

HF 2553 Comparison

House	Topic	Senate
Creates codified law to deal with catastrophes declared by the legislature	Overall scope	Applies only to I-35W bridge catastrophe
No comparable language	State tort claim limits	Retroactively increases the \$300,000 cap on individual tort claims against the state to \$400,000, effective August 1, 2007. <i>R1</i> Payments made to victims under this bill are not to be considered in calculating the limit on tort claims in civil actions arising out of the bridge collapse (This is a reference to the \$1,000,000 cap on claims arising out of a single occurrence). <i>R9: 7.33-8.2</i>
Codified statement of findings applies to all catastrophes declared by the legislature. References constitutional duty to provide for security, benefit, and protection of people. <i>R2: 1.9-1.16</i> Uncodified statement declares the collapse of the I-35W bridge a catastrophe, and that the state should compensate survivors. <i>R2: 7.10-7.13</i>	Findings	Includes detail on the circumstances of the I-35W collapse. States that establishment of a compensation process furthers the public interest in avoiding litigation. States that findings are not an admission of liability <i>R2: 2.17-2.29</i>
“Loss” includes economic (loss of earnings, medical, burial property, loss of business or employment opportunity) and non-economic (physical and emotional pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship). No punitive damages. Loss doesn’t include attorney fees, other fees, or costs <i>R2,3</i>	Loss/Damages	“Damages” include those that are compensable under state tort law and damages for wrongful death compensable under the wrongful death statute. Damages do not include punitive damages or attorney fees or other fees incurred by a victim in making a claim. <i>R2: 2.31-2.34</i>

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<p>“Survivor is defined in codified law as a natural person who suffers loss as a result of a catastrophe, and includes the personal representative of a natural person. <i>R3: 2.21-2.23</i> The uncodified provision governing the I-35W catastrophe limits use of the appropriation to a survivor who was on the bridge when it collapsed (or the personal representative of a person on the bridge). <i>R3: 7.19-7.22</i></p>	<p>Survivor/victim</p>	<p>“Victim” is defined as a natural person who was present on the bridge at the time of the collapse and would also include a parent or legal guardian of a minor; a legally appointed representative of a victim; or a surviving spouse or next of kin who would be entitled to bring a wrongful death action. <i>R3: 3.6-3.11</i></p>
<p>Provides for a single person appointed by the Executive Council as an employee or a contractor to serve as special master. Authorizes the special master to hire employees, enter into contracts, and adopt rules. Requires the special master to be appointed within 30 days of enactment of this bill. Administrative costs limited to 1% of the total appropriation. Requires reporting of administrative expenses to legislative budget chairs. <i>R4: 2.25- 3.8; 7.15-7.16</i></p>	<p>Special master</p>	<p>Provides for the creation of a special master panel to consider claims; make offers of settlement; and enter into settlement agreements with victims. The Chief Justice of the Supreme Court will establish the panel, which must consist of three attorneys, at least one of whom is a retired judge. Nonjudicial members must have experience in legal issues involving the settlement of tort claims and the determination of damages. The state court administrator will be responsible for hiring employees and providing administrative support. The panel may adopt procedures, rules, and forms for performing its duties. Other provisions dealing with the administration of the panel are included. <i>R4: 3.12-3.33</i></p>
<p>September 1, 2009 deadline for filing claims. <i>R4: 7.23-7.24</i> Special master determines loss within 120 days of filing of a claim. Must not consider negligence or other theories of liability. Within 20 days of making a determination, special master must notify survivor of amount fund proposes to pay. To accept, survivor must indicate this in writing within 30 days. Failure to accept is rejection. Acceptance or rejection is irrevocable. Emergency</p>	<p>Deadline for filing claims; claims procedures</p>	<p>To be eligible to receive an offer of settlement or enter into an agreement, a victim must file a claim with the panel by October 1, 2008. An offer of settlement must be made by April 1, 2009. <i>R4: 3.34-4.2</i> The amount of an offer of settlement must be based on total damages incurred by the victim, less a collateral source reduction; any payment made to the victim from the emergency relief fund; and any payments made or required to be made to the victim</p>

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relief payments must be offset from amount otherwise receivable. <i>R4-5: 3.9-3.36 7.23-7.29</i>		by a third-party tortfeasor under the terms of an existing settlement or other agreement or a final judgment in favor of the victim <i>R4: 3.34-4.2</i>
No cap, within limits of appropriation. The special master may propose to compensate all survivors of that catastrophe for a uniform percentage of the loss suffered that is less than the full loss, or may take other steps to ensure that available funds can be equitably distributed among all survivors <i>R5: 3.21 to 3.26</i>	Cap on Awards	The amount of an offer of settlement must not exceed \$400,000 per victim. However, total payments from the fund would not be subject to the \$1,000,000 cap on state liability for tort claims arising out of a single occurrence but would be limited to the extent of the availability of appropriations for this purpose <i>R5: 4.12-4.15</i>
Survivor must release state and political subdivisions from claims relating to the catastrophe and agree to withdraw any pending actions. The release must require the survivor to indemnify the state for claims of contribution or indemnity made by others against the state and to satisfy any judgment obtained by others against the states that relate to the claims of survivors. The release does not apply to a survivor's claims against others. The release must provide for the subrogation interest of the state. <i>R6: 4.1-4.18</i>	Release	A victim who accepts a settlement offer must release the state, all municipalities, and their employees from any liability arising from the bridge collapse, and to cooperate in claims against third parties. Execution of the release would also extinguish any claim or liability for damages asserted by a spouse or family member of a victim. The release must require the survivor to indemnify the state for claims of contribution or indemnity made by others against the state and to satisfy any judgment obtained by others against the states that relate to the claims of survivors. The release does not apply to a survivor's claims against others. The release must provide for the subrogation interest of the state. <i>R6: 4.16-4.30</i>
A determination of the special master is final and is not subject to judicial review. <i>R5: 3.27-3.28</i>	Effect and finality of settlement; election to proceed in court	An offer of settlement made to a victim is considered for all purposes to be an offer to settle a legal claim and a determination by the panel regarding an offer or settlement agreement is final and not subject to judicial review. <i>R6: 5.1-5.19</i> A victim may elect not to file a claim with the panel or not to accept an offer of settlement. A victim who elects not to file a claim or accept an offer of

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<p>An offer to make a payment or a payment made under this chapter is not an admission of liability, and is not admissible in an administrative or judicial action. Requires the special master to determine a survivor's loss and make payments without reference to state tort liability limits in Minnesota Statutes, section 3.736. <i>R10: 6.15-6.22</i></p>		<p>settlement has not waived any legal rights that may be asserted against the state or a municipality and may proceed with a claim in district court. If a victim elects not to accept an offer, the state or a municipality may not use data provided by the victim to the panel in subsequent legal proceedings, although the information may be obtained through discovery or other legal processes. <i>R6: 5.11-5.19</i> Establishment of the compensation process and the emergency relief fund, and an offer of settlement or settlement agreement, is not an admission of liability and does not establish a duty to compensate victims. The creation and funding of the process or an offer of settlement or settlement agreement is not admissible in any legal proceeding to establish liability or a legal duty. <i>R7: 5.23-5.29</i></p>
<p>In determining loss suffered by a survivor, the special master must offset payments made or to be made from other sources, as defined in Minnesota Statutes, section 548.36, subdivision 1.</p>	<p>Payments from other sources</p>	<p>The amount of an offer of settlement must be based on total damages incurred by the victim, less a collateral source reduction; any payment made to the victim from the emergency relief fund; and any payments made or required to be made to the victim by a third-party tortfeasor under the terms of an existing settlement or other agreement or a final judgment in favor of the victim. <i>R7: 4.3-4.11</i> Payments made under the process and from the emergency relief fund are intended to supplement and be in addition to any payments required to be made by a third party under other law. Payments are not a collateral source for purposes of specified statutes or any other law that provides for reducing a damage award or the amount of benefits recoverable by a victim from a third party. <i>R7: 5.30-5.35</i></p>

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<p>Other sources may not eliminate or reduce their payments to a survivor as a result of payments made from the fund or as a result of a survivor waiving a right to pursue legal action against the state or a political subdivision. No person or entity, having paid a survivor, has any right of recovery, through subrogation or otherwise, against the fund or compensation paid by the fund. Obligation of any person or entity other than the fund to make payments to a survivor is primary as compared to any payment made by the fund, and lists certain persons and entities covered by this provision. Provides that following an award to a victim, any entity claiming a subrogation interest against the award has 60 days to notify the state of its intent to assert its interest, during which time the award remains in possession of the state. States that failure to provide notice results in a waiver of the subrogation claim.</p> <p><i>R7-9: 4.19-5.29</i></p>		<p>A person required to make payments to a victim may not eliminate or reduce those payments as a result of compensation paid to the victim under the special compensation process or from the emergency relief fund or as a result of the victim's release of claims. The obligation of any person other than the state to make payments to a victim would be considered primary as compared to any payment made or to be made under the special compensation process or from the emergency relief fund. Lists specific persons who would be covered by this subdivision.</p> <p>A person who has paid benefits or compensation to or on behalf of a victim does not have a right to recover those amounts by either making a claim, or recovering from payments made, under the compensation process or from the emergency relief fund.</p> <p>Following a settlement agreement any person claiming a subrogation interest against the amount paid by the state has 60 days in which to provide notice to the state and the victim of its intent to assert its interest, during which time the Commissioner of Finance must not make the payment. The subrogation claim is waived if notice is not provided. If no notice is received, the Commissioner of Finance must make the payment. If a notice is received, the Commissioner must withhold the payment until the subrogee abandons or waives the subrogation claim.</p> <p><i>R7-9: 6.1-7.16</i></p>
<p>The state is subrogated to all potential claims against third-party tortfeasors of any survivor receiving compensation from the fund, up to the amount paid to the survivor from the fund. Provides that the state is entitled to be reimbursed regardless of whether the</p>	<p>Reimbursement of state; state right of subrogation</p>	<p>The state is entitled to recover from any third party for payments made from the emergency relief fund or under the compensation process to the extent the third party caused or contributed to the bridge collapse. The state could seek reimbursement from or assert</p>

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<p>survivor is fully compensated.</p> <p>Provides that the state is entitled to recover from any third party, including a state contractor, for payments made from the fund, to the extent the third party caused the catastrophe.</p> <p><i>R9: 5.30-6.6</i></p>		<p>subrogation rights against a victim only to the extent the recovery received by the victim from the state and third parties exceeded the victim's total damages. The state is also subrogated to all potential claims against third parties of a victim receiving a payment to the extent those claims relate to the bridge collapse. The state's subrogation right is limited to the amount paid to the victim and is in addition to other remedies, claims, and rights relating to the bridge collapse that the state may have against other persons for the recovery of money. <i>R9: 7.17-7.32</i></p>
<p>Not an element of damages. An attorney representing a survivor with respect to a claim filed with the special master must not charge a fee <i>R9: 6.7-6.8</i></p>	Attorney fees	<p>Not an element of damages</p>
<p>Name, amount paid, and release are public. All other data is confidential <i>R10: 6.9-6.14</i></p>	Data practices	<p>Records of the panel not accessible to the public, except for name of victim and terms of any written settlement agreement. If victim elects not to settle, state cannot use data provided by the victim in a subsequent legal proceeding. <i>R10: 5.6-5.10</i></p>
<p>Creates a codified catastrophe survivor fund, consisting of money appropriated by law, gifts, and other revenues.</p> <p><i>R10: 6.24-6.32</i></p> <p>Appropriates \$39.32 million for I-35W survivors. No more than 1 percent for administrative expenses. Available until June 30, 2011. <i>R11-7.31-8.7</i></p>	Fund; Appropriation for I-35W	<p>Appropriates \$25 million (available until June 30, 2010), plus \$750,000 for administration (available until June 30, 2009). States that legislature intends to fully fund settlements by later appropriation if the amount appropriated here is not enough. <i>R11: 8.5-8.16</i></p>
<p>\$680,000; available until June 30, 2011.</p> <p><i>R11: 8.8-8.17</i></p>	Grant to Waite House	<p>\$680,000; can't be used for services that could have been funded by settlement payments to victims; must provide budget to commissioner. Available until spent.</p> <p><i>R11: 8.17-8.27</i></p>

March 25, 2008

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Commissioner of Administration may not accept new applications for emergency relief, but may process applications already received. <i>R11: 8.18-8.23</i>	Emergency payments	No comparable provision