

I requested this bill as a part of my effort to restructure our public education system and improve student performance. Most of the bill will improve the ability of the office of the Superintendent of Public Instruction and local school districts to respond to the diverse needs of students at risk of dropping out of high school.

Under the learning assistance program, as student's test scores improve, school districts receive less funds. Section 4 of the bill attempts to eliminate this disincentive. Unfortunately, a technical drafting error creates both confusion and potentially higher program costs.

Section 6 provides a broad prohibition on the use of tobacco products on public school property. I strongly support the goal of reducing the number of children who become addicted to cigarettes and other tobacco products which cause health problems. Although there have been some concerns raised about the ban, the provision does have an effective date of September 1, 1991. The delay will allow local districts to plan for implementation and allow the legislature the opportunity to address any technical concerns, such as whether it applies to property leased to private parties, before the effective date. Hence, I have decided not to remove this section.

Section 15 requires the Superintendent of Public Instruction to establish an awards program related to outcomes-based education programs. Although I support the concept of establishing an awards program for outcomes-based education programs, this section is overly specific and directive. I have retained the appropriation in section 18 to allow the Superintendent of Public Instruction to design an awards program for the recognition of schools in school districts that have shown significant and continuous improvement in student basic skills performance as well as other desired outcomes identified by the school district and community.

Section 16 requires the Superintendent of Public Instruction to develop a model curriculum for an outcomes-based health and physical education learning assistance education program. No funds are provided for this activity in the bill or in the House or Senate draft budgets.

With the exception of sections 4, 15, and 16, Engrossed Substitute House Bill No. 1444 is approved.\*

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## CHAPTER 234

[Substitute House Bill No. 1254]

### IMMUNITY FROM CIVIL LIABILITY—REPORTS OF POSSIBLE WRONGDOING TO GOVERNMENT AGENCIES

AN ACT Relating to immunity from civil liability; and adding new sections to chapter 4.24 RCW.

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

**NEW SECTION.** Sec. 1. Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of sections 1 through 4 of this act is to protect individuals who make good-faith reports to appropriate governmental bodies.

**NEW SECTION.** Sec. 2. A person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be

immune from civil liability on claims based upon the communication to the agency. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

***\*NEW SECTION. Sec. 3. If an agency fails to reasonably respond to a person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency, the person shall be immune from civil liability on claims arising from the communication of such complaint or information which the person genuinely and reasonably believed to be true. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.***

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

***NEW SECTION. Sec. 4.*** In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under section 2 of this act may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under this act, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in section 2 of this act shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in section 2 of this act, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

***NEW SECTION. Sec. 5.*** Sections 1 through 4 of this act are each added to chapter 4.24 RCW.

Passed the House April 22, 1989.

Passed the Senate April 22, 1989.

Approved by the Governor May 5, 1989, with the exception of section 3, which is vetoed.

Filed in Office of Secretary of State May 5, 1989.

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

"I am returning herewith, without my approval as to section 3, Substitute House Bill No. 1254, entitled:

"AN ACT Relating to immunity from civil liability."

This bill was introduced as a Governor and Attorney General request bill to address concerns which arose out of a specific factual situation. A citizen reported the violation of a tax law to a state agency, the agency took enforcement action, and the party who was alleged to have violated the law sued the citizen for slander and libel even though the information reported was factual. Truth is a defense to any slander or libel lawsuit; however, the request bill allows citizens to be represented and protected against the financial cost of defending against frivolous suits. Sections 1, 2 and

4 address this situation and provide appropriate protection so citizens can feel secure in reporting possible violations of the law to regulatory agencies. The agency then can verify the facts and take appropriate action.

Section 3 was added to Substitute House Bill No. 1254 late in the session and was not subject to thorough legislative discussion and standing committee review. It provides that if an agency fails to respond to a complaint regarding a matter of concern to the agency, the person filing the complaint would be immune from civil liability on claims arising from the communication of the complaint.

I understand that the intent of this section is to ensure that good faith citizen complaints are acted upon by governmental agencies by providing immunity from suit to people who may choose to go public with their concerns. That is an admirable purpose which I support. However, I am concerned that the language used in this section could be interpreted to mean that immunity would be conferred even when statements are made that go beyond the original communication to the agency, such as inferences made about the character of an individual. These claims may arise from the communication and therefore be subject to the immunity provisions. That broadened immunity from civil action is more than what is needed in these instances.

In addition, under section 3, if an agency failed to reasonably respond to a complaint, the complainant would be granted immunity to communicate to other persons information about a private individual that was actually false and damaging to the individual's reputation, as long as the complainant claimed he reasonably believed the information was true. Unfortunately, proving or in this case disproving, the complainant's state of mind is not easy. The injured individual would be precluded from taking action against the person who disseminated the false information.

Also, section 3 fails to indicate what is meant by "if an agency failed to reasonably respond to a complaint". Citizens often expect immediate responses to their complaints regardless of the complexity of the issue or the capacity of the agency to respond. The Legislature should discuss whether this kind of immunity to make false charges is good public policy or if additional safeguards or standards should be included before this provision becomes law.

With the exception of section 3, Substitute House Bill No. 1254 is approved."

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## CHAPTER 235

[House Bill No. 1189]

### KOREAN CONFLICT MEMORIAL

AN ACT Relating to a veterans' memorial; adding new sections to chapter 40.14 RCW; and making an appropriation.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 40.14 RCW to read as follows:

The director of the department of veterans affairs shall coordinate the design, construction, and placement of a memorial within the state capitol grounds honoring Washington state residents who died or are "missing-in-action" in the Korean conflict.

**NEW SECTION.** Sec. 2. A new section is added to chapter 40.14 RCW to read as follows:

The director of the department of veterans affairs or the director's designee shall chair an advisory committee composed of seven members to include the director of the department of veterans affairs or the director's