State Risk Management Practices in Washington

Proposed Final Report

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STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

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REPORT SUMMARY

Washington Law Provides Much Broader State Government Tort Liability Than Laws in Other States

A tort is a legal action brought to recover damages for bodily injury, death or property loss. Originally, **the state** could not be sued in a tort action. The Legislature did away with this prohibition in 1961 providing that the state could be sued to the same extent as any person or corporation. Because of this change and other state laws, this state has a higher potential for tort payouts than other states.

According to the Office of Financial Management, the state paid $399 million in tort payouts and defense costs in Fiscal Years 2004-2010. In the 2009-2011 Operating Budget (ESHB 1244), the Legislature directed JLARC to review the effect of risk management practices on tort payouts.

Current State Risk Management Structure

This report's discussion of risk management structure has two parts: the conducting of post-incident reviews, and the provision of general risk management assistance. The current structure is in response to the recommendations of a 2001 task force convened to improve the state's risk management practices.

In terms of post-incident reviews,

- **The Office of Financial Management (OFM) is conducting fewer post-incident reviews than anticipated.** A fiscal note for the bill assigning OFM the role of conducting these reviews estimated that OFM would lead 12 reviews per year. In contrast, OFM completed a total of ten reviews over seven years (2003 through 2009).
- **State agencies with the highest tort payouts are conducting their own post-incident reviews.** These agencies are the departments of Transportation, Corrections, and Social and Health Services (DSHS). Over the past seven years, actions against these three agencies accounted for 75 percent of the state's total tort payouts.

In terms of general risk management assistance, OFM provides this assistance to all state agencies. OFM provides training and support to all state agencies on issues of common concern such as employee safe driving practices, employment concerns, and safe work place issues.

In 2006, OFM was also chiefly responsible for promoting a new approach to agency risk management practices: **Enterprise Risk Management** (ERM). ERM looks beyond seeking to control fiscal losses and defines risk as anything that interferes with achieving a goal. This approach provides that risk management activities are not done just from a centralized location but rather involve all aspects and employees of an entity. ERM has been recognized as a best practice approach to risk management.

JLARC Examined Three Agencies' Risk Management Practices Using Enterprise Risk Management Principles

ERM includes five basic principles that have been recognized as elements of an effective risk management system. Rather than a linear process, the ERM principles function as a continuous improvement loop. Within the three agencies, JLARC used these five principles to evaluate whether the programs with the highest tort payouts were consistently using the principles in some way to assist in their risk management.

Results: All Three Agencies Reviewed Have Taken Steps to Implement Enterprise Risk Management Principles

The agencies are applying Enterprise Risk Management principles, but at two agencies we found examples where some ERM principles were not consistently addressed.

Agency/ Program	Does the Agency *Consistently* Apply the ERM Principles?				
	Identify Risk	Analyze Risk	Prioritize Risk	Address Risk	Review & Report
Transportation/Highway Safety Program	✓	✓	✓	✓	✓
Corrections/Div. of Community Corrections	✓	✓	✓	✓	?
DSHS/Children's Administration	✓	✓	✓	✗	✗

JLARC has the following recommendations to address the three instances noted in the table above.

1. **The Department of Corrections should develop and implement a policy for the consistent review of, and reporting on, the effects of actions taken in the Community Corrections Division to address risks.**
2. **The Department of Social and Health Services should address the risks identified in the RSVP report regarding Children's Protective Services investigations and report its results to the Legislature by December 2011.**
3. **The Department of Social and Health Services should develop a method for reviewing and reporting on the effect of actions taken in the Children's Administration to address risks.**