

HOUSE BILL REPORT

SHB 3120

As Passed Legislature

Title: An act relating to notice requirements for tort claims against state and local governments and their officers, employees, or volunteers.

Brief Description: Concerning notice requirements for tort claims against state and local governments and their officers, employees, or volunteers.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Priest, Kirby and Williams).

Brief History:

Committee Activity:

Judiciary: 2/1/06, 2/2/06 [DPS].

Floor Activity:

Passed House: 2/14/06, 97-0.

Passed Senate: 3/2/06, 46-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Provides that a tort claim against an officer, employee, or volunteer of a state or local government must be filed with the state or local government before a civil suit may be commenced.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Edie Adams (786-7180).

Background:

A tort claim against either the state or a local government may not be filed in court until the claimant complies with certain notice requirements established in statute, called the "claim filing statute." One of the purposes of the claim filing statute is to allow governmental entities time to investigate, evaluate, and settle claims prior to the instigation of a civil proceeding.

A tort claim against the state must be presented to and filed with the Risk Management Division of the Office of Financial Management. A tort claim against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims. The claim must accurately describe the injury or damages, the conduct or circumstances that brought about the injury or damage, the names of all persons involved, and the amount of damages claimed. A claimant may not commence a civil tort action against the state, or against a local governmental entity, until 60 days after the claim is filed. The statute of limitations for the claim is tolled during this 60 day period.

Substantial compliance with respect to the contents of the claim is sufficient. However, the courts have strictly construed the procedural requirements of the claim filing statute. Failure to strictly comply with the filing requirements leads to dismissal of the action.

State and local governmental entities are liable for the tortious conduct of their officers, employees, or volunteers while they are acting within their official duties. However, the claim filing statutes do not specifically state that a claim against an officer, employee, or volunteer of the state or local governmental entity must be filed with the state or local governmental entity before a civil action may be brought. In a recent Washington Supreme Court case, *Bosteder v. Renton*, a claimant argued that a suit against an individual officer or employee of the governmental entity did not have to comply with the claim filing statute.

A majority of the Court (in a five - four split) agreed with the claimant and held that the claim filing statute does not apply to a claim filed against an individual officer or employee of a governmental entity. These five justices found that the plain language of the statute applies only to the governmental entity and not to individual employees, and that the Legislature could have easily included individuals in the statute if it had intended the statute to apply to them.

Four justices determined that the requirements of the claim filing statute do apply to claims against an individual officer or employee of the governmental entity when the alleged conduct occurred in the scope of employment. These members reasoned that interpreting the statute to apply only to claims filed against the government, and not those filed against an individual officer or employee, would allow claimants to avoid the claim filing statute and would create a large loophole that would frustrate the Legislature's intent in enacting the statute.

Summary of Substitute Bill:

The claim filing statutes that apply to tort claims against the state or local governments are amended to specifically provide that they apply to claims against officers, employees, or volunteers of the state or local government when acting in that capacity.

A local governmental entity that fails to comply with its duty to designate and record an agent to receive claim filings is precluded from raising a defense under the chapter dealing with tort liability for local governments.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is a clarification of what was originally intended when the Legislature passed the tort claim filing statutes and will correct the Supreme Court's contrary analysis of these statutes. If a person is going to make a claim against the public treasury, the governmental entity should receive notice of the claim and an opportunity to evaluate the claim before a lawsuit is filed.

Testimony Against: None.

Persons Testifying: Representative Lantz, prime sponsor; Marcia Fromhold, Schools Insurance Association of Washington, Cities Insurance Association of Washington, United Schools Insurance Program, Washington Rural Counties Insurance Program, and ESD 112; Loy Dale, Southwest Washington Risk Management Cooperative; Rene Tomisser, Office of the Attorney General; and Gail Stone, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.