

House Research Act Summary

CHAPTER: 288 (as amended by Chapter 370) **SESSION:** 2008 Regular Session

TOPIC: I-35W Bridge Survivor Compensation

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Overview

Establishes a process and appropriates money for providing compensation to survivors of the I-35W bridge collapse. Appropriates \$24 million to make payments under settlement agreements and appropriates an additional \$12.64 million to make supplemental payments. Establishes a three-person special master panel to consider claims and enter into settlement agreements. Makes an additional appropriation of \$610,000 for a grant to Waite House.

Section

- 1** **Tort liability limits.** Provides that the increase in the per claimant state tort liability limit previously scheduled to apply to claims arising on or after January 1, 2008, instead applies to any claims arising on or after August 1, 2007. This means that the limits for claims relating to the I-35W bridge collapse will be \$400,000 (instead of \$300,000) per claimant.

The \$400,000 limit would also apply to any other tort claim filed against the state for an incident occurring on or after August 1, 2007. The \$1 million aggregate limit on the state's liability for claims arising out of any one occurrence, including for civil claims related to the bridge collapse, are unaffected.
- 2** **Purpose.** States findings and purpose relating to the I-35W bridge collapse and the establishment of a compensation process. Provides that these findings are not an admission of liability of the state, a municipality, or their employees.
- 3** **Definitions.** Defines terms used in this act. "Damages" are defined as those compensable under state tort and wrongful death law. "Survivor" is defined to refer to people on the

bridge at the time of collapse or their surviving spouse or next of kin.

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Consideration and payment of claims.

Subd. 1. Special master panel. Requires the chief justice of the Supreme Court to establish a three-member special master panel to consider claims, make offers, and enter into agreements on behalf of the state.

Subd. 2. Staff. Provides for staff or consultants to assist the panel.

Subd. 3. Records. Provides that the panel's records are not public, except for the name of the survivor and the terms of any written settlement agreement.

Subd. 4. Procedure. Authorizes the panel to adopt procedures, rules, and forms. Requires the panel to allow each survivor to appear in person before the panel or one of its members.

Subd. 5. Payment of panel expenses. Requires the state court administrator to forward documentation of panel expenses to the commissioner of finance for payment.

Subd. 6. Immunity. Provides that members of the panel and its employees and consultants are absolutely immune from civil liability in performance of panel duties.

Subd. 7. General duties. Requires the panel to consider claims, make offers of settlement, and enter into settlement agreements. Provides that the panel must not consider negligence or any other theory of liability. The panel must assume that no future additional appropriation will be made available for settling claims.

Subd. 8. Effect and finality of offers and settlement agreements. Provides that an offer of settlement is considered an offer to settle a legal claim. Provides that a panel determination is final and not subject to judicial review. Provides that the amount of damages incurred by a survivor calculated by the special master panel may not be used in a subsequent court proceeding to determine rights, duties, or responsibilities of the state or any other party.

Subd. 9. Deadlines. Provides that to receive payments, survivors must file a claim with the panel by October 15, 2008. Requires the panel to make an offer of settlement by February 28, 2009. Requires a survivor to accept or reject an offer of settlement within 45 days after receiving the offer and specifies that failure to accept within 45 days is a rejection. Provides that a survivor who is eligible to receive a supplemental payment under subdivision 12 may choose to wait until the supplemental payment is calculated before accepting or rejecting an offer of settlement, provided that the offer may not be accepted later than 45 days after receiving notice of the proposed supplemental payment.

Subd. 10. Calculation of amount. Requires the panel to determine total damages incurred by a survivor. Provides that an offer of settlement must be based on total damages, less:

(1) payments made up to the date of the settlement offer for collateral sources;

(2) payments made from the emergency relief fund; and

(3) payments made or required to be made by a third-party tortfeasor as of the time the offer is made or a final judgment in favor of the survivor.

Subd. 11. Limit on amount. Limits the amount of an offer of settlement to \$400,000, except that this limit does not apply to supplemental payments under subdivision 12. Requires the offer of settlement to include a notice to the survivor of damages not included in the offer because of the \$400,000 limit and the amount of the remainder for which a supplemental payment may be awarded. Provides that the \$1 million per occurrence tort claim limit does not apply to payments made to survivors under this section. States that payments under this section are limited by the appropriation for this purpose.

Subd. 12. Supplemental payments. Provides that a survivor is eligible for a supplemental payment if the offer of settlement calculation under subdivision 10 exceeds \$400,000. Requires that the supplemental payment be based solely on that portion of uncompensated medical expenses, loss of income, future earning capacity, or other financial support for which compensation was not received under the offer of settlement. Provides that a supplemental payment may be made only to a survivor who has accepted an offer of settlement and signed the required release.

Provides that a supplemental payment made be made only for the following purposes, in the following order of priority:

(1) to pay uncompensated medical expenses in excess of those paid from the first 400,000; and

(2) to pay for loss of income, future earning capacity, or other financial support not included in the first \$400,000.

Specifies that no payments made be made under clause (2) unless all survivors have been fully paid under clause (1).

Provides that if the available appropriation is insufficient to make full supplemental payments to all survivors, the panel may prorate awards or take other steps necessary to make equitable distributions.

Subd. 13. Release. Requires a survivor who accepts an offer of settlement to sign a release and specifies topics to be covered by the release.

Subd. 14. Payment. Requires the panel to forward documentation of settlements to the commissioner of finance and (except as provided in section 5, subdivision 4), requires the commissioner to pay the agreed amount within 45 days.

Subd. 15. Election to proceed in district court. Provides that a survivor may elect not to file a claim or not to accept an offer and instead to make a claim in district

court. Provides that if this occurs, the state cannot use data provided by the survivor to the panel in a subsequent legal proceeding.

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Effect of process; relationship to other law.

Subd. 1. No state liability or duty. Provides that the process in this act is not an admission of liability of the state or a municipality, does not establish a duty to compensate survivors, and is not admissible in a proceeding to establish liability or a legal duty.

Subd. 2. Payments as additional compensation. Provides that payments under this act are intended to supplement payments required to be made by a third party.

Subd. 3. Payments for other sources. Provides that a person required to make payments, including future payments, to a survivor may not eliminate or reduce those payments as a result of compensation paid to a survivor under this act or as a result of the survivor's release of a claim against the state. Provides that the obligation of a person other than the state to make payments is primary as compared to any payment under this act. *[Note: Laws 2008, chapter 370, section 11, amended this section to provide that a person who is not a third-party tortfeasor may eliminate or reduce payments to the extent those payments represent damages for future losses for which the survivor received compensation under chapter 288 or from the emergency relief fund. A third-party tortfeasor who is required to make payments, including future payments, may not eliminate or reduce those payments as a result of compensation paid under chapter 288 or as a result of a survivor's release of claims against the state or a municipality. The changes made in chapter 370, section 11, prevail over earlier changes in 2008 H.F. 3955, section 2.]* (Chapter 338, section 2)

Subd. 4. No third-party subrogation or recovery. Provides that a person who has paid benefits or compensation to a survivor does not have a subrogation right to recover those benefits by making a claim or recovering from payments made under this act. Provides that a person who believes the state cannot constitutionally prohibit assertion of a subrogation claim has 40 days after the settlement agreement is entered into to notify the state and the survivor of intent to assert that interest. During the 40-day period, the commissioner of finance must not make the payment to the survivor. The subrogation claim is waived if notice is not provided by the deadline, and the commissioner shall then make the payment. If a notice of claim is received, the commissioner shall withhold the payment until the claim is abandoned or waived.

Subd. 5. Reimbursement of state. Provides that the state is entitled to recover from third parties payments made under this act, to the extent the third party caused or contributed to the catastrophe. Provides that the state is subrogated to all potential claims against third-party tortfeasors of a survivor receiving payments under this act, up to the amount paid to the survivor under this act. Requires a survivor to notify the state if the survivor has been fully compensated by third parties. Provides that the state is entitled to be reimbursed by a survivor if payments are greater than total damages incurred by a survivor.

Subd. 6. Amounts not considered for purposes of limit of government tort payments. Provides that payments made to survivors under this act are not to be

considered in calculating the \$1 million aggregate limit of tort claims against the state or a municipality. *[Note: Laws 2008, chapter 370, section 10, adds a new section relating to this issue. The new section provides that payments made to survivors under chapter 288 or from the emergency relief fund shall not be counted as income, assets, or resources for purposes of specified health care and maintenance programs. The new section in chapter 370 prevails of other changes made in 2008 H.F. 3955, section 1.]* (Chapter 338, section 1)

6 Appropriations. Appropriates:

- \$24 million to make payments under settlement agreements;
- \$12.64 million to make supplemental payments;
- \$750,000 for administrative expenses of the special master panel;
- \$610,000 to Pillsbury United Communities in Minneapolis, to allow Waite House to provide services to youth an family of youth who were on a school bus on the I-35W bridge when it collapsed.

Requires the commissioner of finance to report to the legislature on the expenditure of these appropriations by January 15 of 2009, 2010, and 2011.

7 Effective date. Effective immediately.