

SENATE AMENDMENTS TO SENATE BILL 198

By COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

April 26

1 In line 2 of the printed bill, after the semicolon delete the rest of the line and insert “amending
2 ORS 30.285.”.

3 Delete lines 4 through 10 and insert:

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
6 any of its officers, employees and agents, whether elective or appointive, against any tort claim or
7 demand, 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
32 or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against
33 liability and reasonable costs of defending the claim, cost of such indemnification to be a charge
34 against the Insurance Fund established by ORS 278.425.

35 “(6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits

1 of liability of any public officer, agent or employee under ORS 30.260 to 30.300, or obviate the ne-
2 cessity of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself
3 or of any other public officer, agent or employee on any claim arising out of the same accident or
4 occurrence.

5 “(7) As used in this section, ‘state officer, employee or agent’ includes:

6 “(a) District attorneys and deputy district attorneys, special prosecutors and law clerks of the
7 office of district attorney who act in a prosecutorial capacity, but does not include any other em-
8 ployee of the office of district attorney or any employee of the justice or circuit courts whose salary
9 is paid wholly or in part by the county.

10 “(b) **Persons who contract with a public body to provide services pursuant to ORS 161.365**
11 **to 161.370 for the purposes of community restoration or to restore fitness to proceed.”.**

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