

SENATE BILL REPORT

ESHB 1553

As Reported by Senate Committee On:
Government Operations & Elections, March 26, 2009

Title: An act relating to claims for damages against the state and local governmental entities.

Brief Description: Addressing claims for damages against the state and local governmental entities.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Takko, Goodman, Williams, Hurst, Pedersen and Campbell).

Brief History: Passed House: 3/05/09, 96-0.

Committee Activity: Government Operations & Elections: 3/26/09 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, McDermott, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

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 local governments 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 (OFM). 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The claimant must verify, present, and file the claim. However, if the claimant is incapacitated, a minor, or is a nonresident of the state who is absent when the claim is required to be filed, the claim may be verified, presented, and filed by any relative, attorney, or agent representing the claimant.

Substantial compliance with respect to the contents of the claim is sufficient. In fact, the claim filing statute for the state specifically provides that with respect to the content, the statute should be liberally construed so that substantial compliance is sufficient. However, the courts have generally required strict compliance with the procedural requirements of the claim filing statute and failure to strictly comply leads to dismissal of the action.

Procedures for filing claims for injuries resulting from health care are governed under a separate chapter of the Revised Code of Washington.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): Presentation is accomplished by delivery to the agent or other person designated to accept delivery at the agent's office by registered mail, or by certified mail, return receipt requested.

All claims for damages must be presented on the standard tort claim form, maintained by the Risk Management Division of the OFM and on its web site, and be adopted by the local government, and must:

- describe the conduct and the circumstances that brought about the injury or damage;
- describe the injury or damage;
- state the time and place that the injury or damage occurred;
- state the names of all persons involved, if known;
- contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

The claim form must not list the claimants social security number and must not require information not specified by this act.

A claim must be signed by:

- the party making the claim;
- the claimant's parent, guardian, or personal representative;
- a person with a written power of attorney;
- an attorney admitted to practice in Washington state on the claimant's behalf.

Local government entities must make available the standard tort claim form with instructions on how the form is to be presented, as well as the name, address, and business hours of the agent of the local government entity. If the claim form provided by the local governmental entity fails to seek the information specified by statute or incorrectly lists the agent with whom the claim is to be filed, the local government entity is deemed to have waived any defense related to the failure to provide that specific information or to file with the proper designated agent.

The amount of damages stated on a claim form is not admissible at trial.

An action commenced within five business days after 60 calendar day period has elapsed will be deemed timely.

The claims filing statutes are to be liberally construed with respect to the procedural requirements of the statute and substantial compliance will be deemed satisfactory.

The claim filing statutes do not apply to claims based on injuries from health care. The procedures established under the medical malpractice statutes apply to those claims.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (on Proposed Amendments): PRO: Injured plaintiffs are being denied access to the courts because of the strict claim filing statutes. The original intent of these statutes was to provide notice so that the government can get the facts of the claim and investigate. They were not meant to be "gotcha" statutes. Some of the procedural requirements are very tricky, even for attorneys. Cases are dismissed based on technical interpretations of the statute. The bill is aimed at restoring the original intent. The procedural requirements of this statute are so complex and so strictly enforced it all but requires that a person hire an attorney to file suit against a government entity. That is not what was intended when the statute was implemented.

CON: The major concern is with Section 1 (5) that procedural requirements are to be liberally construed. Why would a party even attempt to get the very detailed procedural requirements correct if they don't need to, if they aren't going to be held to the stated standard? There is a section in the bill that talks about "substantial compliance" with procedural requirements. What does that mean? This bill is unclear as to when a complaint is effective. Is it effective when it's placed in the mail or when it is received? Unclear. Adding five extra days to file a claim will not address the issue of courts not knowing how to calculate when the 60-day limit has expired.

Persons Testifying: PRO: Mary Ruth Mann, Attorney; Larry Shannon, Washington State Association for Justice.

CON: Glen Anderson, Attorney General; Mel Sorensen, Washington Defense Trial Lawyers; Tammy Fellin, Association of Washington Cities; Tom McBride, Washington Association of Prosecuting Attorneys.