



LOUISIANA STATE LAW INSTITUTE
PAUL M. HEBERT LAW CENTER, ROOM W 127
UNIVERSITY STATION
BATON ROUGE, LA 70803-1016

OFFICE OF
THE DIRECTOR
(225) 578-0200
FAX: (225) 578-0211
EMAIL: LAWINSTITUTE@LSLI.ORG

January 31, 2020

Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 220 OF THE 2019 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to the Louisiana Governmental Claims Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Holdridge", with a long horizontal flourish extending to the right.

Guy Holdridge
Director

cc: Senator W. Jay Luneau

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov
Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
TORTS AND INSURANCE COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 220 OF THE 2019 REGULAR SESSION**

Relative to the Louisiana Governmental Claims Act

Prepared for the
Louisiana Legislature on

January 31, 2020

Baton Rouge, Louisiana

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William R. Corbett, Reporter
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Nick Kunkel, Staff Attorney

SENATE RESOLUTION NO. 220

BY SENATOR LUNEAU

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding certain aspects of the Louisiana Governmental Claims Act.

WHEREAS, R.S. 13:5101 through 5113 is known as the Louisiana Governmental Claims Act; and

WHEREAS, the Louisiana Governmental Claims Act provides relative to suits in contract or for injury to person or property against the state, a state agency, and an officer or employee of the state or a state agency for actions arising out of the discharge of official duties or within the course and scope of employment, and further applies to a political subdivision, and to an officer or employee of a political subdivision, for actions arising out of the discharge of official duties or acting within the course and scope of employment; and

WHEREAS, the Louisiana Governmental Claims Act provides definitions, procedures, and requirements relative to such suits for indemnification and representation by the attorney general of covered officers or employees; and

WHEREAS, R.S. 13:5108.1 provides specific procedures for the process of determining such coverage, representation, and indemnification, including time periods for delivery of document to the attorney general, investigation by the attorney general confirming or denying coverage of an officer or employee, and resulting actions and notices by the attorney general; and

WHEREAS, such process and applicable time periods should be reviewed by the Louisiana State Law Institute to determine if revisions are necessary to these procedures, including expansion of present time periods for certain actions set forth in the law; and

WHEREAS, a requirement in the present law is that the covered officer or employee be "free from criminal conduct"; and

WHEREAS, such language should be reviewed by the Louisiana State Law Institute to determine if it should be updated or otherwise revised; and

WHEREAS, a report should be submitted to the Legislature of Louisiana with any conclusions and recommendations on all of the above no later than January 31, 2020; and

WHEREAS, any recommendations by the Louisiana State Law Institute for changes in the law should be in the proper form, format, and language of substantive legislation to enact the recommendations.

THEREFORE, BE IT RESOLVED that the Senate of the Louisiana State Legislature does hereby urge and request that the Louisiana State Law Institute study and make recommendations regarding certain aspects of the Louisiana Governmental Claims Act.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

January 31, 2020

To: Senator Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 220 OF THE 2019 REGULAR SESSION**

Senate Resolution No. 220 of the 2019 Regular Session urges and requests the Louisiana State Law Institute to study and make recommendations regarding certain aspects of the Louisiana Governmental Claims Act, which provides relative to suits against the state, state agencies, and officers and employees of the state for actions arising out of employment or discharge of official duties. In particular, the resolution points to R.S. 13:5108.1, which “provides specific procedures for the process of determining” potential coverage, representation, and indemnification of employees or officials in such suits, urging that “such process and applicable time periods should be reviewed by the Louisiana State Law Institute to determine if revisions are necessary to these procedures[.]” In furtherance of this directive, the Law Institute assigned the resolution to its Torts and Insurance Committee, supervised by Mr. Skip Philips, a practicing attorney in Baton Rouge and adjunct professor at the LSU Paul M. Hebert Law Center, Mr. Thomas Galligan, Dean of the LSU Law Center and current Interim President of LSU, Professor Bill Corbett, also of the LSU Law Center, and Mr. Donald Price, a practicing attorney in Baton Rouge.

After compiling background research and information, the Committee has met on several occasions to discuss the issues related to a possible revision of the Louisiana Governmental Claims Act. The Committee has made preliminary strides in making necessary revisions to R.S. 13:5108.1, with particular focus on balancing and achieving predictability for all competing interests. Throughout its work on this project, the Committee’s Co-chairs and Reporters have maintained open dialogue with representatives from both the Office of Risk Management and the Attorney General, welcoming the input of such interested parties and inviting their participation in the Committee’s meetings and commentary on draft proposals. The Committee continues to meet to discuss its potential revisions to R.S. 13:5108.1 and other statutes, with plans to eventually present such revisions to the Law Institute Council. Upon receiving full approval of this project from the Council, the Committee will submit recommendations to the Legislature in the form of a final report and proposed legislation. The Committee anticipates that such proposals will be submitted to the Legislature for the 2021 Regular Session.