#### SENATE BILL 86

neither advocacy nor opposition on the part of the President ate in conformance with presession filing rules, indicating





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4 copies if no amendments 9 copies if amendments 9 copies if to be printed engrossed 1 copy for committee file 1 copy for committee file	Bugas, Smith	FOR INFORMATION ONLY-NOT PART OF COMMITTEE REPORT						Legislative Counsel SB 86B-5 06/12/81 (31) (44) (3-pages)	See attached amendments:	ns by prior reference.	pass. {X] Do pass with House amendments ( ) and	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:	MI. Speaker: B-Engrossed
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HOUSE COMMITTEE REPORT

Salem, Oregon June 22

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Counsel

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"Director Department 0 Fi General Services. 3

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13 12 11 5 14 20 19 18 17 16 5 read: Senate the Oregon the н. scope Servi њ such "Secti Sta Delete department 0.000 278 0 Bi Laws |H i t ) D tender Ē 120 ORS 0 . B Ļ 0 fi н ч Ц 1981 13 ն .nes ω. 30. Oregon Ч claim(1) н. shall ORS ~ . Ω 260 ч (Enrolled ω ים. מ accepted Upon for 278. Ъ С through ß repealed." tender മ 30.300, 120, damages receipt state Senate ORS 37 defense as and chapt Ъі ο Уq amended [ลร H ficer Bill the the insert: 0 Ħ provided ю. Г claim Department 131 180 the Åq employe Š section and claim բ. Ծ ים. מ ц ц furthe the covered ORS р К с т о Њ 16 agent remaining 30.275] the General Ĥ, . chapter Åq amended insurer within insuranc against 109 çt the and ወ

21 25 24 23 22 26 28 27 not ORS whe may inve department provisi <u>Q</u>. 'n rt ther <u></u>30. sti. cover р е rmi ons .gati 260 þ the . بر 0 N ed able б 0 that g shall үд claim нı ці Э <u>зо</u>. thi ð insurance the Ø 300. n НĢ the բ. Ծ ause section quested Ŋ meritorious tate claimant The an о Ч Atto: о Ч investigation Åq shall Ŀ f ք the rney under the state not and department General tender ORS рe comes officer, ő applicable ω O μ. **₹**. рe may Ŋ 260 rejected, thin conducted н agent conduct н đ the the ω0. Ξf ß . 300, department provi the the the employe ť the ი de n laim μ. ons t e rmine μ. Ø н. 0 F U о к

S œ σ σ 4 ω Ν depa has The the Q amount Senate authori department ction Attorney rtment determined provisions ť о F B L zed |--be any may ίn shall 131) General appropriate section judgment, negotiate, оњ that рау [of subsection Q from shall 20, reasonable thi s and, the the compromise chapter defend 1981 (2) ці. Н amount Special the Act] 0Ĕ settlement 109 all thi s department and о Њ 0r Liability lawsuits Oregon any the settle section cannot settlement Liabili Laws after determines with Revolving e D 198 . ту the the Fund achieved Hsubject (Enrolled department claimant Fund such the ç The

H 5 μ 12 set Ways legislature tled and (2) which Means The μ. department n have Commi ц. Д sessi an ttee aggregate .on, shall о Њ or the the submit cost Legislative Emergency ц. р quarterly excess Board Assembly, reports о Њ listing \$10,000 μ. њ ç the the al Ē the Joint claims

14 21 20 19 18 11 д 5 24 23 22 25 balance 293 С С sati and amount Oregon ທ ຄ Ω advancement under lommi ິ ທີ່ ທີ່ advanced • there 205 sfaction (S on, , tte the Laws remaining μ. ő ወ ΗĘ ល оr Ч are 0£ provisions 293 insufficient 1981 shall through there the 0 Fi the no . 225. the Emergency ц Ц funds Legislative (Enrolled . Մ be the the Prior total no 0f obtained available ORS Liability to cover balance Liability amount сt Сt Board. Senate 293 any Assembly, from . 205 in the under the advancement payable Fund Bill Fund the ď amount Liability under shall 131 section ŗ J 293 Joint and F the .225, ť Ways pe [of the the б legislature р б 21 paid the appr balance Fund, provisions this provided paid and chapter oval Liabilit towards 1981 or Means on thereof 0 Fi Ŀ f Q . Մ 109 Act] claim 0 Fr the Ŕ ці р Fund ORS the may

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ω N indebtedness at such the instalments amount 0£ a S the Liability Fund shall can be be fixed by the Department reasonably expected in not more ç than liquidate the of General **10** years Services

5 S 00 თ տ Þ 5 fund. Liability claims section, successors, against "(5) = arose those the In order Fund are which that department local ð were necessitated repaid public assure participants shall make മെ bodies that specified the the 0 F such assessments advancement in the moneys state ці п subsection program agencies, advanced о Њ moneys when as are necessary о К (4) ð the the their legal of сt о thi s claim the о**н** 

Proposed Amendments SB 86B-5 06/12/81 (31) Page 3

### OREGON STATE SENATE

61st Legislative Assembly

# STAFF MEASURE ANALYSIS

Measure:	38 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.

0 fi defeated for Function and p order that those members of the public requirement, officers, the injury. The law presently agents or or their failure to comply with the purpose of measure as reported out. which is jurisdictional The employes, n proponents requires notify notify the public body within of the bill as introduced wis that any person ß who are being able requirement ic body within 180 days from the introduced wished to eliminate able to recover on the claim, injured would not have a cla requirement by their failure injured ٨q the acts of from the public body a claim ð Ę. this date know 0f н. т

laws. be different two statute of limitations, year statute of limitations The measure would eliminate the 180 notice requirement, from private defendants, and would not be governed by for any in 1 tortious tortious injury. Public bodies that all torts would have a two the general but statute would retain a two-year would of limitations the then

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

### Major issues discussed.

Ę. the 2 <u>ب</u> state The The liability impact fiscal impact о f fund, as the notice requirement 0f passage of the s well as those bodies who are bill on unknowledgeable members of the to public bodies participating self-insurers

public, whose otherwise valid claims are defeated by such ignorance 0 Fi the rule.

### Effect of committee amendments.

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

would be effective The "resurrected" date of January 1, committee limited by passage of the measure. application of the 1982, and amended deletion the bill 0fi б notice, ensure that by invoking an g claims

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 ĝ 5/12

**Explanation Prepared By:** Kristena A. LaMar; Legal Counsel

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

Function and purpose of measure as reported out.

expires.

pe . example. given The measure ß the public retains body before the the present requirement that claim may be enforced, in court, some form of notice for

body, 0 Hi but 4 ω circumstances Ν bodies evidenced by the modifies existing law by allowing The The The measure or to at public body measure measure provides their the communication of the injury and the intent retains notice public body's administrative specifically of all or for ç any part written notice requires general the public body or its representative of the intent to pursue the claim; or by I offices, to the the plaintiff to delivery of the claim at counsel Attorney General to any member ß of notice the body; 0f any Ŀ. carry the burden of actual their to other against time governing notice the public by payment State as the

proof on notice being made.

### Major issues discussed

Fiscal impact on public bodies.

2.

Definitions of actual notice.

ω Need of public bodies for specifications of circumstances 0f claims.

Integration of measure with SB 131, if signed by Governor.

### Effect of committee amendments.

Ч. С 0 fi registered suit, Notice and payment of 2. 1 mail defined in 1 claim, terms 0f rather than by mailing notice by formal notice, actual notice, certified commencement

general N Persons eligible counsel and claims ť receive notice adjusters, rather are expanded to than by reference include public bodies to ORCP

Revenue: Fiscal; No Yes

(Attach additional sheets as necessary)

SENATE COMMITTEE	
	Data May 12, 1981
Mr. President:	
JUSTICE	to whom was
referred Senate Bill 86 A-Engrossed	, having had the same under consideration,
respectfully report it back recommending:	•
(adoption) passage.	
(adoption)	of explanation attached.) (SR 9.05(1))
passage with amendments.	(adoption)
	licts. (SR 9.35)
the measure he printed	therefor. (SR 9.45)
ferred to ation.	
SEE AMENDMENTS ATTACHED	
Other:	
VOTING AYE: BROWN, FADELEY, GARDNER, TERNSTEDT	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 (CHATCHERSDON
Submit: 2 copies if no amdts. 7 copies if andte	n. will lead floor discussion.
	SP*60497-155

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Legislative Counsel SB 86A-2 05/07/81 (45) (44)

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On page 2, delete lines 1 through 3.

After line 5, insert:

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μ 12 14 цц noti 90 other applicab days, . C P 3 3 (2) incapaci because Ч Noti duri D period b D . 0 e ty: 0£ whi 0 Fi 0 Fi the ် ဌာ claim time, the injury shall person not 0 H ad. including Ъ injured ecause given within 0 יבן. מ the н minority, unable period, the đ following not incompetency give exceeding the 0

16 15 05 injury. (a) For wrongful death, within one Ye ä В മ њ ¢, Φ Ř the മ j\_ leged los n

17 ა 10 ñ Ŋ = оr Г (d injury. For all other ი laims ~ within 180 days ω fte В the alle }ged

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23 22 thi s 3 sec (d tion; Ac đ a L notice 0 Hђ Ω laim മ ട provided ці р subse Ω Ę. g б б  $\sim$ 0f

24 Р 25 gns the secti claimant 3 (c) . B Commencement (2) within 0 н this the 0 Ē, section; applicable an acti о К on D 0n b period the of claim time Åq provi оr Г g .ded beha in. Ŀч Hŋ, 0 њ

28 27 the publi (d Ô. Ю ayment poda മ оff rt any a 1 1 time оr any part 0 ĥ the Ω laim Λq В 0 P behalf о Њ

claimant "(4) оŗ Formal representative notice 0 Fi claim 0 F ຸໝ ր. Ծ claimant മ written containing: communication from ք

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σ 5 rise (d)" ő the A description claim, ເຄ far 0 F 8 8 8 the known time, ť place the and claimant; circumstances and giving

Q ω correspondence (c) The name concerning о Њ the claimant the and the be mailing sent address с<del>т</del> which

claim

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ц Ц 10 delivery: 3 (5) Formal notice оf claim shall þe given by mail о К personal

14 ЦЗ agent 0r assistant "(a) thereo Ξ£ the 0 fi ç the claim the Attorney offi н. ũ against . ດ @ о Њ General the the Attorney state 0 F General an officer, о К ç employe ք deputy оř

19 17 21 84 16 μ. public administrative employe с† Ю general counsel છે , Apoq в, Чf agent the о г office, ő claim thereof, an ե. Տ attorney t o against ő any the member designated by ն public local 0£ Apoq the public governing the a t poda its governing principal 0 K poqA an Apoq оf officer, the ດ ດ

26 25 24 23 27 22 21 0 F particular communication place behalf 0 Fi individual to thi an (6) Actual and officer Ŋ о F Sec the circumstances person сt. . B whom പ. മ public employe о Ч notice such intends notice any per Apoq that 0f оr Г giving may ő acquires claim is agent uos. ø assert reasonable be reponsible rise 0f given any the actual ť დ claim а 8 public the communication by person for knowledge provided in claim, against administering body. would where 0 H the ⊳ conclude subsection persor the publi the which claims time Ω that any poqA (5) g 0)

Proposed SB 86A-2 Amendments 05/07/81 (45) Page Ν

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 $\overline{\phantom{a}}$ თ сл ω N any the for one forms investigation, employe о Ћ who, risks scope for those оr Г മറ within claimants of ORS agent an activitie officer, negotiation, the о f 30.260 an insurance to provide scope employe Ъ, о f 30.300, adjustment ORS claim 0r carrier 30.260 оŗ agent information, ці П оr Г 0f furnishing ç insuring the defense 30.300, ω public 0 K of 0 F engages ці ц claims within body or public accepting supervising in poda 8 8 8 an

Ц 50 Ø ω poda proving scope (8) <sup>II</sup> ( 3 0r (7) 0 H) that an officer, ORS цц Except an action arising notice 30.260 ี ย provided 0£ сt О employe 30.300, claim was о<sub>г</sub> i n from the ORS agent given any plaintiff 12.120 о Њ a ຮ act ք and public required by 0r has 12.135, omission the burden of poda but within the this 0£ ຸໝ section. publi Ω

18 17 16 15 ц 4 μ ω alleged 30.260 officer action notwi thstanding statute ť arising loss providing employe 30.300 о К from injury." any or shall ຸໝ any agent limitation other be act 0f commenced provision 0 F മ on public body omission the within 0f commencement ORS of two within chapter ຸມ public years the 12 ОĤ body or after an or other scope action, the an 0£ ORS an

Proposed SB 86A-2

Amend: 05/0

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Principal Sponsor
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Bill No. 88 980 B-Eng.

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LECISLATIVE FISCAL OFFICE Fiscal Impact Assessment

Sec.

	Taken from table.	$\underline{X}$ Tabled by operation of SR 8.20.	Tabled.	. (	This is to inform you that SB 79, 85, 86, 16	From the Committee on	To the Secretary of the Senate:	March 30, 1981 (DATE)	OREGON STATE SENATE STATE CAPITOL SALEM, OREGON
JAN WYERS, CHAIRSERSON		F 8.20.		(MEASURE NUMBER)	167, 178, 186, 471 has been:				NOTICE OF MEASURES TABLED

Bill No.

38

86

B-Eng. and

Heure Amendments

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relative conflictor

Fiscal Impact Assessment

LEGISLATIVE FISCAL OFFICE

has NO fiscal impact.

This office has reviewed the proposed legislation and determined that it

This is to inform you that From the Committee on To the Secretary of the Senate: April 8, 1981 (DATE) SB 86 JUSTICE (MEASURE NUMBER) has been:

NOTICE OF MEASURES TABLED

OREGON STATE SENATE STATE CAPITOL SALEM, OREGON

Tabled.

\_\_\_\_ Tabled by operation of SR 8.20.

X Taken from table.

Sen. Jan Wyers (CHAIRMAN)

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

MEASURE

NUMBER:

SB

86

Original

SUBJECT: STATUS:

removes special two-year ages must be ^-NT HMFT

y by person who claims damages. time period in which action for

dam-

tort

liability

law the

required

writ-Also

from removing two-year

Additional

staff will be required

limitation on filing claims.

to handle increased workload expected

Department

of Justice

COMMENTS:

paid by units of government cipating in the state tort 1

Tort

liability

insurance

premiums

t parti-liability

EFFECT

ON REVENUES:

insurance program Tort liability claims costs

Claims investigations

indeterminate

indeterminate

\$296,400 GF

\$247,000 GF

state tort governments Department

of Justice and local s participating in the liability self-

in the

**EFFECT ON EXPENDITURES:** 

1981-83

1983-85

LEGISLATIVE

FISCAL

ANALYST:

Steve

Forrey

1-20-81

GOVERNMENT

AFFECTED:

General Services Department of

Justice

and/or Department

of

Kathleen Dewoina

1-20-81

BUDGET AND MANAGEMENT ANALYST:

self-insurance

program

indeterminate

indeterminate

ORGANIZATIONAL IMPACT:

none

**EFFECT ON POSITIONS:** 

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

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

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.

SB 86

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가는 다른 가슴을 알았다.

OREGON LEGISLATIVE ASSEMBLY-1981 Regular Session

C. B. Engrossed

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) **Senate Bill 86** 

Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and

[Removes fram]-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.

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 assembla feature over the measure to consideration by the Legislative Assembly. It is an editor's brief statement of the assembla feature over the measure to consider the measure of the body the second statement of the assembla feature over the measure of the body the second statement of the second statemen

17 11 4 16 15 13 12 5 V٣ the notice.] is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate information required by this subsection, or which is presented in any other manner than provided in this section, personally or by certified mail, return receipt requested. A notice of claim which does not contain the claim shall be served upon the Attorney General or local public body's representative for service of process either person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged public body acting within the scope of employment or duties for or on account of any loss or injury within the loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of Be It Enacted by the People of the State of Oregon: prescribing an effective date 30.275. [(1) Every person who claims damages from a public body or from an officer, employe or agent of a Section 1. ORS 30.275 is amended to read:

24 3 3 21 20 19 18 is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within 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 [(2) When the claim is for death, the notice may be presented by the personal representative, surviving 141 

within two years after the date of suchaccident or occurrence. The time for giving such notice does not include uń. Sey €DE.

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NOTE: Matter in hold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION. 1997

B-Eng. SB 86

[2]

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.]

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

section. the penns

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

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(a) For wrongful death, within one year after the alleged loss or injury. n and the reactive the second structure set is structure within structures with get because the structure of st (b) For all other claims, within 180 days after the alleged loss or injury. A because or adapted but we want objects

(3) Notice of claim, required by, this section is satisfied by: a low and all one practices of the section of t a qual da basaria a para g Gamari da mada grayare

(a) Formal notice of claim as provided in subsections (4) and (5) of this section; 19 책상 4 연1

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

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

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

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

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

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

3 21 20 19 18 17 16 15

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

(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 of agent thereof, to the office of the Attorney General

or to a deputy or assistant of the Attorney General.

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

communication is such that a reasonable person would conclude that a particular person intends to assert a claim 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 body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the provided in subsection (5) of this section or any person reponsible for administering claims on behalf of the public in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages against the public body or an officer, employe or agent of the public body. A person responsible for administering (6) Actual notice of claim is any communication by which any individual to whom notice may be given as

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furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

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

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 or other statute providing a limitation on the commencement of an action, an action arising from any act or (8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12

shall be commenced within two years after the alleged loss or injury.

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

11 Senate Bill 131), is repealed or which notice was not presented before the effective date of before the effective date of this Act. (2)this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired

ection 3. ORS 278.120 is amended to read

ORS 30.260 to 30.300. If the Atherney General determines that the state or a state officer, agent or employe is such tender is accepted ORS chapter 180 and the remaining provisions of this section shall pot be applicable. If or may be liable to the claimant under ORS 30.260 to 30.300, [he] the Attorney General shall defend or may investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of the claim is not covered by insurance or if the tender is rejected, the Attorney general shall cause an claim is covered by insurance, [he] the Attorney General shall tender defense of the claim to the fisurer, and if against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section. Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims 278.120. (1) Upon receipt by the Attorney General of a claim for damages [as provided in ORS 30/275]

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Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board of the terms, conditions and reasons therefor. (2) Prior to making any settlement payment exceeding \$10,000, the Attorney General also shall advise the 24 2 2 21 20

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satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board. provisions of ORS 293,205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and under the provisions of Opts 293.205 to 293.225. Prior to any advancement to the Liability Fund under the paid on a claim by the Attorney General, the amount remaining in the Diability Fund shall be paid towards (3) If there is no balance in the Liabitity Fund, or if the balance is insufficient to cover the amount to be

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

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

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a t the indebtedness such instalments amount 0 Fi ດ ເ the shall can Liability р е be reasonably fixed Fund уq the ц. Ц expected not Department more to than liquidat о Њ 10 General years. Ò the Servi .ces

fund claims successors, against section, Liability (5) (5) arose those the H Fund which were order that department local are necessitated б repaid public bodies or assure participants shall a S that specified make LU the the such advancement ц, moneys state the in subsection assessments program when agencies, advanced 0 Fi moneys a S Or (4) б are necessary the the their legal о f б this the claim оř

ઝે բ. Ի the the read: Oregon not provisions Services may ORS department scope whether determines investi such Section covered department ¥278.120. b Ø State ωO 0 ff .260 Laws liable to gation tender the ORS 0f 0f 0 Fi that shall çt Уq 1981 ຸມ claim 30. ω Oregon claim this Ŀ f 30.300. ե. Տ insurance shall tender (1) Upon ORS 260 the the (Enrolled Senate cause requested accepted ORS բ. Ծ section shall for ц С 0r 278.120, state claimant under meritorious The an 30.300, ື່ receipt damages о К state оř Attorney investigation Υд լ. ե defense a s ø the chapter р. Н the officer state Åq amended [as not and Billthe department. the General tender provided of ORS be comes officer, claim 131),is Department 180 the Уq employe ţ applicable. ω 0 ы 19 section and claim to be may conduct within the provisions ը. Տ 260 in ORS rejected, conducted to further agent Ιf covered the 0r 6 the 0fi 16, agent 30.300, remaining 30.275] the н Њ 0r General department amended chapter λq the the claim the employe insurer, within insurance, the determine agai сt О 109 יק. מ nst the բ. Ծ and 0 H) о К

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# 1981 Regular Legislative Session FISCAL ANALYSIS OF PROPOSED LEGISLATION Executive Department and the Legislative

MEASURE Prepared by NUMBER: Including the SB 86 A-Engrossed 14 Fiscal Office

two years after the date of GOVERNMENT UNIT AFFECTED: Department BUDGET AND MANAGEMENT ANALYST: Kathle SUBJECT: STATUS: LEGISLATIVE FISCAL ANALYST: requires that an action for ten notice to Removes from public Amendments public Department of General Services Steve Forrey body tort liability by Senate body by Kathleen Dewoina damages must be commenced within the accidental occurence. person who April 4-15-81 claims damages. law 4-15-81 the required writ Also

Tort the self-insurance program cipating in the state tort paid by units of government EFFECT ON REVENUES: Department EFFECT incurance local All Public Claims investigations **Tort liability claims** state liability insurance premiums governments participating NO program tort liability **EXPENDITURES:** of General Bodies including the eral Services costs selft parti-liability the and ĥ indeterminate indeterminate indeterminate 1981-83 indeterminate indeterminate indeterminate 1983-85

ORGANIZATIONAL IMPACT: none

EFFECT ON POSITIONS:

Department of Justice

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

COMMENTS:

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

The processing. requirement. bill replaces This ω may claim notice result 'n added legal costs request with ω legal action due ď ion filing increased legal

This proposal is not anticipated 5 the Governor's Recommended Budget



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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 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.

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A BILL FOR AN ACT Charles of the second state and repeating ORS 30.275 Cheschilder

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

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 $^{4}$ A0.275. [ $\bigcirc$ (1) Every person who claims damages from a public body or from an offi-cer, 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 estion 1.  $\frac{\partial}{\mathcal{X}}$ 

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or on account of any loss or injury within scope of ORS 30.260 to 30.300 shall caus Cer within the scope of employment or duties damages from a public body or from an offidays after the alleged loss or injury a written notice stating the time, place and circumof the representative or attorney, if any, of the notice stating the time, place and circum-stances thereof, the name of the claimant and eral. other claimant could be served upon the public cordance with ORCP 7 D.(3)(d) an officer, agent shall be presented to the State of Oregon or a state officer, employe or 730.275 presented claim shall be served upon the Attorney Gen-eral or local public body's representative for fied mail, return receipt requested. A notice of claim which does not contain the information claim which does not relief demanded does not invalidate to state the amount of compensation or other presented to the public body within employe or agent of a public body acting this section, is invalid, except that failure vice of process either personally or by certi Claims against any relief demanded. Claims against and the amount of compensation or ይ employe or agent thereof shall be  $[\bigcirc(1)]$  Every person who claims ø person nodn local public body shall cause whom process Attorney body Notice which the E 180 Genthe the for 20 0 8 р о 0 ទួ **5**.

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tice. may be presented by the personal representa-tive, surviving spouse or next of kin, or by the 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. E year after the alleged injury or loss resulting which consular officer such (2) When the claim is for death, the notice the death. However, if deceased was a citizen, within one ę, the foreign the country person for 9

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ment ORS officer, and unless The amendment of ORS the days, [The [such] commencement before respect before ω injury or because ß time during which the person injured is the 260 duties the the ц С employe for the ß accident a claim for damages effective effective date О Ħı 30.300 shall giving such notice action for an 0 R рr agent action on or or occurrence [s1 on date 0 Ħ account minority, 낭 of a be commenced within 30.275 0 fi 0 Hi recover this this public body acting within arising о Њ does after Åq out Act Act incompetency or other any loss damages Section 1 of which the not include the time, the for which notice as required by ORS out unable effective date о<sub>њ</sub> from or injury within of this two years after an accident ç Ç Ø give claim for damages public expired before Act was the notice the incapacity. 0 Fi poda 30.275 ß doos. 90 not not this scope the occurrence the ß not exceeding 90 presented and the time scope Act 0 H date of because permit arose in 1 employ-0 Ħ

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**OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session** 

#### SENATE AMENDMENTS TO By COMMITTEE ON JUSTICE **SENATE BILL 86**

#### April 14

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

Delete lines 4 through 29 and page 2 and insert:

"Section 1. ORS 30.275 is amended to read:

Ξ 10 person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged a public body acting within the scope of employment or duties for or on account of any loss or injury within the General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. "30.275. [(1) Every person who claims damages from a public body or from an officer, employe or agent of

5 U 4 Б the notice.] is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate information required by this subsection, or which is presented in any other manner than provided in this section, personally or by certified mail, return receipt requested. A notice of claim which does not contain the claim shall be served upon the Attorney General or local public body's representative for service of process either

3 21 61 may be brought without any additional notice.] 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 spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within "[(2) When the claim is for death, the notice may be presented by the personal representative, surviving

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23 28 2 26 23 24 23 damages arose. [The time for giving such notice does not include the time, not exceeding 90 days, during which commenced within two years after the date of [such] the accident or occurrence out of which the claim for 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 incapacity.] the person injured is unable to give the notice because of the injury or because of minority, incompetency or other recover damages from a public body or from an officer, employe or agent of a public body acting within the scope "((3) No] An action [shall be maintained unless such notice has been given and unless the action is] to

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

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SP-60497.155	· · ·
Sen. <u>Wyers</u> will lead floor discussion.	Submit: 2 copies if no amdts. 7 copies if amdts.
Sen. Jan Wyerschamman	Referred to Committee on Ways and Means by prior reference.
	NOT CONCURRING (SR 9.15 (2)) Senator(s)
	•
	Excused: Senator Smith
Jernstedt	Voting Nay: Senators Gardner, Jern
y, Kulongoski, Wyers.	Voting Aye: Senators Brown, Fadeley,
ble	April 8, 1981
- Tabled - Rule 8.20	Other: March 30, 1981
	and rereferred to committee for further consideration.
therefor. (SR 9.45)	
licts. (SR 9.35)	(adoption) passage with amendments to the
(adoption)	(adoption) X passage with amendments.
President's Desk for rereferral. (Letter of explanation attached.) (SR 9.05(1))	passage.
that the measure he returned to the	(adoption)
	respectfully report it back recommending:
, having had the same under consideration,	referred <u>SB 86</u>
to whom was	Your Committee onJustice
	Mr. President:
Date <u>April 8, 1981</u>	•
- ·	

April 10, AMENDMENTS prepared by SB Kristena A. 86 1981 LaMar

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the printed bill, <del>on <u>pag</u>e</del> Q\$ line 2, after "amending

"<del>30.275 and</del>", and in the same line delete 1000

the remainders of amenday 3 0 ≫ ∽ the line after 1214

"30:285") and insert "creating new provisions, and prescribing an effective 20. Tollinus / Toronolo & Pondellar 2 20. Jonath File

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"Lection 1.

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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 circum-stances thereof, the name of the claimant and of the representative or attorney, if any, of the claimant and the amount of compensation or XCCUART 1. O MS 3 3 A 75 A Or a "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 presented State of Oregon or a state officer, employe or agent shall be presented to the Attorney Gen-eral. Claims against any local public body or other an officer; employe or agent thereof shall be could be served upon the public body in ac-cordance with ORCP 7 D.(3)(d). Notice of claim shall be served upon the Attorney Gen-eral or local public body's representative for service of process either personally or by certi-fied mail, return receipt requested. A notice of claim which does not contain the information presented in any other manner than provided required in this section, is invalid, except that failure relief demanded. ЪУ ይ ω this person subsection, Claims against the nodn whom process g which ដ

tice.  $m_{2}(2)$  When the claim is for death, the notice may be presented by the personal representa-tive, 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 the person lived, an action for wrongful death may be brought without any additional notice  $\mathcal{I}$ whose death the claim is made has presented a notice that would have been sufficient had

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to state the amount of compensation or other

demanded does not invalidate the no-

Page 2. SB 86 Amendments

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

USECTION 2. To for before before effective date respect commencement presenting that notice prescribed by ORS the the ď effective date of effective date of ք claim for damages of an action of this Act." on or 30.275 by Section 1 of this this this Act for which notice arising out after Act as the semainder of the line and insert; required by ORS effective date of an accident 30.275 expired before Act does not permit was 0 Ħ 30.275 ß not this Act occurrence presented and the the in

after 2.4

-delete-the

Delete lines 6 through 29.

Delete page 2 of the printed billy

On page 3, delete lines 1 through 8.

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

After line 33, insert:

"SECTION 4. This Act takes ettect on January 1982

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**OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session** 

#### SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 86 By COMMITTEE ON JUSTICE

May 14

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

On page 2, delete lines 1 through 3.

After line 5, insert:

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

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

"(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;

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

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

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

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

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

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

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

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28 2 General or to a deputy or assistant of the Attorney General. "(a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney

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

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

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. "(7) In an action arising from any act or omission of a public body or an officer, employe or agent of a

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

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SA to A-Eng. SB 86

Page 2

OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session  ${\cal B}_{
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**A**-Engrossed

Senate Bill 86 May

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

#### 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

Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; 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:

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

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

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<del>damages from a public body or from</del> (3) Not Associate the maintained unless such notice has been given and unless the action is to the second secon officer employe or agent of a public body acting within the scobe IECOVELY 

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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.

0 7 responsible particular communication the 0 M 90 0r this 1055 other notice because applicable given ORS 30.260 subsection the claimant within G  $\Theta$ an days, an officer injury (d) O(2) Notice public body at (3) Notice (b) For all (a) For wrongful Q (c) Commencement (a) Formal (b) Actual notice or injury. officer, section; incapacity: as this section; required by this No Payment during which person period to 30.300 for (2) of this action ր. Մ 0 Fr employe employe administering 0£ 0 H notice 0f other claims, such intends to Of the any time claim shall claim arising all the applicable time, shall be maintained unless notice of claim that death, injury the person of or r Of or agent 0£ section; or any part an agent required section claim claim not ρ from action assert Or reasonable within claims . 90. including within 0£ ດ ເຊ because or ິ ຍ of a public body within any injured үд given period the provided provided on ຸມ of one act g claim this 180 the public the within behalf year person of minority, Р Н the is unable of days claim section omission claim in in against time provided period after body. would after subsection subsections the Υq Уq ים. מ or the to give , not exceeding following ⊳ 0f the public body public 0 incompetency or conclude the satisfied person on a public on alleged the alleged behalf (6) of body is behal in the (4) and scope that рλ: los Apoq ր. 0 0 H 0 0£ ۵

A-Eng. SB 86

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Edamages arcses. 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 commenced within two years after the date of such the accident or occurrence out of which the claim for scope of ORS 30:260 to 30:300 shall be d

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incapacity.] 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 SECTION 2. The amendments to ORS 30.275 by section 1 of this Act do not permit commencement of an

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before the effective date of this Act. this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired Section 3. ORS 278.120 is amended to read:

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3 2 20 17 19 18 16 IJ 14 13 be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section. Settlement Revolving Account the amount of any judgment, and, if [he determines] determining such action to negotiate, compromise and settle with the claimant. [He] The Attorney General shall pay from the Claims or may be liable to the claimant under ORS 30.260 to 30.300, [he] the Attorney General shall defend or may ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If claim is covered by insurance, [he] the Attorney General shall tender defense of the claim to the insurer, and if the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to 30.300, if the 278.120. (1) Upon receipt by the Attorney General of a claim for damages [as provided in ORS 30.275]

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

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32 31 30 29 28 27 26 Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund paid on a claim by the Attorney General, the amount remaining in the Liability Fund shall be paid towards (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be

indebtedness of the Liability Fund in not more than 10 years 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 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability

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

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Or individual to whom notice particular 0 H communication place behalf its public body, administrative office, 0 F employe delivery: rise against the public agent thereof correspondence public body; claimant or an this assistant general (b) If (a) If the (6) Actual (5) Formal (b) A description **Ø**(a) (c) The name t d officer, and circumstances giving 0f or agent thereof, section the  $\geq$ the public body acquires person statement that counsel the claim, so 0r representative 0f 1 S employe or ő concerning or any person claim notice to the claim notice such that intends the of the body an Attorney General ч. 8 attorney designated by the governing body ы. М office far с С о Fi of о ђ or agent may against against t o claimant any member of the governing body of the claim to the public body at claim shall be the claim may be sent the as known ມ B an officer, employe 0 f assert claim reasonable of the Attorney General or be reponsible time, rise a claimant containing: 0f ч. N given as a local the and the mailing for the actual knowledge of the time any communication by which any ő ø to the place state claim against the damages is or will public body. person would for administering claims public given by provided in subsection and circumstances claimant; claim, where the 0 F an officer, 0 F its body or agent mail address the public body principal conclude and 05 an to of be employe Ъ personal officer ω the giving asserted deputy which that മ 5 0 H 8 ົ້

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**OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session** 

### **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 presession 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 public body by person who claims damages]. Takes effect January 1, 1982.

Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and A BILL FOR AN ACT

Be It Enacted by the People of the State of Oregon: prescribing an effective date

Section 1. ORS 30.275 is amended to read:

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

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one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within 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

information required by this subsection, or which is presented in any other manner than provided in this section,

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24 3 2 21 may be brought without any additional notice.] is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death

engener serves as some some of suchaccident or occurrence. within two years after the date of suchaccident or occurrence. A word and the article and the approximate serves and the serves [(3) No action shall be maintained unless such notice has been given and unless the action is commenced The time for giving such notice does not include

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furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.	in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in	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 scene of ODC 30 760 to 30 700 common	against the public body or an officer, employe or agent of the public body. A person responsible for administering	communication is such that a reasonable person would conclude that a particular person intends to assert a claim	body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the	provided in subsection (5) of this section or any person reponsible for administering claims on behalf of the public	(6) Actual notice of claim is any communication by which any individual to whom notice may be given as	designated by the governing body as its general counsel.	principal administrative office, to any member of the governing body of the public body, or to an attorney	(b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its	or to a deputy or assistant of the Attorney General.	(a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney General	sent. (5) Formal notice of claim shall be given by mail or personal delivery:	(c) The name of the claimant and the mailing address to which correspondence concerning the claim may be		(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant;	agent of the public body;	(a) A statement that a claim for damages is or will be asserted against the public body or an officer, employe or	(4) Formal notice of claim is a written communication from a claimant or representative of a claimant containing:	(d) Payment of all or any part of the claim by or on behalf of the public body at any time.	time provided in subsection (2) of this section; or	(c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of	(b) Actual notice of claim as provided in subsection (6) of this section;	(a) Formal notice of claim as provided in subsections (4) and (5) of this section;	(v) roa an onier claim norminal by this social is satisfied by:	(a) For wrongful death, within one year after the alleged loss or injury.	minority, incompetency or other incapacity:	exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of	(2) Notice of claim shall be given within the following applicable period of time, not including the period, not	section.	within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this	(1) No action arising from any act or omission of a public body or an officer, employe or agent of a public body	or because of minority, incompetency or other incapacity.]	the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury	B-Eng. SB 86 [2]

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

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

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

Section 3. ORS 278.120 is amended to read:

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

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

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

37 36 35 34 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. Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability

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

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B-Eng. SB 86

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OREGON LEGISLATIVE ASSEMBLY-1981 Regular Session

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may be brought without any additional notice.]

is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death one year after the alleged injury or loss resulting in such death. However, if the person for whose death the claim spouse or next of kin, or by the consular officer of the foreign country of which the deceased was a citizen, within is invalid, except that failure to state the amount of compensation or other relief demanded does not invalidate information required by this subsection, or which is presented in any other manner than provided in this section,

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

person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of

General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a

Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of

claim shall be served upon the Attorney General or local public body's representative for service of process either

A notice of claim which does not contain the

personally or by certified mail, return receipt requested.

scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged

public body acting within the scope of employment or duties for or on account of any loss or injury within the

30.275. [(1) Every person who claims damages from a public body or from an officer, employe or agent of a

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

Section 1. ORS 30.275 is amended to read:

prescribing an effective date

Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; and

A BILL FOR AN ACT

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.

SUMMARY

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

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)

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

within two years after the date of suchaccident or occurrence. The time for giving such notice does not include

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.

[3] No action shall be maintained unless such notice has been given and unless the action is commenced

NOTE:

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the notice.]

Senate Bill 86

12 23 21 10 37 33 31 24 3 20 19 `**≅** 17 39 38 36 33 34 32 30 13 28 27 26 25 16 Ν  $\checkmark$ section. sent. and time provided in subsection (2) of this section; or 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: within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this communication is such that a reasonable person would conclude that a particular person intends to assert a claim body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the or to a deputy or assistant of the Attorney General. agent of the public body; containing: or because of minority, incompetency or other incapacity.] the time, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities. in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages 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 against the public body or an officer, employe or agent of the public body. A person responsible for administering provided in subsection (5) of this section or any person reponsible for administering claims on behalf of the public designated by the governing body as its general counsel. principal administrative office, to any member of the governing body of the public body, or to an attorney (b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; (b) Actual notice of claim as provided in subsection (6) of this section, (3) Notice of claim required by this section is satisfied by: <u>La required by</u> (a) For wrongful death, within one year after the alleged loss or injury.
(a) For all other claims, within 180 days after the alleged loss or injury. Interacting the set of the and the statement of the set of t (2) Notice of claim shall be given within the following applicable period of time, not including the period, not (1) No action arising from any act or omission of a public body or an officer, employe or agent of a public body (b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its (a) If the claim is against the state or an officer, employe or agent thereof, to the office of the Attorney General (5) Formal notice of claim shall be given by mail or personal delivery. (c) The name of the claimant and the mailing address to which correspondence concerning the claim may be (a) A statement that a claim for damages is or will be asserted against the public body or an officer, employe or (4) Formal notice of claim is a written communication from a claimant or representative of a claimant (d) Payment of all or any part of the claim by or on behalf of the public body at any time. (a) Formal notice of claim as provided in subsections (4) and (5) of this section; (6) Actual notice of claim is any communication by which any individual to whom notice may be given as (c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of YRALLESSE 2014 B.D.W 1995 - 1995 1996 - 1995 and the first 5

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B-Eng. SB 86

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

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shall be commenced within two years after the alleged loss or injury. 9 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 other statute providing a limitation on the commencement of an action, an action arising from any act or (8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12

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

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Section 3. ORS 278.120 is amended to read:

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

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

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

37 36 33  $\frac{\omega}{2}$ indebtedness of the Liability Fund in not more than 10 years fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability

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

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B-Eng. SB 86

[3]

**OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session** 

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

By COMMITTEE ON JUDICIARY June 23

### (No change in Measure Summary)

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

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

Services.".

Delete line 27.

On page 3, after line 7, insert:

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

Delete lines 13 through 37 and insert:

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

under ORS 30.260 to 30.300, the department may negotiate, compromise and settle with the claimant. The subject to the provisions of subsection (2) of this section. of any judgment, and, if the department determines such action to be appropriate, the amount of any settlement 20, chapter 109, Oregon Laws 1981 (Enrolled Senate Bill 131), [of this 1981 Act] or the Liability Fund the amount cannot be achieved. The department shall pay from the Special Liability Revolving Fund authorized in section Attorney General shall defend all lawsuits after the department has determined that a reasonable settlement department determines that the state or a state officer, agent or employe is or may be liable to the claimant to 30.300. The Attorney General may conduct the investigation if requested by the department. to be conducted to determine whether the claim is meritorious and comes within the provisions of ORS 30.260 If the claim is not covered by insurance or if the tender is rejected, the department shall cause an investigation if such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. 30.300, if the claim is covered by insurance, the department shall tender defense of the claim to the insurer, and ORS 30.275] against the State of Oregon or a state officer, employe or agent within the scope of ORS 30.260 to "278.120. (1) Upon receipt by the Department of General Services of a claim for damages [as provided in If the

27 26 23 have an aggregate cost in excess of \$10,000. Legislative Assembly, if the legislature is in session, or the Emergency Board listing all claims settled which '(2) The department shall submit quarterly reports to the Joint Ways and Means Committee of the

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

ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and Means

**L** 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

6 S indebtedness of the Liability Fund in not more than 10 years. fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be

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

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### HA to B-Eng. SB 86

Page 2

**OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session** 

#### 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 presession 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

Relating to public body tort liability; creating new provisions; amending ORS 30.275 and 278.120; 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:

E 10 scope of ORS 30.260 to 30.300 shall cause to be presented to the public body within 180 days after the alleged Claims against the State of Oregon or a state officer, employe or agent shall be presented to the Attorney the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded. public body acting within the scope of employment or duties for or on account of any loss or injury within the person upon whom process could be served upon the public body in accordance with ORCP 7 D.(3)(d). Notice of General. Claims against any local public body or an officer, employe or agent thereof shall be presented to a loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of 30.275. [(1) Every person who claims damages from a public body or from an officer, employe or agent of a

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

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23 3 21 20 19 may be brought without any additional notice.] is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death 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 [(2) When the claim is for death, the notice may be presented by the personal representative, surviving

2 24 damages from a public body or from an officer, employe or agent of a public body acting within the scope of [(3) No] An action [shall be maintained unless such notice has been given and unless the action is] to recover

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.

A-Eng. SB 86

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 incapacity.] the person injured is unable to give the notice because of the injury or because of minority, incompetency or other

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

before the effective date of this Act. Section 3. ORS 278.120 is amended to read:

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

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

be appropriate, the amount of any settlement subject to the provisions of subsection (2) of this section

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

ί ευ 36 35 <u>34</u> 32 indebtedness of the Liability Fund in not more than 10 years 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 (4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability

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

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## 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:

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

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

given to 0f Sec name the Department 1(4). and address, circumstances (a) the The e body itself or any governing member The requirements of registered mail a Ηf claimant may give formal written notice by relating the claimant's the of General claim is against the Services; if it is against of the injury, and intention to make a inst the state, this notice is given to 0 the body or its a local public body, general counsel. the claim. Director ч. ст 21 S

Sec. public body. 6 þ 1(5) person qualified to receive ਉ The claimant ٠ Sec. 1(6). may give actual notice by any communication, written to receive formal notice or to a claims adjuster for registered mail and Rule 7(D) service are abolished the or oral,

injury (c) The claimant may give notice by filing a lawsuit Sec. 1(2)(c). to collect damages for the

or all of the (d) The claimant claim. Sec. is deemed to have given notice l(8). if the public body pays part

The present law. notice is given bill Except for the last method, because of within 180 days of the injury, or within one year in allows an extra grace period of up to 90 days if the The new limits are somewhat more liberal, however. injury or other incapacity. there are time limits for giving notice the claimant was the case Notice 0f is sufficient if wrongful just unable as under ß death. give ч. т

filed before within Under the palintiff's claim will be the bill, two years the plaintiff has the burden 0 Fi the alleged injury. heard. Sec. 1(7). Sec. 1(2). rden of showing that proper notice was given A lawsuit, in any event, must be

enacted Department General," The already. as Committee made one amendment to the of the party to General Services. receive notice of 3 This conforms SB 86 B-engrossed to a claim against the state, bill. Sec. 1(8). Цt changed all references to "Attorney SB 131, which has been 8 "Director 0 the

VOTING: Excused Ауе I. Bugas, Cohen, Smith Courtney, Hendriksen, Lombard, Mason, Rutherford, Springer

BILL CARRIER: Rep. Springer

REVENUE FISCAL

MEASURE SUMMARY

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

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LC 1189 12/11/80 (33) (36)

### A BILL FOR AN ACT

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ω N Relating and 278.120; ő public and Apoq repealing tort liability; ORS 30.275 amending ORS\$30.285(30.287)

Be н т Enacted by the People of the State 0 Fr Oregon:

SECTION 1. ORS 30.275 is repealed.

Section 2 ORS 30.285 ט. שי amended t 0 read

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11 10 v ω 7 act demand, agents, save 0 F 30.285 harmless omission whether whether (1) and elective or occurring groundless The indemnify governing in о К appointive, any the performance otherwise, Apoq 0£ its 0 F officers, any against arising public of duty any out employes hody tort о f shall an alleged claim and defend 0 H

14 ЦЗ 120£ apply in duty (2) The Ω ลรค provi о Њ malfeasance sions 0 F subsection ці р office (1 ) оr 0f wilful thi s 0 section do wanton neglect not

19 27 28 26 N Л 24 23 22 21 20 18 ۲۲ 10 15 duty, the offi any claim the amounted demand does investigation appear with officer, alleged cer, performance state provisions (ω) the ц and act н Б Attorney which ő employe employe officer, defend any not malfeasance 0 K [he] Case omission 0 Fi civil 0f arise 0 K оr the General. subsection the duty, employe the agent agent action, out officer, Attorney in 1 in office Attorney оř 0 Fi may asserts The оŖ the that (1) suit an alleged file agent Attorney General employe or agent performance General 0 F General the 0 H оř с† О ք which on this act wilful written р ө proceeding act finds based б shall section, 0f оŖ оř omission its request that the duty, ці р wanton omission reject shall unless ա. Ծ fact face or brought [he] for which complained thereupon neglect defense nodn falls claim after occurring the counsel the against an within оқ о о Њ state о Њ the ці Ц

LC 1189 12/11/80 (33) Page 2

27 25 28 26 'n rendered on Attorney the (6) performance Ξ£ General the the officer, claim and 0 F н. С duty, that employe ր. Ծ the established the act оr judgment agent оŗ omission Уq has against the been judgment complained the defended officer ultimately о Њ Åq was the not

24 23 3 22 21 20 18 17 16 Ъ 14 4 13 12 Ē 10 ò ഗ œ offi act act оr [his proceedings Attorney the established indemnification to officer employe or judgment shall established subsection amounted оr . ค ค оr Г act Ē (5) be be reasonable omission occurring in the performance оř omission or Ιf paid General against employe wilful agent omission ( 3 ) the Åq by ORS that to wilful in settlement о Њ the Attorney General complained о К costs 0 K the such сt О shall not this aq 9 278.100 judgment assert complained agent wanton claim or a charge or wanton neglect of duty, officer, employe о Њ section defending shall be 0 Fi and prejudice neglect о F, ultimately demand in fact did not 0f against о Р establish said claim or rejects was this 0f indemnified the the duty, not amount оŗ the Liability rendered subsection, defense claim, [an] right agent in in of duty, in payment the to malfeasance arose out <u>in</u> appropriate cost which 0f against on 0 F Such ou performance the 0r the മ public о Њ claim under Fund case or that action by н. officer 0 F such liability claim н 0 F ч. ф [he] an alleged any funds in പ. ഗ that о Њ the the duty the and

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Ν including employe 0 F . و agent reasonable shall attorney provide for payment fe ő the state 0£ μ. đ ΰ costs

1 σ σ d, ω р е liabili compliance agent deemed (7) Nothing or employe under . ty оf ő with ORS the increase ці п state subsection 30.275 the limits ORS itself λq 30.270, (3); any 0r 0 F о Њ claimant, (4) οr any liability [obviate or (5) other public nor] о F of the ť this any public necessity affect officer, secti the . p offi 0f shall agent .cer

10 Section ω • ORS 30.287 . Ծ amended сt О read:

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24 23 22 21 20 18 17 16 5 14 13 12ці Ц ö shal act duty, act for wilful determined the governing based 30.285 than against оr 0 F Ļ. counsel officer, 30.287. the reject [he] in fact о қ omission omission (1), any state which wanton neglect body shall that the οr with the officer, defense employe (1) nodn officer, which complained of occurring the ЧĘ an claim 0f 0 F governing the thereupon engage on its employe any civil alleged the agent employe 0 F officer, ці р оr duty, claim face the оř demand amounted unless act body action, 0r agent performance falls in which о<del>г</del> employe agent may о Њ does after omission о Њ counsel ď within the suit a local public not оr malfeasance public case investigation or agent 0f file arise сt о ці р the proceeding duty, the the appear provisions body. a written request asserts out governing performance о К in 1 0£ Apoq and defend ч т that office The പ ഗ an ť പ. മ alleged of ORS other brought ypoq рe the оŖ 0f

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189 12/11080 (33) Page

ω N Ω claim, coopera laim the ted 0 r governi has рц р otherwise Apoq may acted a t any [in] time d t prejudice reject the defense defense о Њ о Њ the the

81 17 16 5 14 13  $\frac{12}{2}$ 11 10 ഗ ω 7 σ σ ÷ did the not wi 1 оf and reasonable indemnified demand officer, settlement complained judgment subsection (1) duty, .ful not establish performance prejudice (w) ці р оr amount ц ultimately employe ЧĘ fact wanton о Њ 0 F costs λq which case the the was in [an] appropriate said the of this с† О arose 0f governing body 0Ĕ оř neglect malfeasance right not duty, public claim agent. defending rendered out 'n [he] section, О Ħ 0 F 0f оŗ 0f the body against the that duty, the an alleged Such in on D performance the in office officer payment rejects officer, 0 F the the action proceedings claim no ப. ந claim publi act н. t act liability 0£ defense Åq о қ employe В 0£ പ. മ employe any that à or wilful the duty omission established funds omission that judgment the о Њ governing 0 F and ß 0 F 0 F മ shall the act agent amounted agent claim [his] complained wanton occurring 0r claim against Åq be body ð omission shall under paid the negl assert о К đ shall such ці р be 0£ e c t ц ц

N 5 24 23 22 21 20 Ó 0f wilful complained employe judgment counsel μ. . ເສ (4) о<sub>г</sub> costs 0 F engaged ultimately цĘ wanton agent 0Ę the including was Åq officer, neglect shall not the rendered цi provide Q governing 0f the reasonable employe duty, performance on the for Apoq оř the payment claim agent attorney judgment and 0f that н. С has ő duty fee H۰ the been ū against the establi ß local defended act amounted the о Ч shed public omission 0 λq Åq fficer, ť Apoq the

27 26 29 28 pe ne agent ö deemed 0 0 (5) ທ ມ. о К ţ Nothing employe ő о Њ increase compliance ці Д under subsection the ORS with limits 30.270, ORS (1), о Њ 30.275, о К liability (2) [relieve о Н nor] ( 3 ) 0f ő of any any affect this claimant public sect the ;i on о ff officer shall the

LC 1189 12/11/80 (33) Page 4

ω  $\mathbf{N}$  $\vdash$ accident officer liabili ty ~ оŗ agent 0£ occurrenc the or employe local ወ public g any body itse claim arising Ϊf оŗ 0£ out any о f other the same public

Q ω 7 σ ω 4 may are case ő extent agreement be applicable (6) the defended that provisions The the with provisions Åq claim the any о F against state insurer, the о Њ policy thi s Department the оқ section 0f public may insurance р е 0 Fi may officer, General subject ре о Ч superseded Services, other under employe ORS agreement Or сt О 30.282 in which the agent

Section 4 • ORS 278.120 н. 0 amended сt О read:

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26 29 28 27 N 5 24 N 3 22 21 20 18 17 10 15 14 Ч 12  $\frac{1}{1}$ ò Уq ນ 9 0 any the shal Revolving [He] Ω в 30.260 0f determines] defend such <u>General</u> 30.300 ы С damages laimant ò ω insurance this 'n ſ claim j.... settlement 278 D The state g tender 0 caus с<u>т</u> 0 F ffi .120. ุลร section shall μ. under ъ Attorney may Account വ വ 30.300. Ω Ð officer, the ወ ם. מ determining an provided Ŗ meri оr (1) Upon negotiate, tender ORS subject investigation accepted ORS claim employe shall not Ŀ £ tori the н Њ General 30.260 the agent the -ous defense ה. מ in ORS amount receipt 0 ð tender such covered compromise Attorney and be ť 0 F agent the shall chapter 30.275] о Њ 30.300, t 0 applicable. 0f action employe comes ה. מ Åq provisions be any рау the by insurance, within the rejected, General within conducted and against from 180 ő judgment, claim to പ. ഗ [he] Attorney the р е о қ settle and the the о Њ ЧĦ the appropriate, the determines may scope the the the subsection сt о the Claims and, General provi Attorney [he] the wi th р ө Attorney determine claim remaining State insurer о Њ liable ŗ. Ŧ Ø the ORS Settlement ions that ц. С [he 0f о Њ Attorney the General (2) claimant General 3 0 ő not 0 F Oregon മ whether provisions the and .260 amount о́н claim the ORS covered р. state this to shal . њ о К for о f മ

LC 1189 12/11/80 (33) Page 5

the Committee therefor. session, Attorney (2) Prior о Н оĥ the the General to making any Emergency Legislative also shall Board settlement Assembly, advise о Њ the payment terms, the if the Joint conditions legislature exceeding \$10,000, Ways and and Means പ. വ reasons in 1

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20 21 84 17 ö the indebtedness a t instalments, section shall such instalments amount with о ff be a S the shall repaid from the Liability Fund in annual can interest Liability be be fixed reasonably ຊ ຊ provided Fund γq the ni u expected not Department in ORS more ð 293.220. than liquidate 0f General н 0 The years the amount Services 0f

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**OREGON LEGISLATIVE ASSEMBLY--1981 Regular Session** 

#### 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:

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 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 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 the notice.] claim shall be served upon the Attorney General or local public body's representative for service of process either the representative or attorney, if any, of the claimant and the amount of compensation or other relief demanded loss or injury a written notice stating the time, place and circumstances thereof, the name of the claimant and of

[(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 may be brought without any additional notice.] is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death

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

(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.

minority, incompetency or other incapacity: (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

(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;

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

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

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

(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;

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

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

(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.

principal administrative office, to any member of the governing body of the public body, or to an attorney (b) If the claim is against a local public body or an officer, employe or agent thereof, to the public body at its

in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in 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 communication is such that a reasonable person would conclude that a particular person intends to assert a claim 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

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.

shall be commenced within two years after the alleged loss or injury. 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 (8) Except as provided in ORS 12.120 and 12.135, but notwithstanding any other provision of ORS chapter 12

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 before the effective this Act as required by ORS 30.275 and the time for presenting that notice prescribed by ORS 30.275 expired occurrence before the effective date of this Act for which notice was not presented before the effective date of date of this Act.

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

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

**Enrolled Senate Bill 86** 

Page

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 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 subject to the provisions of subsection (2) of this section. under ORS 30.260 to 30.300, the department may negotiate, compromise and settle with the claimant. 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 Attorney General shall defend all lawsuits after the department has determined that a reasonable settlement The

have an aggregate cost in excess of \$10,000. (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

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 paid on a claim, and there are no funds available under section 21, chapter 109, Oregon Laws 1981 (Enrolled (3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount to be

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

(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 claims arose that necessitated the advancement of moneys to the fund. SECTION 4. This Act takes effect on January 1, 1982. bodies or state agencies, or their legal successors, which were participants in the program when the claim or

#### Passed by House June 26, 1981 Repassed by Senate July 2, 1981 Passed by Senate May 18, 1981 President of Senate Secretary of Senate Speaker of House Filed in Office of Secretary of State: Approved: **Received by Governor:** М., . M.,... <u>⊀</u> Secretary of State Governor 1981 1981 1981

**Enrolled Senate Bill 86** 

Page 3

**OREGON LEGISLATIVE ASSEMBLY-1981 Regular Session** 

#### 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 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

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

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

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SECTION 1. ORS 30.275 is repealed.

Section 2. ORS 30.285 is amended to read:

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

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

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

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

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

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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.

be indemnified against liability and [his] reasonable costs of defending the claim, cost of such indemnification malfeasance in office or wilful or wanton neglect of duty, in which case [he] the officer, employe or agent shall

judgment ultimately rendered on the claim that the act or omission complained of was not in the performance of to be a charge against the Liability Fund established by ORS 278.100. (6) If the officer, employe or agent has been defended by the Attorney General and it is established by the

including a reasonable attorney fee duty, the judgment against the officer, employe or agent shall provide for payment to the state of its costs

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

Section 3. ORS 30.287 is amended to read:

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

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

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

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38 37 6 39 36 fee. employe or agent shall provide for payment to the local public body of its costs including a reasonable attorney the performance of duty or amounted to wilful or wanton neglect of duty, the judgment against the officer, established by the judgment ultimately rendered on the claim that the act or omission complained of was not in (4) If the officer, employe or agent has been defended by counsel engaged by the governing body and it is 30 31 32 33 34 35

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

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

Section 4. ORS 278.120 is amended to read:

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

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

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

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

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## SENATE BILL BACK

Title: BILL ◄ NØXMXIOSSH CROSS OUT INAPPLICABLE WORDS V MEMORYAL NUMBER -98

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

PRE-SESSION FILED

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

At the request of:

Oregon State Bar Association

All agencies, organizations and persons that have formally requested the measure are named herein in accordance with ORS 171.127.

CHIEF SPONSOR