

IN THE SENATE

SENATE BILL NO. 1132

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE IDAHO TORT CLAIMS ACT; AMENDING SECTION 6-903, IDAHO CODE,  
2 TO PROVIDE THAT A CERTAIN BOARD AND ITS MEMBER DISTRICTS SHALL BE CON-  
3 sidered a single governmental unit and certain claims may be brought and  
4 pursued only against the operating unit and to make technical correc-  
5 tions; AND AMENDING SECTION 6-926, IDAHO CODE, TO PROVIDE FOR THE COM-  
6 BINED AGGREGATE LIMIT OF LIABILITY FOR A CERTAIN OPERATING AGENCY, ITS  
7 MEMBER IRRIGATION DISTRICTS AND THEIR RESPECTIVE EMPLOYEES AND TO MAKE  
8 TECHNICAL CORRECTIONS.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 6-903, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 6-903. LIABILITY OF GOVERNMENTAL ENTITIES -- DEFENSE OF EMPLOY-  
14 EES. (a~~1~~) Except as otherwise provided in this act, every governmental  
15 entity is subject to liability for money damages arising out of its negligent  
16 or otherwise wrongful acts or omissions and those of its employees acting  
17 within the course and scope of their employment or duties, whether arising  
18 out of a governmental or proprietary function, where the governmental entity  
19 if a private person or entity would be liable for money damages under the laws  
20 of the state of Idaho, provided that the governmental entity is subject to  
21 liability only for the pro rata share of the total damages awarded in favor  
22 of a claimant which is attributable to the negligent or otherwise wrongful  
23 acts or omissions of the governmental entity or its employees. When the  
24 claim for damages arises from construction, operation or maintenance of an  
25 impoundment, canal, lateral, drain or associated facilities that are under  
26 the supervision or control of the operating agency of irrigation districts  
27 whose board consists of directors of its member districts, then such board  
28 and its member districts shall be considered a single governmental unit and  
29 the claim may be brought and pursued only against the operating unit.

30 (b~~2~~) (i) A governmental entity shall provide a defense to its employee,  
31 including a defense and indemnification against any claims brought against  
32 the employee in the employee's individual capacity when the claims are re-  
33 lated to the course and scope of employment, and be responsible for the pay-  
34 ment of any judgment on any claim or civil lawsuit against an employee for  
35 money damages arising out of any act or omission within the course and scope  
36 of his employment; provided that the governmental entity and its employee  
37 shall be subject to liability only for the pro rata share of the total damages  
38 awarded in favor of a claimant which is attributable to the act or omission  
39 of the employee; (ii) provided further, that to the extent there is valid  
40 and collectible, applicable insurance or any other right to defense or in-  
41 demnification legally available to and for the protection of an employee,  
42 while operating or using an automobile, aircraft or other vehicle not owned

1 or leased by the governmental entity and while acting within the course and  
2 scope of his/her employment or duties, the governmental entity's duty here-  
3 under to indemnify the employee and/or defend any such claim or lawsuit aris-  
4 ing out of the operation or use of such personal automobile, aircraft or ve-  
5 hicle, shall be secondary to the obligation of the insurer or indemnitor of  
6 such automobile, aircraft or vehicle, whose obligation shall be primary; and  
7 (iii) provided further, this ~~paragraph~~ subsection shall not be construed to  
8 alter or relieve any such indemnitor or insurer of any legal obligation to  
9 such employee or to any governmental entity vicariously liable on account  
10 of or legally responsible for damages due to the allegedly wrongful error,  
11 omissions, conduct, act or deed of such employee.

12 (e3) The defense of its employee by the governmental entity shall be  
13 undertaken whether the claim and civil lawsuit is brought in Idaho district  
14 court under Idaho law or is brought in a United States court under federal  
15 law. The governmental entity may refuse a defense or disavow and refuse to  
16 pay any judgment for its employee if it is determined that the act or omission  
17 of the employee was not within the course and scope of his employment or in-  
18 cluded malice or criminal intent.

19 (d4) A governmental entity shall not be entitled to contribution or  
20 indemnification, or reimbursement for legal fees and expenses from its em-  
21 ployee unless a court shall find that the act or omission of the employee was  
22 outside the course and scope of his employment or included malice or crim-  
23 inal intent. Any action by a governmental entity against its employee and  
24 any action by an employee against the governmental entity for contribution,  
25 indemnification, or necessary legal fees and expenses shall be tried to the  
26 court in the same civil lawsuit brought on the claim against the governmental  
27 entity or its employee.

28 (e5) For the purposes of this act and not otherwise, it shall be a rebut-  
29 table presumption that any act or omission of an employee within the time and  
30 at the place of his employment is within the course and scope of his employ-  
31 ment and without malice or criminal intent.

32 (f6) Nothing in this act shall enlarge or otherwise adversely affect  
33 the liability of an employee or a governmental entity. Any immunity or other  
34 bar to a civil lawsuit under Idaho or federal law shall remain in effect. The  
35 fact that a governmental entity may relieve an employee from all necessary  
36 legal fees and expenses and any judgment arising from the civil lawsuit shall  
37 not under any circumstances be communicated to the trier of fact in the civil  
38 lawsuit.

39 (g7) When a claim asserted against an employee in the employee's indi-  
40 vidual capacity is dismissed by the court, the dismissed party shall have the  
41 right to a hearing pursuant to the provisions of section 12-123, Idaho Code.

42 SECTION 2. That Section 6-926, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 6-926. JUDGMENT OR CLAIMS IN EXCESS OF COMPREHENSIVE LIABILITY PLAN --  
45 REDUCTION BY COURT -- LIMITS OF LIABILITY. (1) The combined, aggregate lia-  
46 bility of a governmental entity and its employees for damages, costs and at-  
47 torney's fees under this chapter, on account of bodily or personal injury,  
48 death, or property damage, or other loss as the result of any one (1) occur-  
49 rence or accident regardless of the number of persons injured or the number

1 of claimants, shall not exceed and is limited to five hundred thousand dol-  
2 lars (\$500,000), unless the governmental entity has purchased applicable,  
3 valid, collectible liability insurance coverage in excess of said limit, in  
4 which event the controlling limit shall be the remaining available proceeds  
5 of such insurance. For claims arising from construction, operation or main-  
6 tenance of impoundments, canals, laterals, drains or associated facilities  
7 that are under the supervision or control of the operating agency of irri-  
8 gation districts whose board consists of directors of its member districts,  
9 the combined aggregate limit of liability for the operating agency, its mem-  
10 ber irrigation districts and their respective employees shall be the com-  
11 combined aggregate limit of a single governmental entity under this section. If  
12 any judgment or judgments, including costs and attorney's fees that may be  
13 awarded, are returned or entered, and in the aggregate total more than five  
14 hundred thousand dollars (\$500,000), or the limits provided by said valid,  
15 collectible liability insurance, if any, whether in one (1) or more cases,  
16 the court shall reduce the amount of the award or awards, verdict or ver-  
17 dicts, or judgment or judgments in any case or cases within its jurisdiction  
18 so as to reduce said aggregate loss to said applicable statutory limit or to  
19 the limit or limits provided by said valid, collectible insurance, if any,  
20 whichever ~~was~~ is greater.

21 (2) Limits of liability above specified in this section shall not be in-  
22 creased or altered by the fact that a decedent, on account of whose death a  
23 wrongful death claim is asserted hereunder, left surviving him or her more  
24 than one (1) person entitled to make claim therefor, nor shall the aggregate  
25 recovery exceed the single limit provided for injury or death to any one (1)  
26 person in those cases in which there is both an injury claim and a death claim  
27 arising out of the injury to one (1) person, the intent of this section being  
28 to limit such liabilities and recoveries in the aggregate to one (1) limit  
29 only.

30 (3) The entire exposure of the entity and its employee or employees  
31 hereunder shall not be enlarged by the number of liable employees or the  
32 theory of concurrent or consecutive torts or tort feasons or of a sequence of  
33 accidents or incidents if the injury or injuries or their consequences stem  
34 from one (1) occurrence or accident.

35 (4) In no case shall any court enter judgment, or allow any judgment to  
36 stand, which results in the limit of liability ~~herein~~ provided in this sec-  
37 tion to be exceeded in any manner or respect. If any court has jurisdic-  
38 tion of two (2) or more such claims in litigation in which the adjudication  
39 is simultaneous and, in the aggregate, exceeds the limits ~~above~~ provided in  
40 this section, the reduction shall be pro rata in a proportion consistent with  
41 the relative amounts of loss of the claimants before the court; otherwise,  
42 the reduction shall be determined and made in view of limits remaining after  
43 the prior settlement of any other such claims or the prior satisfaction of  
44 any other such judgments, and no consideration shall be given to other such  
45 outstanding claims, if any, which have not been settled or satisfied prior  
46 thereto.

47 (5) The court shall reduce any judgment in excess of the limits provided  
48 by this act in any matter within its jurisdiction, whether by reason of the  
49 adjudication in said proceedings alone or of the total or aggregate of all

1 such awards, judgments, settlements, voluntary payments or other such loss  
2 relevant to the limits ~~above~~ provided in this section.