

FINAL BILL REPORT

ESHB 1553

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Synopsis as Enacted

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).

House Committee on Judiciary
Senate Committee on Government Operations & Elections

Background:

A person may not commence a tort claim in court against either the state or a local government 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.

The claimant is required to verify, present, and file the claim with the state or local government. However, if the claimant is incapacitated, is 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. The claim filing statute for the state specifically provides that with respect to the content, the statute

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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:

Claims against the state must be presented on a standard tort claim form. The form must be maintained by the OFM and put on its website. Claims against local governments may be presented on either the standard tort claim form or a form provided by the local government. Local governments and the state must make the standard form available with instructions on how the form is to be presented along with the name, address, and business hours of the agent authorized to receive the claim. The claim form must not list the claimant's social security number and may not require information that is not specified in the statute. The amount of damages stated on the claim form is not admissible at trial.

For claims against local governments, a claim is deemed presented when the form is delivered in person or received by the agent, by regular mail, registered mail, or by certified mail, with return receipt requested. For claims against the state, presentation of the claim is accomplished by service upon the agent or by registered mail.

For claims against local governments, if the claim form fails to seek the information specified in the statute or incorrectly lists the agent to whom the claim is to be filed, the local government is deemed to have waived any defense related to the failure to provide that specific information or to file with the proper agent.

The claimant does not have to provide his or her residential address six months prior to the time the claim arose, but must state his or her actual residence at the time the claim arose. The claim must be signed either by the claimant (who must also verify the claim), by the claimant's attorney-in-fact under a power of attorney, by an attorney licensed to practice in Washington, or by a court-approved guardian or guardian ad litem on behalf of the claimant.

An action commenced within five court days after the 60-calendar-day period has elapsed will be deemed to have been presented on the first day after the 60-calendar-day period.

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.

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

Votes on Final Passage:

House	96	0	
Senate	39	9	(Senate amended)
Senate	35	12	(Senate amended)

House 93 0 (House concurred)

Effective: July 26, 2009