notice has been given and unless the action is] to recover 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 be commenced within two years after the date of [such] the accident or occurrence out of which the claim for damages arose.

[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.]

do

~~The~~ *Section 1* amendment of ORS 30.275 by Section 1 of this Act ~~does~~ not permit commencement of an action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or occurrence before the effective date of this Act for which notice was not presented before the effective date of this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired before the effective date of this Act. *2*

**SENATE AMENDMENTS TO
SENATE BILL 86**

By COMMITTEE ON JUSTICE

April 14

1 On page 1 of the printed bill, line 2, after the first semicolon delete the rest of the line and insert "creating
2 new provisions; amending ORS 30.275 and 278.120; and prescribing an effective date."

3 Delete lines 4 through 29 and page 2 and insert:

4 "Section 1. ORS 30.275 is amended to read:

5 "30.275. [(1) Every person who claims damages from a public body or from an officer, employe or agent of
6 a public body acting within the scope of employment or duties for or on account of any loss or injury within the
7 scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged
8 loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of
9 the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded.

10 Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney
11 General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a
12 person upon whom process could be served upon the public body in accordance with ORCP 7D.(3)(d). Notice of
13 claim shall be served upon the Attorney General or local public body's representative for service of process either
14 personally or by certified mail, return receipt requested. A notice of claim which does not contain the
15 information required by this subsection, or which is presented in any other manner than provided in this section,
16 is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate
17 the notice.]

18 "[2] When the claim is for death, the notice may be presented by the personal representative, surviving
19 spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within
20 one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim
21 is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death
22 may be brought without any additional notice.]

23 "[3] No] An action [shall be maintained unless such notice has been given and unless the action is] to
24 recover damages from a public body or from an officer, employe or agent of a public body acting within the scope
25 of employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall be
26 commenced within two years after the date of [such] the accident or occurrence out of which the claim for
27 damages arose. [The time for giving such notice does not include the time, not exceeding 90 days, during which
28 the person injured is unable to give the notice because of the injury or because of minority, incompetency or other
29 incapacity.]

30 "SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an
31 action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or
32 occurrence before the effective date of this Act for which notice was not presented before the effective date of

- 1 this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired
 - 2 before the effective date of this Act.”
 - 3 On page 3, delete lines 1 through 8.
 - 4 In line 9, delete “4” and insert “3”.
 - 5 After line 33, insert:
 - 6 “SECTION 4. This Act takes effect on January 1, 1982.”
-

SENATE COMMITTEE REPORT

①

Date April 8, 1981

Mr. President:

Your Committee on Justice _____ to whom was

referred SB 86 _____, having had the same under consideration,

respectfully report it back recommending:

_____ (adoption)
_____ passage.

_____ that the measure be returned to the
President's Desk for referral. (Letter
of explanation attached.) (SR 9.05(1))

(adoption)
_____ passage with amendments.

_____ (adoption)
_____ passage with amendments to resolve
conflicts. (SR 9.35)

_____ (adoption)
_____ passage with amendments to the
_____ engrossed measure.

_____ that _____ be substituted
therefor. (SR 9.45)

_____ that the measure be printed engrossed
and rereferred to committee for further
consideration.

_____ Other: March 30, 1981 - Tabled - Rule 8.20
April 8, 1981 - Taken from Table

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

Voting Nay: Senators Gardner, Jernstedt

Excused: Senator Smith

NOT CONCURRING (SR 9.15 (2)) Senator(s) _____

_____ Referred to Committee on Ways and Means
by prior reference.

Jan Myers
Sen. Jan Myers Scherman

Submit:
2 copies if no amnds.
7 copies if amnds.

Sen. Myers
will lead floor discussion.

["(3) No] An action [shall be maintained unless such notice has been given and unless the action is] to recover 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 be commenced within two years after the date of [such] the accident or occurrence out of which the claim for damages arose. [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.]

~~In line 5, after "2.", delete the remainder of the line and insert:~~
"SECTION 4. This amendment of ORS 30.275 by Section 1 of this Act does not permit commencement of an action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or occurrence before the effective date of this Act for which notice was not presented before the effective date of this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired before the effective date of this Act."

~~Delete lines 6 through 29.~~

Delete page 2 of the printed bill.

On page 3, delete lines 1 through 8.

In line 9, delete "4" and insert "3".

After line 33, insert:

"SECTION 4. This Act takes effect on January 1, 1982." •

**SENATE AMENDMENTS TO
A-ENGROSSED SENATE BILL 86**

BY COMMITTEE ON JUSTICE

May 14

1 On page 1 of the printed A-engrossed bill, delete lines 24 and 25.
2 On page 2, delete lines 1 through 3.

3 After line 5, insert:

4 "(1) No action arising from any act or omission of a public body or an officer, employe or agent of a public
5 body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by
6 this section.

7 "(2) Notice of claim shall be given within the following applicable period of time, not including the period,
8 not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or
9 because of minority, incompetency or other incapacity:

10 "(a) For wrongful death, within one year after the alleged loss or injury.

11 "(b) For all other claims, within 180 days after the alleged loss or injury.

12 "(3) Notice of claim required by this section is satisfied by:

13 "(a) Formal notice of claim as provided in subsections (4) and (5) of this section;

14 "(b) Actual notice of claim as provided in subsection (6) of this section;

15 "(c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period
16 of time provided in subsection (2) of this section; or

17 "(d) Payment of all or any part of the claim by or on behalf of the public body at any time.

18 "(4) Formal notice of claim is a written communication from a claimant or representative of a claimant
19 containing:

20 "(a) A statement that a claim for damages is or will be asserted against the public body or an officer,
21 employe or agent of the public body;

22 "(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the
23 claimant; and

24 "(c) The name of the claimant and the mailing address to which correspondence concerning the claim may
25 be sent.

26 "(5) Formal notice of claim shall be given by mail or personal delivery:

27 "(a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney
28 General or to a deputy or assistant of the Attorney General.

29 "(b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at
30 its principal administrative office, to any member of the governing body of the public body, or to an attorney
31 designated by the governing body as its general counsel.

1 “(6) Actual notice of claim is any communication by which any individual to whom notice may be given as
2 provided in subsection (5) of this section or any person responsible for administering claims on behalf of the
3 public body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the
4 communication is such that a reasonable person would conclude that a particular person intends to assert a
5 claim against the public body or an officer, employe or agent of the public body. A person responsible for
6 administering claims on behalf of a public body is one who, as an officer, employe or agent of a public body or
7 as an employe or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260
8 to 30.300, engages in investigation, negotiation, adjustment or defense of claims within the scope of ORS
9 30.260 to 30.300, or in furnishing or accepting forms for claimants to provide claim information, or in
10 supervising any of those activities.

11 “(7) In an action arising from any act or omission of a public body or an officer, employe or agent of a
12 public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of
13 claim was given as required by this section.

14 “(8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS
15 chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any
16 act or omission of a public body or an officer, employe or agent of a public body within the scope of ORS
17 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury.”

^B
A-Engrossed

Senate Bill 86 ^{May}

Ordered by the Senate ~~April 14~~ ^{May 14} and ^{May 14}

(Including Amendments by Senate April 14)

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with precession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar)

SUMMARY

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

Removes from public body tort liability law the required written notice to public body by person who claims damages. [*Also removes special*] Retains two-year time period in which action for damages must be commenced.

Takes effect January 1, 1982.

A BILL FOR AN ACT

1
2 Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and
3 prescribing an effective date.

4 Be It Enacted by the People of the State of Oregon:

5 Section 1. ORS 30.275 is amended to read:

6 30.275. *(1) Every person who claims damages from a public body or from an officer, employe or agent of a*
7 *public body acting within the scope of employment or duties for or on account of any loss or injury within the*
8 *scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged*
9 *loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of*
10 *the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded.*

11 *Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney*
12 *General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a*
13 *person upon whom process could be served upon the public body in accordance with ORCP 7.D.(3)(d). Notice of*
14 *claim shall be served upon the Attorney General or local public body's representative for service of process either*
15 *personally or by certified mail, return receipt requested. A notice of claim which does not contain the*
16 *information required by this subsection, or which is presented in any other manner than provided in this section,*
17 *is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate*
18 *the notice.]*

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

24 *(3) No ~~an~~ action shall be maintained unless such notice has been given and unless the action is ^{to recover}*
25 ~~damages from a public body or from an officer, employe or agent of a public body acting within the scope of~~

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

①
9-4-82

① (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.

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

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1 ~~employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall be~~
2 commenced within two years after the date of ^{such an} ~~such an~~ accident or occurrence ~~out of which the claim for~~
3 ~~damages arose.~~ ^{The time for giving such notice does not include the time, not exceeding 90 days, during which}
4 ~~the person injured is unable to give the notice because of the injury or because of minority, incompetency or other~~
5 ~~incapacity.~~ ^{incapacity.} 1

6 SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an
7 action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or
8 occurrence before the effective date of this Act for which notice was not presented before the effective date of
9 this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired
10 before the effective date of this Act.

11 Section 3. ORS 278.120 is amended to read:

12 278.120. (1) Upon receipt by the Attorney General of a claim for damages ^{as provided in ORS 30.275}
13 ~~against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the~~
14 ~~claim is covered by insurance, [he] the Attorney General shall tender defense of the claim to the insurer, and if~~
15 ~~such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If~~
16 ~~the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an~~
17 ~~investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of~~
18 ~~ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is~~
19 ~~or may be liable to the claimant under ORS 30.260 to 30.300, [he] the Attorney General shall defend or may~~
20 ~~negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims~~
21 ~~Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to~~
22 ~~be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.~~

23 (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the
24 Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the
25 Emergency Board of the terms, conditions and reasons therefor.

26 (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
27 paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards
28 satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund
29 under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the
30 provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and
31 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.
32 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
33 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
34 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
35 indebtedness of the Liability Fund in not more than 10 years.

36 SECTION 4. This Act takes effect on January 1, 1982.

(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 responsible 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

① (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 (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:

③ (a) For wrongful death, within one year after the alleged loss or injury.

④ (b) For all other claims, within 180 days after the alleged loss or injury.

⑤ (3) Notice of claim required by this section is satisfied by:

⑥ (a) Formal notice of claim as provided in subsections (4) and (5) of this section;

⑦ (b) Actual notice of claim as provided in subsection (6) of this section;

⑧ (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

⑨ (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

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

B-Engrossed

Senate Bill 86

Ordered by the Senate May 14
(Including Amendments by Senate April 14 and May 14)

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules,
indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar)

SUMMARY

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

*[Removes from] Revises notice provisions of public body tort liability law [the required written notice to public body by person who claims damages].
Takes effect January 1, 1982.*

A BILL FOR AN ACT

1
2 Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and
3 prescribing an effective date.

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

5 Section 1. ORS 30.275 is amended to read:

6 *30.275. [(1) Every person who claims damages from a public body or from an officer, employe or agent of a*
7 *public body acting within the scope of employment or duties for or on account of any loss or injury within the*
8 *scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged*
9 *loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of*
10 *the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded.*
11 *Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney*
12 *General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a*
13 *person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of*
14 *claim shall be served upon the Attorney General or local public body's representative for service of process either*
15 *personally or by certified mail, return receipt requested. A notice of claim which does not contain the*
16 *information required by this subsection, or which is presented in any other manner than provided in this section,*
17 *is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate*
18 *the notice.]*

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

24 *[(3) No action shall be maintained unless such notice has been given and unless the action is commenced*
25 *within two years after the date of such accident or occurrence. The time for giving such notice does not include*

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted;
complete new sections begin with **SECTION**.

1 *the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury*
2 *or because of minority, incompetency or other incapacity.]*

3 (1) No action arising from any act or omission of a public body or an officer, employe or agent of a public body
4 within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this
5 section.

6 (2) Notice of claim shall be given within the following applicable period of time, not including the period, not
7 exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of
8 minority, incompetency or other incapacity:

9 (a) For wrongful death, within one year after the alleged loss or injury.
10 (b) For all other claims, within 180 days after the alleged loss or injury.

11 (3) Notice of claim required by this section is satisfied by:

12 (a) Formal notice of claim as provided in subsections (4) and (5) of this section;
13 (b) Actual notice of claim as provided in subsection (6) of this section;

14 (c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of
15 time provided in subsection (2) of this section; or

16 (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

17 (4) Formal notice of claim is a written communication from a claimant or representative of a claimant
18 containing:

19 (a) A statement that a claim for damages is or will be asserted against the public body or an officer, employe or
20 agent of the public body;

21 (b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant;
22 and

23 (c) The name of the claimant and the mailing address to which correspondence concerning the claim may be
24 sent.

25 (5) Formal notice of claim shall be given by mail or personal delivery:

26 (a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney General
27 or to a deputy or assistant of the Attorney General.

28 (b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its
29 principal administrative office, to any member of the governing body of the public body, or to an attorney
30 designated by the governing body as its general counsel.

31 (6) Actual notice of claim is any communication by which any individual to whom notice may be given as
32 provided in subsection (5) of this section or any person responsible for administering claims on behalf of the public
33 body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the
34 communication is such that a reasonable person would conclude that a particular person intends to assert a claim
35 against the public body or an officer, employe or agent of the public body. A person responsible for administering
36 claims on behalf of a public body is one who, as an officer, employe or agent of a public body or as an employe or
37 agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages
38 in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in
39 furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

1 (7) In an action arising from any act or omission of a public body or an officer, employe or agent of a public
2 body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was
3 given as required by this section.

4 (8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12
5 or other statute providing a limitation on the commencement of an action, an action arising from any act or
6 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
7 shall be commenced within two years after the alleged loss or injury.

8 SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an
9 action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or
10 occurrence before the effective date of this Act for which notice was not presented before the effective date of
11 this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired
12 before the effective date of this Act.

13 Section 3. ORS 278.120 is amended to read:

14 278.120. (1) Upon receipt by the Attorney General of a claim for damages [as provided in ORS 30.275]
15 against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the
16 claim is covered by insurance, [he] the Attorney General shall tender defense of the claim to the insurer, and if
17 such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If
18 the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an
19 investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of
20 ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is
21 or may be liable to the claimant under ORS 30.260 to 30.300, [he] the Attorney General shall defend or may
22 negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims
23 Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to
24 be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.

25 (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the
26 Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the
27 Emergency Board of the terms, conditions and reasons therefor.

28 (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
29 paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards
30 satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund
31 under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the
32 provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and
33 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

34 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
35 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
36 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
37 indebtedness of the Liability Fund in not more than 10 years.

38 SECTION 4. This Act takes effect on January 1, 1982.

5/15 *Marshall, R.C.*
P. 2

B-Engrossed

Senate Bill 86

Ordered by the Senate May 14
(Including Amendments by Senate April 14 and May 14)

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules,
indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar)

SUMMARY

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

[Removes from] **Revises notice provisions of public body tort liability law [the required written notice to
public body by person who claims damages].**
Takes effect January 1, 1982.

A BILL FOR AN ACT

1
2 Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and
3 prescribing an effective date.

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

5 Section 1. ORS 30.275 is amended to read:

6 30.275. *[(1) Every person who claims damages from a public body or from an officer, employe or agent of a
7 public body acting within the scope of employment or duties for or on account of any loss or injury within the
8 scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged
9 loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of
10 the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded.
11 Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney
12 General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a
13 person upon whom process could be served upon the public body in accordance with ORCP 7 D. (3)(d). Notice of
14 claim shall be served upon the Attorney General or local public body's representative for service of process either
15 personally or by certified mail, return receipt requested. A notice of claim which does not contain the
16 information required by this subsection, or which is presented in any other manner than provided in this section,
17 is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate
18 the notice.]*

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

24 *[(3) No action shall be maintained unless such notice has been given and unless the action is commenced
25 within two years after the date of such accident or occurrence. The time for giving such notice does not include*

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted;
complete new sections begin with **SECTION**.

1 *the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury*
2 *or because of minority, incompetency or other incapacity.]*

3 (1) No action arising from any act or omission of a public body or an officer, employe or agent of a public body
4 within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this
5 section.

6 (2) Notice of claim shall be given within the following applicable period of time, not including the period, not
7 exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of
8 minority, incompetency or other incapacity:

9 (a) For wrongful death, within one year after the alleged loss or injury.

10 (b) For all other claims, within 180 days after the alleged loss or injury.

11 (3) Notice of claim required by this section is satisfied by:

12 (a) Formal notice of claim as provided in subsections (4) and (5) of this section;

13 *APR 1970* → (b) Actual notice of claim as provided in subsection (6) of this section;

14 (c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of
15 time provided in subsection (2) of this section; or

16 (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

17 (4) Formal notice of claim is a written communication from a claimant or representative of a claimant
18 containing:

19 (a) A statement that a claim for damages is or will be asserted against the public body or an officer, employe or
20 agent of the public body;

21 (b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant;
22 and

23 (c) The name of the claimant and the mailing address to which correspondence concerning the claim may be
24 sent.

25 (5) Formal notice of claim shall be given by mail or personal delivery:

26 (a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney General
27 or to a deputy or assistant of the Attorney General.

28 (b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its
29 principal administrative office, to any member of the governing body of the public body, or to an attorney
30 designated by the governing body as its general counsel.

31 (6) Actual notice of claim is any communication by which any individual to whom notice may be given as
32 provided in subsection (5) of this section or any person responsible for administering claims on behalf of the public
33 body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the
34 communication is such that a reasonable person would conclude that a particular person intends to assert a claim
35 against the public body or an officer, employe or agent of the public body. A person responsible for administering
36 claims on behalf of a public body is one who, as an officer, employe or agent of a public body or as an employe or
37 agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages
38 in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in
39 furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

1 (7) In an action arising from any act or omission of a public body or an officer, employe or agent of a public
2 body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was
3 given as required by this section.

4 (8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12
5 or other statute providing a limitation on the commencement of an action, an action arising from any act or
6 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
7 shall be commenced within two years after the alleged loss or injury.

8 SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an
9 action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or
10 occurrence before the effective date of this Act for which notice was not presented before the effective date of
11 this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired
12 before the effective date of this Act.

13 Section 3. ORS 278.120 is amended to read:

14 278.120. (1) Upon receipt by the Attorney General of a claim for damages [as provided in ORS 30.275]
15 against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the
16 claim is covered by insurance, [He] the Attorney General shall tender defense of the claim to the insurer, and if
17 such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If
18 the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an
19 investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of
20 ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is
21 or may be liable to the claimant under ORS 30.260 to 30.300, [He] the Attorney General shall defend or may
22 negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims
23 Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to
24 be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.

25 (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the
26 Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the
27 Emergency Board of the terms, conditions and reasons therefor.

28 (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
29 paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards
30 satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund
31 under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the
32 provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and
33 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

34 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
35 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
36 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
37 indebtedness of the Liability Fund in not more than 10 years.

38 SECTION 4. This Act takes effect on January 1, 1982.

HOUSE AMENDMENTS TO RESOLVE CONFLICTS TO B-ENGROSSED SENATE BILL 86

By COMMITTEE ON JUDICIARY

June 23

(No change in Measure Summary)

1 On page 1 of the printed B-engrossed bill, line 2, before the second "and" insert "repealing section 3,
2 chapter 109, Oregon Laws 1981;"

3 On page 2, line 26, delete "Attorney General" and insert "Director of the Department of General
4 Services."

5 Delete line 27.

6 On page 3, after line 7, insert:

7 "SECTION 1a. Section 3, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131), is repealed."

8 Delete lines 13 through 37 and insert:

9 "Section 3. ORS 278.120, as amended by section 16, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill
10 131), is further amended to read:

11 "278.120. (1) Upon receipt by the Department of General Services of a claim for damages *as provided in*
12 *ORS 30.275] against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to*
13 *30.300*, if the claim is covered by insurance, the department shall tender defense of the claim to the insurer, and
14 if such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable.

15 If the claim is not covered by insurance or if the tender is rejected, the department shall cause an investigation
16 to be conducted to determine whether the claim is meritorious and comes within the provisions of ORS 30.260
17 to 30.300. The Attorney General may conduct the investigation if requested by the department. If the
18 department determines that the state or a state officer, agent or employe is or may be liable to the claimant
19 under ORS 30.260 to 30.300, the department may negotiate, compromise and settle with the claimant. The
20 Attorney General shall defend all lawsuits after the department has determined that a reasonable settlement
21 cannot be achieved. The department shall pay from the Special Liability Revolving Fund authorized in section
22 20, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131), *[of this 1981 Act]* or the Liability Fund the amount
23 of any judgment, and, if the department determines such action to be appropriate, the amount of any settlement
24 subject to the provisions of subsection (2) of this section.

25 "(2) The department shall submit quarterly reports to the Joint Ways and Means Committee of the
26 Legislative Assembly, if the legislature is in session, or the Emergency Board listing all claims settled which
27 have an aggregate cost in excess of \$10,000.

28 "(3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
29 paid on a claim, and there are no funds available under section 21, chapter 109, Oregon Laws 1981 (Enrolled
30 Senate Bill 131), *[of this 1981 Act]* the amount remaining in the Liability Fund shall be paid towards satisfaction
31 of the total amount payable and the balance thereof may be advanced through the Liability Fund under the
32 provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the provisions of

1 ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and Means
2 Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.
3 “(4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
4 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
5 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
6 indebtedness of the Liability Fund in not more than 10 years.
7 “(5) In order to assure that the moneys advanced to the Liability Fund are repaid as specified in subsection
8 (4) of this section, the department shall make such assessments as are necessary against those local public
9 bodies or state agencies, or their legal successors, which were participants in the program when the claim or
10 claims arose that necessitated the advancement of moneys to the fund.”

A-Engrossed

Senate Bill 86

Ordered by the Senate April 14
(Including Amendments by Senate April 14)

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with precession filing rules,
indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar)

SUMMARY

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

Removes from public body tort liability law the required written notice to public body by person who
claims damages. [*Also removes special*] Retains two-year time period in which action for damages must be
commenced.

Takes effect January 1, 1982.

A BILL FOR AN ACT

1
2 Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and
3 prescribing an effective date.

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

5 Section 1. ORS 30.275 is amended to read:

6 30.275. *[(1) Every person who claims damages from a public body or from an officer, employe or agent of a*
7 *public body acting within the scope of employment or duties for or on account of any loss or injury within the*
8 *scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged*
9 *loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of*
10 *the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded.*
11 *Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney*
12 *General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a*
13 *person upon whom process could be served upon the public body in accordance with ORCP 7D.(3)(d). Notice of*
14 *claim shall be served upon the Attorney General or local public body's representative for service of process either*
15 *personally or by certified mail, return receipt requested. A notice of claim which does not contain the*
16 *information required by this subsection, or which is presented in any other manner than provided in this section,*
17 *is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate*
18 *the notice.]*
19 *[(2) When the claim is for death, the notice may be presented by the personal representative, surviving*
20 *spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within*
21 *one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim*
22 *is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death*
23 *may be brought without any additional notice.]*

24 *[(3) No] An action [shall be maintained unless such notice has been given and unless the action is] to recover*
25 *damages from a public body or from an officer, employe or agent of a public body acting within the scope of*

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted;
complete new sections begin with SECTION.

1 employment or duties for or on account of any loss or injury within the scope of ORS 30.260 to 30.300 shall be
2 commenced within two years after the date of [such] the accident or occurrence out of which the claim for
3 damages arose. [The time for giving such notice does not include the time, not exceeding 90 days, during which
4 the person injured is unable to give the notice because of the injury or because of minority, incompetency or other
5 incapacity.]

6 SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an
7 action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or
8 occurrence before the effective date of this Act for which notice was not presented before the effective date of
9 this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired
10 before the effective date of this Act.

11 Section 3. ORS 278.120 is amended to read:

12 278.120. (1) Upon receipt by the Attorney General of a claim for damages [as provided in ORS 30.275]
13 against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the
14 claim is covered by insurance, [he] the Attorney General shall tender defense of the claim to the insurer, and if
15 such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If
16 the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an
17 investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of
18 ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is
19 or may be liable to the claimant under ORS 30.260 to 30.300, [he] the Attorney General shall defend or may
20 negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims
21 Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to
22 be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.

23 (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the
24 Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the
25 Emergency Board of the terms, conditions and reasons therefor.

26 (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
27 paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards
28 satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund
29 under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the
30 provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and
31 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

32 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
33 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
34 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
35 indebtedness of the Liability Fund in not more than 10 years.

36 SECTION 4. This Act takes effect on January 1, 1982.

HOUSE OF REPRESENTATIVES

61st Legislative Assembly

STAFF MEASURE ANALYSIS

Measure: SB 86 B-engrossed, as amended

Committee: Judiciary

Hearing Dates: June 12 and 15, 1981

Explanation Prepared by: Stephen L. Griffith, Legal Counsel

Function of Measure:

The notice provisions of the present public body tort liability law are difficult to understand and fulfill for the person injured. ORS 30.275. A public body may have had actual notice of the injury and of the intention of the claimant to assert a claim, but because the notice was not mailed by registered mail to the proper representative determined by Oregon Rule of Civil Procedure 7(D) (3) (d), the public body can deny the claim after the notice period expires.

The engrossed bill makes for a much fairer system. It retains the present requirement that some form of notice be given to the public body before a claim may be enforced. It allows this to be done in various ways, however:

- (a) The claimant may give formal written notice by relating the claimant's name and address, circumstances of the injury, and intention to make a claim. Sec. 1(4). If the claim is against the state, this notice is given to the Director of the Department of General Services; if it is against a local public body, it is given to the body itself or any governing member of the body or its general counsel. Sec. 1(5). The requirements of registered mail and Rule 7(D) service are abolished.
- (b) The claimant may give actual notice by any communication, written or oral, to a person qualified to receive formal notice or to a claims adjuster for the public body. Sec. 1(6).
- (c) The claimant may give notice by filing a lawsuit to collect damages for the injury. Sec. 1(2) (c).
- (d) The claimant is deemed to have given notice if the public body pays part or all of the claim. Sec. 1(8).

Except for the last method, there are time limits for giving notice just as under present law. The new limits are somewhat more liberal, however. Notice is sufficient if it is given within 180 days of the injury, or within one year in the case of wrongful death. The bill allows an extra grace period of up to 90 days if the claimant was unable to give notice because of injury or other incapacity. Sec. 1(2).

Under the bill, the plaintiff has the burden of showing that proper notice was given before the plaintiff's claim will be heard. Sec. 1(7). A lawsuit, in any event, must be filed within two years of the alleged injury. Sec. 1(8).

The Committee made one amendment to the bill. It changed all references to "Attorney General," as the party to receive notice of a claim against the state, to "Director of the Department of General Services." This conforms SB 86 B-engrossed to SB 131, which has been enacted already.

VOTING: Aye - Cohen, Courtney, Hendriksen, Lombard, Mason, Rutherford, Springer
Excused - Bugas, Smith

BILL CARRIER: Rep. Springer

MEASURE SUMMARY

- 1
- 2 Removes from public body tort liability law the required
- 3 written notice to public body by person who claims damages. Also
- 4 removes special two-year time period in which action for damages
- 5 must be commenced.

COPIES SENT
REVENUE
FISCAL 12/11/80

A BILL FOR AN ACT

1
2 Relating to public body tort liability; amending ORS ~~30.285~~, 30.287
3 and 278.120; and repealing ORS 30.275.

4 Be It Enacted by the People of the State of Oregon:

5 SECTION 1. ORS 30.275 is repealed.

6 Section 2. ORS 30.285 is amended to read:

7 30.285. (1) The governing body of any public body shall defend,
8 save harmless and indemnify any of its officers, employes and
9 agents, whether elective or appointive, against any tort claim or
10 demand, whether groundless or otherwise, arising out of an alleged
11 act or omission occurring in the performance of duty.

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

15 (3) If any civil action, suit or proceeding is brought against
16 any state officer, employe or agent which on its face falls within
17 the provisions of subsection (1) of this section, or which the state
18 officer, employe or agent asserts to be based in fact upon an
19 alleged act or omission in the performance of duty, [he] the
20 officer, employe or agent may file a written request for counsel
21 with the Attorney General. The Attorney General shall thereupon
22 appear and defend the officer, employe or agent unless after
23 investigation [he] the Attorney General finds that the claim or
24 demand does not arise out of an alleged act or omission occurring in
25 the performance of duty, or that the act or omission complained of
26 amounted to malfeasance in office or wilful or wanton neglect of
27 duty, in which case the Attorney General shall reject defense of the
28 claim.

1 (4) Any officer, employe or agent of the state against whom a
2 claim within the scope of this section is made shall cooperate fully
3 with the Attorney General in the defense of such claim. If the
4 Attorney General determines that such officer, employe or agent has
5 not so cooperated or has otherwise acted to prejudice defense of the
6 claim, the Attorney General may at any time reject the defense of
7 the claim.

8 (5) If the Attorney General rejects defense of a claim under
9 subsection (3) of this section or this subsection, or if it is
10 established by the judgment ultimately rendered on the claim that
11 the act or omission complained of was not in the performance of duty
12 or amounted to wilful or wanton neglect of duty, no public funds
13 shall be paid in settlement of said claim or in payment of any
14 judgment against such officer, employe or agent. Such action by the
15 Attorney General shall not prejudice the right of the officer,
16 employe or agent to assert and establish [an] in appropriate
17 proceedings that the claim or demand in fact arose out of an alleged
18 act or omission occurring in the performance of duty, or that the
19 act or omission complained of did not amount to malfeasance in
20 office or wilful or wanton neglect of duty, in which case [he] the
21 officer, employe or agent shall be indemnified against liability and
22 [his] reasonable costs of defending the claim, cost of such
23 indemnification to be a charge against the Liability Fund
24 established by ORS 278.100.

25 (6) If the officer, employe or agent has been defended by the
26 Attorney General and it is established by the judgment ultimately
27 rendered on the claim that the act or omission complained of was not
28 in the performance of duty, the judgment against the officer,

1 employe or agent shall provide for payment to the state of its costs
2 including a reasonable attorney fee.

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

10 Section 3. ORS 30.287 is amended to read:

11 30.287. (1) If any civil action, suit or proceeding is brought
12 against any officer, employe or agent of a local public body other
13 than the state which on its face falls within the provisions of ORS
14 30.285 (1), or which the officer, employe or agent asserts to be
15 based in fact upon an alleged act or omission in the performance of
16 duty, [he] the officer, employe or agent may file a written request
17 for counsel with the governing body of the public body. The
18 governing body shall thereupon engage counsel to appear and defend
19 the officer, employe or agent unless after investigation it is
20 determined that the claim or demand does not arise out of an alleged
21 act or omission occurring in the performance of duty, or that the
22 act or omission complained of amounted to malfeasance in office or
23 wilful or wanton neglect of duty, in which case the governing body
24 shall reject defense of the claim.

25 (2) Any officer, employe or agent of a local public body
26 against whom a claim within the scope of this section is made shall
27 cooperate fully with the governing body and counsel in the defense
28 of such claim. If the counsel determines and certifies to the
29 governing body that such officer, employe or agent has not so

1 cooperated or has otherwise acted [in] to prejudice defense of the
2 claim, the governing body may at any time reject the defense of the
3 claim.

4 (3) If the governing body rejects defense of a claim under
5 subsection (1) of this section, or if it is established by the
6 judgment ultimately rendered on the claim that the act or omission
7 complained of was not in the performance of duty or amounted to
8 wilful or wanton neglect of duty, no public funds shall be paid in
9 settlement of said claim or in payment of any judgment against such
10 officer, employe or agent. Such action by the governing body shall
11 not prejudice the right of the officer, employe or agent to assert
12 and establish in [an] appropriate proceedings that the claim or
13 demand in fact arose out of an alleged act or omission occurring in
14 the performance of duty, or that the act or omission complained of
15 did not amount to malfeasance in office or wilful or wanton neglect
16 of duty, in which case [he] the officer, employe or agent shall be
17 indemnified by the public body against liability and [his]
18 reasonable costs of defending the claim.

9 (4) If the officer, employe or agent has been defended by
20 counsel engaged by the governing body and it is established by the
21 judgment ultimately rendered on the claim that the act or omission
22 complained of was not in the performance of duty or amounted to
23 wilful or wanton neglect of duty, the judgment against the officer,
24 employe or agent shall provide for payment to the local public body
25 of its costs including a reasonable attorney fee.

26 (5) Nothing in subsection (1), (2) or (3) of this section shall
27 be deemed to increase the limits of liability of any public officer,
28 agent or employe under ORS 30.270, or [relieve any claimant of the
29 necessity of compliance with ORS 30.275, nor] to affect the

1 liability of the local public body itself or of any other public
2 officer, agent or employe on any claim arising out of the same
3 accident or occurrence.

4 (6) The provisions of this section may be superseded to the
5 extent that the claim against the public officer, employe or agent
6 may be defended by any insurer, or may be subject under ORS 30.282
7 to agreement with the state Department of General Services, in which
8 case the provisions of the policy of insurance or other agreement
9 are applicable.

10 Section 4. ORS 278.120 is amended to read:

11 278.120. (1) Upon receipt by the Attorney General of a claim for
12 damages [as provided in ORS 30.275] against the State of Oregon or a
13 state officer, employe or agent within the scope of ORS 30.260 to
14 30.300, if the claim is covered by insurance, [he] the Attorney
15 General shall tender defense of the claim to the insurer, and if
16 such tender is accepted ORS chapter 180 and the remaining provisions
17 of this section shall not be applicable. If the claim is not covered
18 by insurance or if the tender is rejected, the Attorney General
19 shall cause an investigation to be conducted to determine whether
20 the claim is meritorious and comes within the provisions of ORS
21 30.260 to 30.300. If the Attorney General determines that the state
22 or a state officer, agent or employe is or may be liable to the
23 claimant under ORS 30.260 to 30.300, [he] the Attorney General shall
24 defend or may negotiate, compromise and settle with the claimant.
25 [He] The Attorney General shall pay from the Claims Settlement
26 Revolving Account the amount of any judgment, and, if [he
27 determines] determining such action to be appropriate, the amount of
28 any settlement subject to the provisions of subsection (2) of this
29 section.

1 (2) Prior to making any settlement payment exceeding \$10,000,
2 the Attorney General also shall advise the Joint Ways and Means
3 Committee of the Legislative Assembly, if the legislature is in
4 session, or the Emergency Board of the terms, conditions and reasons
5 therefor.

6 (3) If there is no balance in the Liability Fund, or if the
7 balance is insufficient to cover the amount to be paid on a claim by
8 the Attorney General, the amount remaining in the Liability Fund
9 shall be paid towards satisfaction of the total amount payable and
10 the balance thereof may be advanced through the Liability Fund under
11 the provisions of ORS 293.205 to 293.225. Prior to any advancement
12 to the Liability Fund under the provisions of ORS 293.205 to
13 293.225, approval of the advancement shall be obtained from the
14 Joint Ways and Means Committee of the Legislative Assembly, if the
15 legislature is in session, or the Emergency Board.

16 (4) Money advanced to the Liability Fund as provided in this
17 section shall be repaid from the Liability Fund in annual
18 instalments, with interest as provided in ORS 293.220. The amount of
19 the instalments shall be fixed by the Department of General Services
20 at such amount as can be reasonably expected to liquidate the
21 indebtedness of the Liability Fund in not more than 10 years.

Enrolled

Senate Bill 86

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with
presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the
request of Oregon State Bar)

CHAPTER.....

AN ACT

Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; repealing
section 3, chapter 109, Oregon Laws 1981; and prescribing an effective date.

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

Section 1. ORS 30.275 is 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 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 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) 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 suchaccident 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.]

(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 Director of the Department of General Services.

(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 responsible 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 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.

SECTION 1a. Section 3, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131), is repealed.

SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an action on or after the effective date of this Act in respect to a claim for damages arising out of an accident or occurrence before the effective date of this Act for which notice was not presented before the effective date of this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired before the effective date of this Act.

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.

SECTION 4. This Act takes effect on January 1, 1982.

Passed by Senate May 18, 1981

Received by Governor:

Repassed by Senate July 2, 1981

M, 1981

Approved:

Secretary of Senate M, 1981

President of Senate Governor

Filed in Office of Secretary of State:

Passed by House June 26, 1981

M, 1981

Speaker of House Secretary of State

Enrolled Senate Bill 86

Page 3

Senate Bill 86

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar Association)

SUMMARY

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

Removes from public body tort liability law the required written notice to public body by person who claims damages. Also removes special two-year time period in which action for damages must be commenced.

A BILL FOR AN ACT

2 Relating to public body tort liability; amending ORS 30.285, 30.287 and 278.120; and repealing ORS 30.275.

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

4 **SECTION 1.** ORS 30.275 is repealed.

5 Section 2. ORS 30.285 is amended to read:

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

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

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

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

23 (5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this
24 subsection, or if it is established by the judgment ultimately rendered on the claim that the act or omission
25 complained of was not in the performance of duty or amounted to willful or wanton neglect of duty, no public
26 funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or
27 agent. Such action by the Attorney General shall not prejudice the right of the officer, employee or agent to
28 assert and establish *[any]* in appropriate proceedings that the claim or demand in fact arose out of an alleged act
29 or omission occurring in the performance of duty, or that the act or omission complained of did not amount to

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with SECTION.

1 malfeasance in office or wilful or wanton neglect of duty, in which case [he] the officer, employe or agent shall
2 be indemnified against liability and [his] reasonable costs of defending the claim, cost of such indemnification
3 to be a charge against the Liability Fund established by ORS 278.100.

4 (6) If the officer, employe or agent has been defended by the Attorney General and it is established by the
5 judgment ultimately rendered on the claim that the act or omission complained of was not in the performance of
6 duty, the judgment against the officer, employe or agent shall provide for payment to the state of its costs
7 including a reasonable attorney fee.

8 (7) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of liability of
9 any public officer, agent or employe under ORS 30.270, or [obviate the necessity of compliance with ORS
10 30.275 by any claimant, not] to affect the liability of the state itself or of any other public officer, agent or
11 employe on any claim arising out of the same accident or occurrence.

12 Section 3. ORS 30.287 is amended to read:

13 30.287. (1) If any civil action, suit or proceeding is brought against any officer, employe or agent of a local
14 public body other than the state which on its face falls within the provisions of ORS 30.285 (1), or which the
15 officer, employe or agent asserts to be based in fact upon an alleged act or omission in the performance of duty,
16 [he] the officer, employe or agent may file a written request for counsel with the governing body of the public
17 body. The governing body shall thereupon engage counsel to appear and defend the officer, employe or agent
18 unless after investigation it is determined that the claim or demand does not arise out of an alleged act or
19 omission occurring in the performance of duty, or that the act or omission complained of amounted to
20 malfeasance in office or wilful or wanton neglect of duty, in which case the governing body shall reject defense
21 of the claim.

22 (2) Any officer, employe or agent of a local public body against whom a claim within the scope of this
23 section is made shall cooperate fully with the governing body and counsel in the defense of such claim. If the
24 counsel determines and certifies to the governing body that such officer, employe or agent has not so
25 cooperated or has otherwise acted [in] to prejudice defense of the claim, the governing body may at any time
26 reject the defense of the claim.

27 (3) If the governing body rejects defense of a claim under subsection (1) of this section, or if it is
28 established by the judgment ultimately rendered on the claim that the act or omission complained of was not in
29 the performance of duty or amounted to wilful or wanton neglect of duty, no public funds shall be paid in
30 settlement of said claim or in payment of any judgment against such officer, employe or agent. Such action by
31 the governing body shall not prejudice the right of the officer, employe or agent to assert and establish in [an]
32 appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the
33 performance of duty, or that the act or omission complained of did not amount to malfeasance in office or
34 wilful or wanton neglect of duty, in which case [he] the officer, employe or agent shall be indemnified by the
35 public body against liability and [his] reasonable costs of defending the claim.

36 (4) If the officer, employe or agent has been defended by counsel engaged by the governing body and it is
37 established by the judgment ultimately rendered on the claim that the act or omission complained of was not in
38 the performance of duty or amounted to wilful or wanton neglect of duty, the judgment against the officer,
39 employe or agent shall provide for payment to the local public body of its costs including a reasonable attorney
40 fee.

1 (5) Nothing in subsection (1), (2) or (3) of this section shall be deemed to increase the limits of liability of
2 any public officer, agent or employe under ORS 30.270, or *[relieve any claimant of the necessity of compliance*
3 *with ORS 30.275, nor]* to affect the liability of the local public body itself or of any other public officer, agent or
4 employe on any claim arising out of the same accident or occurrence.

5 (6) The provisions of this section may be superseded to the extent that the claim against the public officer,
6 employe or agent may be defended by any insurer, or may be subject under ORS 30.282 to agreement with the
7 state Department of General Services, in which case the provisions of the policy of insurance or other
8 agreement are applicable.

9 Section 4. ORS 278.120 is amended to read:

10 278.120. (1) Upon receipt by the Attorney General of a claim for damages *[as provided in ORS 30.275]*
11 *against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300*, if the
12 claim is covered by insurance, *[he]* the Attorney General shall tender defense of the claim to the insurer, and if
13 such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If
14 the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an
15 investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of
16 ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is
17 or may be liable to the claimant under ORS 30.260 to 30.300, *[he]* the Attorney General shall defend or may
18 negotiate, compromise and settle with the claimant. *[He]* The Attorney General shall pay from the Claims
19 Settlement Revolving Account the amount of any judgment, and, if *[he determines]* determining such action to
20 be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section.

21 (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the
22 Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the
23 Emergency Board of the terms, conditions and reasons therefor.

24 (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be
25 paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards
26 satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund
27 under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the
28 provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and
29 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

30 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability
31 Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be
32 fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the
33 indebtedness of the Liability Fund in not more than 10 years.

