

# Risk



# Alert

OFM Risk Management Division

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Lucy Isaki, State Risk Manager

For Information:

[Iolene.Bellows@ofm.wa.gov](mailto:Iolene.Bellows@ofm.wa.gov) 360-902-7312

## NEW LAW CHANGES TORT CLAIM FILING FOR STATE AGENCIES AND LOCAL GOVERNMENT

### WHAT RISK MANAGERS NEED TO KNOW

#### *What Law Changed Tort Claim Filing Requirements for State Agencies and Local Government?*

**ESHB 1553** is the new law that addresses **claims for damages against the state and local governmental entities.**

#### *When are the Requirements of ESHB 1553 Effective?*

**July 26, 2009.**

#### *What is the Claim Filing Statute Requirement in ESHB 1553?*

A person may not initiate a tort claim in Superior Court against either the state or a local government entity 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.

#### *How Does ESHB 1553 Require Tort Claims be "Presented" or Filed?*

A tort claim against the state must be "presented" to or filed with the Risk Management Division (RMD) of the Office of Financial Management (OFM). ESHB 1553 specifically states that **a properly presented claim is to be delivered in person or mailed.**

A tort claim filed against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims. 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.

#### *What Signature Changes are Required by ESHB 1553?*

One of the most significant and important changes that resulted from ESHB 1553 regards the signature on the tort claim form. As of July 26, 2007, the Standard Tort Claim Form **must be signed by:**

- the Claimant; OR
- by a person holding a written power of attorney from the Claimant; OR
- by the attorney in fact for the Claimant; OR
- by an attorney admitted to practice in Washington State on the Claimant's behalf; OR
- by a court-approved guardian ad litem on behalf of the Claimant.

#### *Does ESHB 1553 Retain the Requirement for an Original Signature?*

Yes. RMD **still requires an original signature on the Standard Tort Claim Form**—and this requirement was retained in ESHB 1553. Therefore, **faxed or e-mailed tort claims cannot be accepted.**

#### *How Does ESHB 1553 Change Some of the State's Existing Tort Claim Filing Requirements?*

It **requires RMD to accept only one Standard Tort Claim Form (SF 210)** for all claims. That means RMD can no longer require an SF 138 or any information in excess of what is outlined in the new law.

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## ESHB 1553—WHAT RISK MANAGERS NEED TO KNOW

### *Can a Claim Be Denied on Just the Fact that Additional Information was not Included?*

No. RMD objectively determines the state's liability for all claimed injuries. It fairly compensates claimants for damages when liability is supported, and denies claims when liability is unsupported.

### *What Changes were made by RMD to the Tort Claims Process to Respond to ESHB 1553?*

First, a one-tort claim form packet has been developed. The packet includes a notice sheet explaining the new law, a slightly revised SF 210, a medical release, and a vehicle collision form for claims involving a vehicle collision (essentially the former SF 138). This packet of information is called the [Standard Tort Claim Form Packet](#).

Secondly, RMD revised its claims website to briefly outline the tort claim filing changes created by ESHB 1553 and provide an electronic copy of the [Standard Tort Claim Form Packet](#). Agencies or citizens can learn more about changes created by ESHB 1553 for presenting (filing) tort claims and easily access the new [Standard Tort Claim Form Packet](#) on the RMD [tort claim website](#).

Claims against local governments may be presented on either the [Standard Tort Claim Form](#) or a form provided by the local government entity.

### *Does this Mean Claims and Opposing Counsel are Required to Use the Standard Tort Claim Form?*

Yes. This new requirement calls for one form (SF 210 as described above as the Standard Tort Claim Form) for those filing a tort claim with RMD. This new requirement enables RMD to receive more uniform, consistent information from those filing complaints or claims against the state.

### *How Do Those without Access to a Computer Obtain the Standard Tort Claim Form Packet?*

They can contact the Risk Management Division to request a copy be mailed by calling 360-902-7303. RMD suggests and encourages agencies that receive requests for the [Standard Tort Claim Form Packet](#) from citizens without access to computers, download a copy from the RMD website and send it directly to the requester.

### *Should Agencies Discard Any Supply of Older Versions of the Standard Tort Claim Form?*

Yes—**please immediately discard** (recycle) **all older versions of the Standard Tort Claim Form** on hand so that the tort claim form and process used is in compliance with the requirements of ESHB 1553 as of the effective date of July 26, 2009. Also, from this point forward, any copy of a Standard Tort Claim must be presented (all eight pages) as it is found within the RMD [Standard Tort Claim Form Packet](#). **CAUTION:** If you **print or provide double-sided copies, please ensure the pages remain in order, so the forms appear as individual documents.**

### *Who Do I Call for More Information About the new Tort Claim Process or ESHB 1553 Requirements?*

State agency risk managers or others with additional questions after reviewing the tort claim presenting or filing requirements in [ESHB 1553](#), or information on the RMD [tort claim website](#) should contact Brian Agar at 360-902-7316 or email him at [brian.agar@ofm.wa.gov](mailto:brian.agar@ofm.wa.gov)

**Local government entities** with further questions about ESHB 1553 should contact Shannon Stuber at 360-902-7311 or email her at [Shannon.stuber@ofm.wa.gov](mailto:Shannon.stuber@ofm.wa.gov).