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SUPREME COURT
STATE OF WASHINGTON

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BY RONALD R. CARPENTER

CLERK

IN THE SUPREME COURT
OF WASHINGTON

MARK STEPHEN RENNER

Respondent,

v.

CITY OF MARYSVILLE,

Petitioner.

No. 81959-9

**RESPONDENT'S PROFFER OF
ADDITIONAL AUTHORITY**

UNDER PENALTY OF PERJURY I STATE THAT I e-
MAILED A COPY OF THIS DOCUMENT *with permission*
-> ATTORNEY FOR *Petitioner*
ON THE FOLLOWING DATE: 10/21/09

COMES NOW Respondent/Plaintiff pursuant to RAP 10.8 and offers the court the following

additional authority:

1. Chapter 433, Laws of 2009 (Engrossed Substitute House Bill 1553, as amended by the

Senate) effective 7/26/09 amending RCW 4.96.020 et. al [Marked copy

attached], especially:

-Sec. 1 (2), (3) (c) and (e) providing for a standard tort claim form which local
governmental entities shall make available;

-Sec.1 (3) (f) stating that "[T]he amount of damages stated on the claim form is
not admissible at trial;"

-Sec.1 (5) providing that: "With respect to the content of claims under this
section and all procedural requirements in this section, this section must be

liberally construed so that substantial compliance will be deemed satisfactory;"

ORIGINAL

FILED AS ORIGINAL
ATTACHMENT TO EMAIL

1 -Sec. 1 (3) (a) (vii) providing that the standard tort claim form must require "A
2 statement of the actual residence of the claimant at the time of presenting the
3 claim and at the time the claim arose." [Emphasis added] This section
4 specifically re-enacts the critical language of its predecessor statute as
5 interpreted in this respondent's case by the Court of Appeals thirteen months
6 before. It also, omits the language "for a period of six months immediately
7 prior to the time the claim arose."

8 -The parallel provisions of Sec. 2 applicable to claims against the state; and

9 -The Certificate of Enrollment states that the bill passed the house 93 to 0 and the
10 Senate 35 to 12.

11 2. Johnson v. King County, 148 Wn. App. 220 (Div. I, 2009) respecting substantial
12 compliance with claim content requirements where the place of verification of
13 the claim was entirely omitted and where the omission is "merely a technical
14 one" which "served no useful purpose." 148 Wn. App. At 228-29.

15 3. Gates v. Port of Kalama, No. 37758-6-II, _____ Wn. App. _____, 215 P. 3 983
16 (9/1/09) regarding:

17 (A) A claim form content requirement that can be inferred but it is not expressly
18 required by statutory language and;

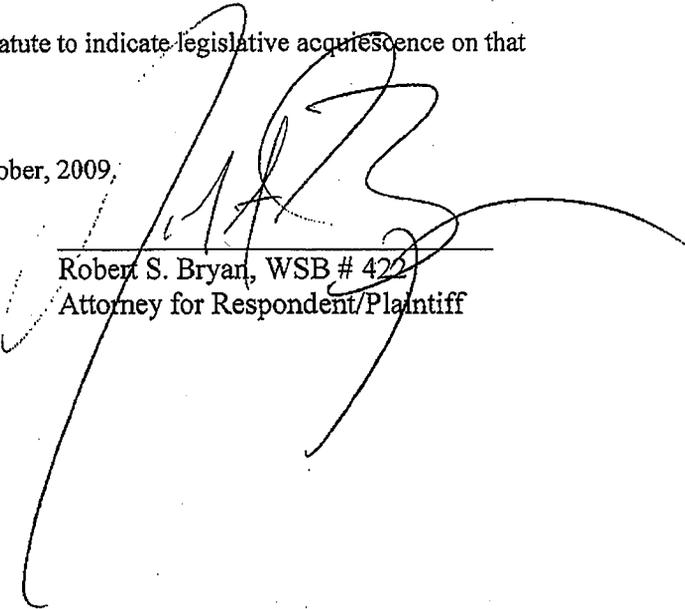
19 (B) The statutory construction principle that "while we seek statutory harmony,
20 we nevertheless deem that the legislature intended a different meaning when it
21 employed different terms and 'meant exactly what it said.'" 215 P. 3rd at 986-
22 987.

23 4. City of Federal Way v. Koenig, No. 82288-3, _____ Wn. 2d _____ P. 3d _____
24 (10/15/09) regarding the principles that

25 A. "This court presumes that the legislature is aware of judicial interpretations of
its enactments and takes its failure to amend a statute following a judicial

1 decision interpreting that statute to indicate legislative acquiescence on that
2 decision. At P. 6-7.

3 Respectfully submitted this 21st day of October, 2009,

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5 Robert S. Bryan, WSB # 422
6 Attorney for Respondent/Plaintiff
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CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1553

Chapter 433, Laws of 2009

61st Legislature
2009 Regular Session

CLAIMS AGAINST THE STATE AND LOCAL GOVERNMENTS

EFFECTIVE DATE: 07/26/09

Passed by the House April 24, 2009
Yeas 93 Nays 0

FRANK CHOPE

Speaker of the House of Representatives

Passed by the Senate April 22, 2009
Yeas 35 Nays 12

BRAD OWEN

President of the Senate

Approved May 11, 2009, 2:37 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1553** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1553

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Judiciary (originally sponsored by Representatives Takko, Goodman, Williams, Hurst, Pedersen, and Campbell)

READ FIRST TIME 02/17/09.

1 AN ACT Relating to claims for damages against the state and local
2 governmental entities; and amending RCW 4.96.020, 4.92.100, and
3 4.92.110.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.96.020 and 2006 c 82 s 3 are each amended to read as
6 follows:

7 (1) The provisions of this section apply to claims for damages
8 against all local governmental entities and their officers, employees,
9 or volunteers, acting in such capacity, except that claims involving
10 injuries from health care are governed solely by the procedures set
11 forth in chapter 7.70 RCW and are exempt from this chapter.

12 (2) The governing body of each local governmental entity shall
13 appoint an agent to receive any claim for damages made under this
14 chapter. The identity of the agent and the address where he or she may
15 be reached during the normal business hours of the local governmental
16 entity are public records and shall be recorded with the auditor of the
17 county in which the entity is located. All claims for damages against
18 a local governmental entity, or against any local governmental entity's
19 officers, employees, or volunteers, acting in such capacity, shall be

1 presented to the agent within the applicable period of limitations
2 within which an action must be commenced. A claim is deemed presented
3 when the claim form is delivered in person or is received by the agent
4 by regular mail, registered mail, or certified mail, with return
5 receipt requested, to the agent or other person designated to accept
6 delivery at the agent's office. The failure of a local governmental
7 entity to comply with the requirements of this section precludes that
8 local governmental entity from raising a defense under this chapter.

9 (3) ~~((All claims for damages arising out of tortious conduct must~~
10 ~~locate and describe the conduct and circumstances which brought about~~
11 ~~the injury or damage, describe the injury or damage, state the time and~~
12 ~~place the injury or damage occurred, state the names of all persons~~
13 ~~involved, if known, and shall contain the amount of damages claimed,~~
14 ~~together with a statement of the actual residence of the claimant at~~
15 ~~the time of presenting and filing the claim and for a period of six~~
16 ~~months immediately prior to the time the claim arose. If the claimant~~
17 ~~is incapacitated from verifying, presenting, and filing the claim in~~
18 ~~the time prescribed or if the claimant is a minor, or is a nonresident~~
19 ~~of the state absent therefrom during the time within which the claim is~~
20 ~~required to be filed, the claim may be verified, presented, and filed~~
21 ~~on behalf of the claimant by any relative, attorney, or agent~~
22 ~~representing the claimant.))~~ For claims for damages presented after the
23 effective date of this section, all claims for damages must be
24 presented on the standard tort claim form that is maintained by the
25 risk management division of the office of financial management, except
26 as allowed under (c) of this subsection. The standard tort claim form
27 must be posted on the office of financial management's web site.

28 (a) The standard tort claim form must, at a minimum, require the
29 following information:

30 (i) The claimant's name, date of birth, and contact information;

31 (ii) A description of the conduct and the circumstances that
32 brought about the injury or damage;

33 (iii) A description of the injury or damage;

34 (iv) A statement of the time and place that the injury or damage
35 occurred;

36 (v) A listing of the names of all persons involved and contact
37 information, if known;

38 (vi) A statement of the amount of damages claimed; and

1 (vii) A statement of the actual residence of the claimant at the
2 time of presenting the claim and at the time the claim arose.

3 (b) The standard tort claim form must be signed either:

4 (i) By the claimant, verifying the claim;

5 (ii) Pursuant to a written power of attorney, by the attorney in
6 fact for the claimant;

7 (iii) By an attorney admitted to practice in Washington state on
8 the claimant's behalf; or

9 (iv) By a court-approved guardian or guardian ad litem on behalf of
10 the claimant.

11 (c) Local governmental entities shall make available the standard
12 tort claim form described in this section with instructions on how the
13 form is to be presented and the name, address, and business hours of
14 the agent of the local governmental entity. If a local governmental
15 entity chooses to also make available its own tort claim form in lieu
16 of the standard tort claim form, the form:

17 (i) May require additional information beyond what is specified
18 under this section, but the local governmental entity may not deny a
19 claim because of the claimant's failure to provide that additional
20 information;

21 (ii) Must not require the claimant's social security number; and

22 (iii) Must include instructions on how the form is to be presented
23 and the name, address, and business hours of the agent of the local
24 governmental entity appointed to receive the claim.

25 (d) If any claim form provided by the local governmental entity
26 fails to require the information specified in this section, or
27 incorrectly lists the agent with whom the claim is to be filed, the
28 local governmental entity is deemed to have waived any defense related
29 to the failure to provide that specific information or to present the
30 claim to the proper designated agent.

31 (e) Presenting either the standard tort claim form or the local
32 government tort claim form satisfies the requirements of this chapter.

33 (f) The amount of damages stated on the claim form is not
34 admissible at trial.

35 (4) No action subject to the claim filing requirements of this
36 section shall be commenced against any local governmental entity, or
37 against any local governmental entity's officers, employees, or
38 volunteers, acting in such capacity, for damages arising out of

1 tortious conduct until sixty calendar days have elapsed after the claim
2 has first been presented to ~~((and filed with))~~ the agent of the
3 governing body thereof. The applicable period of limitations within
4 which an action must be commenced shall be tolled during the sixty((-))
5 calendar day period. For the purposes of the applicable period of
6 limitations, an action commenced within five court days after the sixty
7 calendar day period has elapsed is deemed to have been presented on the
8 first day after the sixty calendar day period elapsed.

9 ~~(5) With respect to the content of claims under this section and~~
10 ~~all procedural requirements in this section, this section must be~~
11 ~~liberally construed so that substantial compliance will be deemed~~
12 ~~satisfactory.~~

13 **Sec. 2.** RCW 4.92.100 and 2006 c 82 s 1 are each amended to read as
14 follows:

15 (1) All claims against the state, or against the state's officers,
16 employees, or volunteers, acting in such capacity, for damages arising
17 out of tortious conduct, except for claims involving injuries from
18 health care, shall be presented to ~~((and filed with))~~ the risk
19 management division. ~~((All such claims shall be verified and shall~~
20 ~~accurately describe the conduct and circumstances which brought about~~
21 ~~the injury or damage, describe the injury or damage, state the time and~~
22 ~~place the injury or damage occurred, state the names of all persons~~
23 ~~involved, if known, and shall contain the amount of damages claimed,~~
24 ~~together with a statement of the actual residence of the claimant at~~
25 ~~the time of presenting and filing the claim and for a period of six~~
26 ~~months immediately prior to the time the claim arose. If the claimant~~
27 ~~is incapacitated from verifying, presenting, and filing the claim or if~~
28 ~~the claimant is a minor, or is a nonresident of the state, the claim~~
29 ~~may be verified, presented, and filed on behalf of the claimant by any~~
30 ~~relative, attorney, or agent representing the claimant.))~~ Claims
31 involving injuries from health care are governed solely by the
32 procedures set forth in chapter 7.70 RCW and are exempt from this
33 chapter. A claim is deemed presented when the claim form is delivered
34 in person or by regular mail, registered mail, or certified mail, with
35 return receipt requested, to the risk management division. For claims
36 for damages presented after the effective date of this section, all
37 claims for damages must be presented on the standard tort claim form

1 that is maintained by the risk management division. The standard tort
2 claim form must be posted on the office of financial management's web
3 site.

4 (a) The standard tort claim form must, at a minimum, require the
5 following information:

6 (i) The claimant's name, date of birth, and contact information;

7 (ii) A description of the conduct and the circumstances that
8 brought about the injury or damage;

9 (iii) A description of the injury or damage;

10 (iv) A statement of the time and place that the injury or damage
11 occurred;

12 (v) A listing of the names of all persons involved and contact
13 information, if known;

14 (vi) A statement of the amount of damages claimed; and

15 (vii) A statement of the actual residence of the claimant at the
16 time of presenting the claim and at the time the claim arose.

17 (b) The standard tort claim form must be signed either:

18 (i) By the claimant, verifying the claim;

19 (ii) Pursuant to a written power of attorney, by the attorney in
20 fact for the claimant;

21 (iii) By an attorney admitted to practice in Washington state on
22 the claimant's behalf; or

23 (iv) By a court-approved guardian or guardian ad litem on behalf of
24 the claimant.

25 (c) The amount of damages stated on the claim form is not
26 admissible at trial.

27 (2) The state shall make available the standard tort claim form
28 described in this section with instructions on how the form is to be
29 presented and the name, address, and business hours of the risk
30 management division. The standard tort claim form must not list the
31 claimant's social security number and must not require information not
32 specified under this section.

33 (3) With respect to the content of ((such)) claims under this
34 section and all procedural requirements in this section, this section
35 ((shall)) must be liberally construed so that substantial compliance
36 will be deemed satisfactory.

1 **Sec. 3.** RCW 4.92.110 and 2006 c 82 s 2 are each amended to read as
2 follows:

3 No action subject to the claim filing requirements of RCW 4.92.100
4 shall be commenced against the state, or against any state officer,
5 employee, or volunteer, acting in such capacity, for damages arising
6 out of tortious conduct until sixty calendar days have elapsed after
7 the claim is presented to (~~and filed with~~) the risk management
8 division. The applicable period of limitations within which an action
9 must be commenced shall be tolled during the sixty(~~-~~) calendar day
10 period. For the purposes of the applicable period of limitations, an
11 action commenced within five court days after the sixty calendar day
12 period has elapsed is deemed to have been presented on the first day
13 after the sixty calendar day period elapsed.

Passed by the House April 24, 2009.

Passed by the Senate April 22, 2009.

Approved by the Governor May 11, 2009.

Filed in Office of Secretary of State May 11, 2009.