

SB 198-2
(LC 1022)
4/12/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 198**

1 In line 2 of the printed bill, after the semicolon delete the rest of the line
2 and insert “amending 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
6 harmless and indemnify any of its officers, employees and agents, whether
7 elective or appointive, against any tort claim or demand, whether groundless
8 or otherwise, arising out of an alleged act or omission occurring in the per-
9 formance of duty.

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

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

1 act or omission complained of amounted to malfeasance in office or willful
2 or wanton neglect of duty, in which case the Attorney General shall reject
3 defense of the claim.

4 “(4) Any officer, employee or agent of the state against whom a claim
5 within the scope of this section is made shall cooperate fully with the At-
6 torney General and the department in the defense of such claim. If the At-
7 torney General after consulting with the department determines that such
8 officer, employee or agent has not so cooperated or has otherwise acted to
9 prejudice defense of the claim, the Attorney General may at any time reject
10 the defense of the claim.

11 “(5) If the Attorney General rejects defense of a claim under subsection
12 (3) of this section or this subsection, no public funds shall be paid in settle-
13 ment of said claim or in payment of any judgment against such officer, em-
14 ployee or agent. Such action by the Attorney General shall not prejudice the
15 right of the officer, employee or agent to assert and establish an appropriate
16 proceedings that the claim or demand in fact arose out of an alleged act or
17 omission occurring in the performance of duty, or that the act or omission
18 complained of did not amount to malfeasance in office or willful or wanton
19 neglect of duty, in which case the officer, employee or agent shall be
20 indemnified against liability and reasonable costs of defending the claim,
21 cost of such indemnification to be a charge against the Insurance Fund es-
22 tablished by ORS 278.425.

23 “(6) Nothing in subsection (3), (4) or (5) of this section shall be deemed
24 to increase the limits of liability of any public officer, agent or employee
25 under ORS 30.260 to 30.300, or obviate the necessity of compliance with ORS
26 30.275 by any claimant, nor to affect the liability of the state itself or of any
27 other public officer, agent or employee on any claim arising out of the same
28 accident or occurrence.

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

30 “(a) District attorneys and deputy district attorneys, special prosecutors

1 and law clerks of the office of district attorney who act in a prosecutorial
2 capacity, but does not include any other employee of the office of district
3 attorney or any employee of the justice or circuit courts whose salary is paid
4 wholly or in part by the county.

5 **“(b) Persons who contract with a public body to provide services**
6 **pursuant to ORS 161.365 to 161.370 for the purposes of community res-**
7 **toration or to restore fitness to proceed.”.**

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