

# Senate Bill 855

Sponsored by Senator KNOPP

## 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**.

Clarifies that governing body of public body is required to indemnify school district board members for tort claims arising out of performance of duty.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the Oregon Tort Claims Act; amending ORS 30.285; and declaring an emergency.

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

4 **SECTION 1.** ORS 30.285 is amended to read:

5 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any  
6 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-  
7 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the  
8 performance of duty.

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

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

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

26 (5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this  
27 subsection, no public funds shall be paid in settlement of said claim or in payment of any judgment  
28 against such officer, employee or agent. Such action by the Attorney General shall not prejudice the  
29 right of the officer, employee or agent to assert and establish an appropriate proceedings that the  
30 claim or demand in fact arose out of an alleged act or omission occurring in the performance of  
31 duty, or that the act or omission complained of did not amount to malfeasance in office or willful

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against  
2 liability and reasonable costs of defending the claim, cost of such indemnification to be a charge  
3 against the Insurance Fund established by ORS 278.425.

4 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of  
5 liability of any public officer, agent or employee under ORS 30.260 to 30.300, or obviate the necessity  
6 of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of  
7 any other public officer, agent or employee on any claim arising out of the same accident or oc-  
8 currence.

9 (7) As used in this section, "state officer, employee or agent" includes district attorneys and  
10 deputy district attorneys, special prosecutors and law clerks of the office of district attorney who  
11 act in a prosecutorial capacity, but does not include any other employee of the office of district at-  
12 torney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the  
13 county.

14 (8) **As used in this section, "state officer, employee or agent" includes school district**  
15 **board members.**

16 **SECTION 2. This 2015 Act being necessary for the immediate preservation of the public**  
17 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
18 **on its passage.**