

No costs shall be paid for or reimbursed by the state of Washington for the participation of other member states in the Northwest low-level waste compact for meetings of the compact held outside the state of Washington.

*Sec. 3 was vetoed, see message at end of chapter.

Passed the Senate April 23, 1989.

Passed the House April 22, 1989.

Approved by the Governor May 13, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1 and 3, Senate Bill No. 5926 entitled:

"AN ACT Relating to low-level radioactive waste."

Section 1 would send a confusing message regarding State policy on the disposal of low-level radioactive waste. State policy on this issue, which is the same as the policy stated in the federal Low-Level Radioactive Waste Amendments Act of 1985, states that the responsibility for disposal of radioactive waste is a national obligation, to be shared by all states across the nation. I am committed to the time frame established in the federal act, providing that all states must belong to a regional compact by December 31, 1992, which relieves the three states which now have sites from having to accommodate all of the nation's low-level radioactive wastes. I also want to make it clear that Washington State is not dependent on the revenue generated from fees for the disposal of radioactive waste.

Section 3 is inappropriate because Washington is a partner in the Northwest Interstate Compact. While I do not condone unnecessary or extravagant travel, the imposition of travel restrictions on the members would be contrary to establishing mutual cooperation and respect with other states.

With the exception of sections 1 and 3, Senate Bill No. 5926 is approved."

CHAPTER 419

[Second Substitute Senate Bill No. 5658]

STATE RISK MANAGEMENT PROGRAM—REVISED PROVISIONS

AN ACT Relating to risk management and the state liability account; amending RCW 4.92.130, 43.84.092, and 4.92.110; adding new sections to chapter 4.92 RCW; adding a new section to chapter 43.10 RCW; adding a new section to chapter 43.19 RCW; creating new sections; repealing RCW 4.92.140, 4.92.170, and 43.19.19366; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. In recent years the state of Washington has experienced significant increases in public liability claims. It is the intent of the legislature to reduce tort claim costs by restructuring Washington state's risk management program to place more accountability in state agencies, to establish an actuarially sound funding mechanism for paying legitimate claims, when they occur, and to establish an effective safety and loss control program.

NEW SECTION. Sec. 2. A new section is added to chapter 4.92 RCW to read as follows:

As used in this chapter:

- (1) "Department" means the department of general administration.
- (2) "Risk manager" means the person supervising the office of risk management in the department of general administration.

NEW SECTION. Sec. 3. A new section is added to chapter 4.92 RCW to read as follows:

(1) All liability claims arising out of tortious conduct or under 42 U.S.C. Sec. 1981 et seq. that the state of Washington or any of its officers, employees, or volunteers would be liable for shall be filed with the office of risk management, department of general administration, unless specifically delegated to other state agencies under state statute.

(2) A centralized claim tracking system shall be maintained to provide agencies with accurate and timely data on the status of liability claims. Information in this claim file, other than the claim itself, shall be privileged and confidential.

(3) Standardized procedures shall be established for filing, reporting, processing, and adjusting claims, which includes the use of qualified claims management personnel.

(4) All claims will be reviewed by the office of risk management to determine an initial valuation, to delegate to the appropriate office to investigate, negotiate, compromise, and settle the claim, or to retain that responsibility on behalf of and with the assistance of the affected state agency.

(5) All claims that result in a lawsuit will be forwarded to the attorney general's office. Thereafter the attorney general and the office of risk management shall collaborate in the investigation, denial, or settlement of the claim.

(6) Reserves shall be established for recognizing financial liability and monitoring effectiveness. The valuation of specific claims against the state shall be privileged and confidential.

(7) All settlements shall be approved by the responsible agencies, or their designees, prior to settlement.

Sec. 4. Section 7, chapter 159, Laws of 1963 as last amended by section 3, chapter 217, Laws of 1985 and RCW 4.92.130 are each amended to read as follows:

A ~~((tort claims revolving fund))~~ liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of ~~((claims against the state arising out of tortious conduct and against its officers, employees, and volunteers for whom the defense of the claim was authorized under RCW 4.92.070.))~~ liability settlements and judgments against the state under 42 U.S.C. Sec.

1981 et seq. or for the tortious conduct of its officers, employees, and volunteers.

(1) The purpose of the liability account is to: (a) Expediently pay legal liabilities of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.

(2) The liability account shall be used to pay claims for injury and property damages exclusive of legal defense costs and agency-retained expenses otherwise budgeted.

(3) No money shall be paid from the ((tort claims revolving fund)) liability account unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

((1)) (a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

((2)) (b) The claim has been approved for payment ((in accordance with RCW 4.92.140 as herein or hereafter amended)).

(4) Earnings on the account's assets shall be credited to the account, notwithstanding RCW 43.84.090.

(5) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.

(6) Annual premium levels shall be determined by the risk manager, with the consultation and advice of the risk management advisory committee and concurrence from the office of financial management. An actuarial study shall be conducted to assist in determining the appropriate level of funding.

(7) Disbursements from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.

(8) The director of the office of financial management may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.

(9) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the office of risk management. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the office of risk management in order to maintain the account balance at the maximum limits. If, after adjustment of premiums, the account balance remains above the limits specified, the excess amount will be prorated back to the appropriate funds.

NEW SECTION. Sec. 5. A new section is added to chapter 4.92 RCW to read as follows:

(1) A risk management account is hereby created in the treasury to be an appropriated account used exclusively for the payment of costs related to:

(a) The administration of liability, property and vehicle claims, including investigation, claim processing, negotiation and settlement, and other expenses relating to settlements and judgments against the state not otherwise budgeted; and

(b) Purchase of liability and property insurance, including catastrophic insurance, subject to policy conditions and limitations determined by the risk manager.

(2) Earnings on the account's assets shall be credited to the account, notwithstanding RCW 43.84.090.

(3) The risk management account shall be financed through a combination of direct appropriations and assessments to state agencies.

NEW SECTION. Sec. 6. A new section is added to chapter 43.19 RCW to read as follows:

(1) The office of risk management shall establish a coordinated safety and loss control program to reduce liability exposure, safeguard state assets, and reduce costs associated with state liability and property losses.

(2) State agencies shall provide top management support and commitment to safety and loss control, and develop awareness through education, training, and information sharing.

(3) The office of risk management shall develop and maintain centralized loss history information for the purpose of identifying and analyzing risk exposures. Loss history information shall be privileged and confidential and reported only to appropriate agencies.

(4) The office of risk management shall develop methods of statistically monitoring agency and state-wide effectiveness in controlling losses.

(5) The office of risk management will routinely review agency loss control programs as appropriate to suggest improvements, and observe and recognize successful safety policies and procedures.

(6) The office of risk management shall provide direct assistance to smaller state agencies in technical aspects of proper safety and loss control procedures, upon request.

NEW SECTION. Sec. 7. A new section is added to chapter 4.92 RCW to read as follows:

(1) The director of the department of general administration shall establish an ongoing risk management advisory committee. Members of the committee may include but shall not be limited to representatives of state agencies, institutions of higher education, local government, or the private sector.

(2) The director of the department of general administration shall serve as chair. The committee shall meet upon call of the chairperson and shall adopt rules for the conduct of its business.

- (3) The risk management advisory committee will provide guidance in:
- (a) Determining appropriate roles, responsibilities of the office of risk management, and policies regarding state-wide risk management;
 - (b) Establishing premiums or other cost allocation systems;
 - (c) Determining appropriate programs and coverages for self-insurance versus insurance;
 - (d) Developing risk retention pools; and
 - (e) Preparing recommendations for containment of risk exposures.

NEW SECTION. Sec. 8. A new section is added to chapter 4.92 RCW to read as follows:

The director of general administration has the power to adopt rules necessary to carry out the intent of this chapter.

NEW SECTION. Sec. 9. A new section is added to chapter 4.92 RCW to read as follows:

The risk manager may delegate to a state agency the authority to carry out any powers or duties of the risk manager under this chapter related to claims administration and purchase of insurance for the purpose of protecting any classes of officers, employees, or for other persons performing services for the state. Such delegation shall be made only upon a determination by the risk manager that another agency has sufficient resources to carry out the functions delegated.

NEW SECTION. Sec. 10. A new section is added to chapter 4.92 RCW to read as follows:

Nothing in this chapter shall be construed as amending, repealing, or otherwise affecting RCW 28B.20.250 through 28B.20.255.

NEW SECTION. Sec. 11. The department of general administration shall conduct periodic actuarial studies to determine the amount of money needed to adequately fund the liability account.

Sec. 12. Section 51, chapter 57, Laws of 1985 and RCW 43.84.092 are each amended to read as follows:

Except as provided in RCW 43.84.090, all earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

On or before July 20 of each year, the state treasurer shall distribute all earnings credited to the treasury income account as of June 30 to the funds for the fiscal year in which it was earned. Except as otherwise provided by statute, the state treasurer shall credit the various accounts and funds in the state treasury their proportionate share of earnings based upon each fund's average daily balance for the period: PROVIDED, That earnings on the balances of the forest reserve fund, the federal forest revolving fund, the liquor excise tax fund, the treasury income account, the suspense account, the undistributed receipts account, the state payroll revolving account, the agency vendor payment revolving fund, the local leasehold excise

tax account, and the local sales and use tax account shall be credited to the state treasurer's service fund: PROVIDED FURTHER, That earnings on the balances of ~~((the tort claims revolving fund;))~~ the agency payroll revolving fund, the special fund salary and insurance contribution increase revolving fund and special fund semimonthly payroll revolving fund shall be credited to the state general fund.

NEW SECTION. Sec. 13. Moneys in the tort claims revolving fund shall be deposited in the liability account to be used for payment of liabilities incurred before the effective date of this act. The tort claim revolving fund is abolished.

Sec. 14. Section 4, chapter 159, Laws of 1963 as last amended by section 8, chapter 126, Laws of 1986 and RCW 4.92.110 are each amended to read as follows:

No action shall be commenced against the state for damages arising out of tortious conduct until ~~((a))~~ sixty days have elapsed after the claim ~~((has first been))~~ is presented to and filed with the risk management office. The ~~((requirements of this section shall not affect the))~~ applicable period of limitations within which an action must be commenced ~~((; but such period shall begin and shall continue to run as if no claim were required))~~ shall be tolled during the sixty-day period.

NEW SECTION. Sec. 15. A new section is added to chapter 4.92 RCW to read as follows:

The risk manager shall develop procedures for standard indemnification agreements for state agencies to use whenever the agency agrees to indemnify, or be indemnified by, any person or party. The risk manager shall also develop guidelines for the use of indemnification agreements by state agencies. On request of the risk manager, an agency shall forward to the risk management office for review and approval any contract or agreement containing an indemnification agreement.

NEW SECTION. Sec. 16. The risk manager, with the assistance of the office of financial management and the department of labor and industries, shall conduct a study and make recommendations to control and reduce the cost to state agencies for industrial insurance coverage for state employees. The study may include an analysis of the fiscal and administrative impact of allowing state agencies to self-insure and incentives for greater participation by state agencies in the retrospective rating program. The recommendations of the risk manager, together with legislative proposals, shall be submitted to the chairmen of the legislative budget committee, the ways and means committee of the senate, and the appropriations committee of the house of representatives by December 1, 1989.

***NEW SECTION.** Sec. 17. A new section is added to chapter 43.10 RCW to read as follows:

The attorney general shall by February 1 of each year, provide to the legislature, the governor, and the office of risk management a comprehensive summary of all cases involving tort claims against the state of Washington which were concluded and closed in the previous calendar year. The report shall include for each case closed:

- (1) A summary of the factual background of the case;*
- (2) Identification of the attorneys representing the state and the opposing parties;*
- (3) A synopsis of the legal theories asserted and the defenses presented;*
- (4) Whether the case was tried, settled, or dismissed, and in whose favor;*
- (5) The amount of any settlement or verdict reached, and the terms for payment;*
- (6) A summary of all settlement offers made by the parties;*
- (7) The approximate number of attorney hours expended by the state on the case, together with the corresponding dollar amount billed therefore; and*
- (8) Such other matters relating to the case as the attorney general deems relevant or appropriate, especially including any comments or recommendations for changes in statute law or agency practice that might effectively reduce the exposure of the state to such tort claims.*

*Sec. 17 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 18. The following acts or parts of acts are each repealed:

(1) Section 8, chapter 159, Laws of 1963, section 4, chapter 126, Laws of 1975 1st ex. sess., section 1, chapter 144, Laws of 1979 ex. sess., section 8, chapter 188, Laws of 1985, section 4, chapter 217, Laws of 1985 and RCW 4.92.140;

(2) Section 11, chapter 159, Laws of 1963, section 3, chapter 140, Laws of 1969, section 7, chapter 126, Laws of 1975 1st ex. sess., section 3, chapter 75, Laws of 1977, section 2, chapter 228, Laws of 1977 ex. sess., section 6, chapter 151, Laws of 1979, section 10, chapter 126, Laws of 1986 and RCW 4.92.170; and

(3) Section 1, chapter 112, Laws of 1981, section 4, chapter 188, Laws of 1985 and RCW 43.19.19366.

NEW SECTION. Sec. 19. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

Passed the Senate April 11, 1989.

Passed the House April 18, 1989.

Approved by the Governor May 13, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 17, Engrossed Second Substitute Senate Bill No. 5658 entitled:

"AN ACT Relating to risk management and the state liability account."

Engrossed Second Substitute Senate Bill No. 5658 represents a significant advance in the way in which the state handles its risk management program. I am pleased to see this legislation pass the Legislature and I anticipate that it will result in a more modern and efficient risk management program, as well as an improvement in safety for state employees and the general public. One subsection of this bill, however, is not acceptable.

Section 17 would require the Attorney General to submit a yearly report to the Legislature with information on each tort claim against the state. Much of the information that would be required would be useful to have on an annual basis, and I have no objection to most of this section. One of the subsections, however, is problematic, and in order to remove it from the bill I must veto the entire section.

Subsection 6 of section 17 would require the Attorney General to provide information on each and every settlement offer made on a tort claim. This would provide a road map to the state's negotiating strategy to claimant's attorneys and be a serious disadvantage to the state. While those who have legitimate tort claims against the state are entitled to reasonable compensation, the state also has an obligation to settle claims without unnecessary and unjustified costs to the taxpayers of the state.

Tort claimants deserve straightforward and honest action from the state and its representatives. They do not deserve an opportunity to be privy to the state's confidential negotiating strategy relative to litigation. The confidentiality of this information is emphasized elsewhere in the bill, and appropriately so. Subsection 6 of section 17 clearly conflicts with those provisions, and the legislative intent.

The Attorney General has expressed willingness to provide much of the information requested in section 17, so most of the desired data will be available to the Legislature despite the removal of this section.

With the exception of section 17, Engrossed Second Substitute Senate Bill No. 5658 is approved."

CHAPTER 420

[Substitute House Bill No. 1051]

DEVELOPMENTALLY DISABLED—INVOLUNTARY COMMITMENT— COMMISSION OF FELONY CRIME AND DEEMED INCOMPETENT— PROCEDURE

AN ACT Relating to developmentally disabled adults; amending RCW 10.77.010, 10.77-.060, 10.77.090, 10.77.110, 10.77.120, 10.77.140, 10.77.163, 10.77.165, 10.77.200, 10.77.210, 71.05.020, 71.05.300, 71.05.320, and 71.05.325; adding new sections to chapter 10.77 RCW; adding new sections to chapter 71.05 RCW; creating a new section; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 10.77 RCW to read as follows:

With respect to this act, the legislature finds that among those persons who endanger the safety of others by committing felony crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of