STATEWIDE TORT LOSS PAYMENT TRENDS

Executive Summary

This report[1] provides an analysis of statewide projected payments for tort losses incurred by the State of Washington from FY 1981 through FY 2010.[2] Independent actuarial reports were analyzed to determine if trends for these losses exist. The analysis estimates that, between 2002 and 2010, losses were reduced by $619 million through the combined efforts of all state agency risk management programs.

Why does the State of Washington pay tort losses?

Washington waived most sovereign immunity in 1961. Since that time, citizens have been able to sue the state when they claim that they were harmed by certain state activities (i.e. a tort lawsuit). The Legislature created the Self Insurance Liability Program (SILP) as a mechanism to pay claims made against all Washington agencies, boards and commissions (excluding the University of Washington and the State Ferry System). SILP covers the payments for losses and defense costs that are associated with these claims. Premiums are paid into the SILP by state agencies at a rate determined by the State Risk Manager. The formula for allocating these costs is based on an independent actuarial study of the state's projected liabilities. The actuary relies not just on past loss history, but also incorporates information about injuries caused by the state, but for which claims have not yet been reported to OFM.[3] These independent actuarial studies were compared for the analysis presented here.

How does the State of Washington manage its tort losses?

The Risk Management Division (RMD) of the Office of Financial Management accepts tort claims from the public, reviews and investigates some claims, and advises agencies on the claims that are brought against them. In addition, RMD works with the Office of the Attorney General as claims are resolved. All of the participants in defending the claims work to arrive at the fairest resolution possible for the lowest settlement appropriate to the situation.

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[1] Prepared by Drew Zavatsky, State Loss Prevention Program Coordinator, Risk Management Division, Office of Financial Management; reviewed by Kevin Wick, Price Waterhouse Coopers.

[2] An earlier draft of this report addressed paid losses only. That analysis estimated the reduction in losses to the state at $344 million.

[3] Incurred but not reported (IBNR) refers to the situation in which a tort has happened (i.e. a car crash), but a claim has not yet been filed against the State for the tort.

Source: Independent Actuarial Reviews (2002), (2010)

Through its Loss Prevention Program, RMD also advises agencies on methods and practices that can prevent or reduce loss. In turn, agency risk management programs undertake extensive work to improve their programs in order to reduce the frequency and severity of loss events. As a part of the service provided to agencies, RMD provides meaningful statistical analysis of each agency's loss history. This report is one such analysis.

Why did OFM decide to review actuarial studies?

Among other things, actuaries study insurance risks and premiums. They provide estimates for projected losses in the future.

By law, OFM contracts with an independent actuarial firm for casualty actuarial consulting services. RCW 4.92.130(5). An actuarial study is conducted periodically and includes recommended premium allocations for state agencies. Because the actuary bases its projections on the loss history of all state agencies, its calculations help to track the effectiveness of the state's loss prevention programs.

How have agencies' risk management programs changed since 2001?

In 2001, the Washington State Risk Management Task Force studied the increase in tort liability payouts that occurred that year.[4] The Task Force recommended several changes in the way the state approached risk management and loss prevention, including:

- Establishing statewide risk management responsibility at a policy level in state government by consolidating the statewide risk management function in the Office of Financial Management;
- OFM should require agencies to conduct post-incident reviews to provide recommendations about avoiding or reducing losses or incidents in the future. Follow-up reports on implementation of corrective measures should be submitted to the Office of Financial Management;
- State agencies experiencing significant losses or potential losses should appropriately equip service delivery staff to address those losses;
- Agencies/programs with significant risk exposure should reach out to victims and communities;
- Providing policy level visibility within the budget process to each agency's loss funding requirements and loss prevention efforts;
- Requiring agencies with significant areas of high risk to develop loss prevention goals and work with both the Office of Risk Management and the budget analysts at the Office of Financial Management on making progress toward those goals;
- Implementing an executive-level immediate response team to help agency executives during a critical incident response;
- Holding staff accountable for agreed upon performance expectations; and
- Requiring risk management notes on proposed legislation.

[4] Available at http://www.ofm.wa.gov/rmd/budget/rmtffinalrpt.pdf.

Many of these recommendations were adopted by Governor Locke in Executive Order 01-05.[5]

Agencies responded to these recommendations and the Order by adopting many best practices, such as hiring Risk Managers, improving agency post-incident review processes, increasing agencies' executive review of areas of high risk and compensation for loss payouts, and increasing the number of principled settlements of high risk and/or high cost tort cases. In addition, when Governor Gregoire took office she required all agencies to implement Enterprise Risk Management (ERM). RMD conducts statewide training in ERM for all state agencies. RMD also tracks the agencies' implementation of ERM, using the Government Management, Accountability and Performance (GMAP) tool created by Governor Gregoire.

Have estimated losses to the state from tort claims changed since 2002?

Yes. Actuarial studies indicate estimated losses have greatly decreased.

Actuarial studies include both estimates of the liability incurred in each loss year, and calculations for amounts of claims that have not yet been filed against the state. As time progresses, actuarial estimates of the total loss arising from a year become less based on forecasting and reflect more of the actual losses paid by the State. This review of statewide trends examines whether the efforts at loss prevention and risk management which began in 2001 led to any decrease in the estimated losses experienced in Washington State.

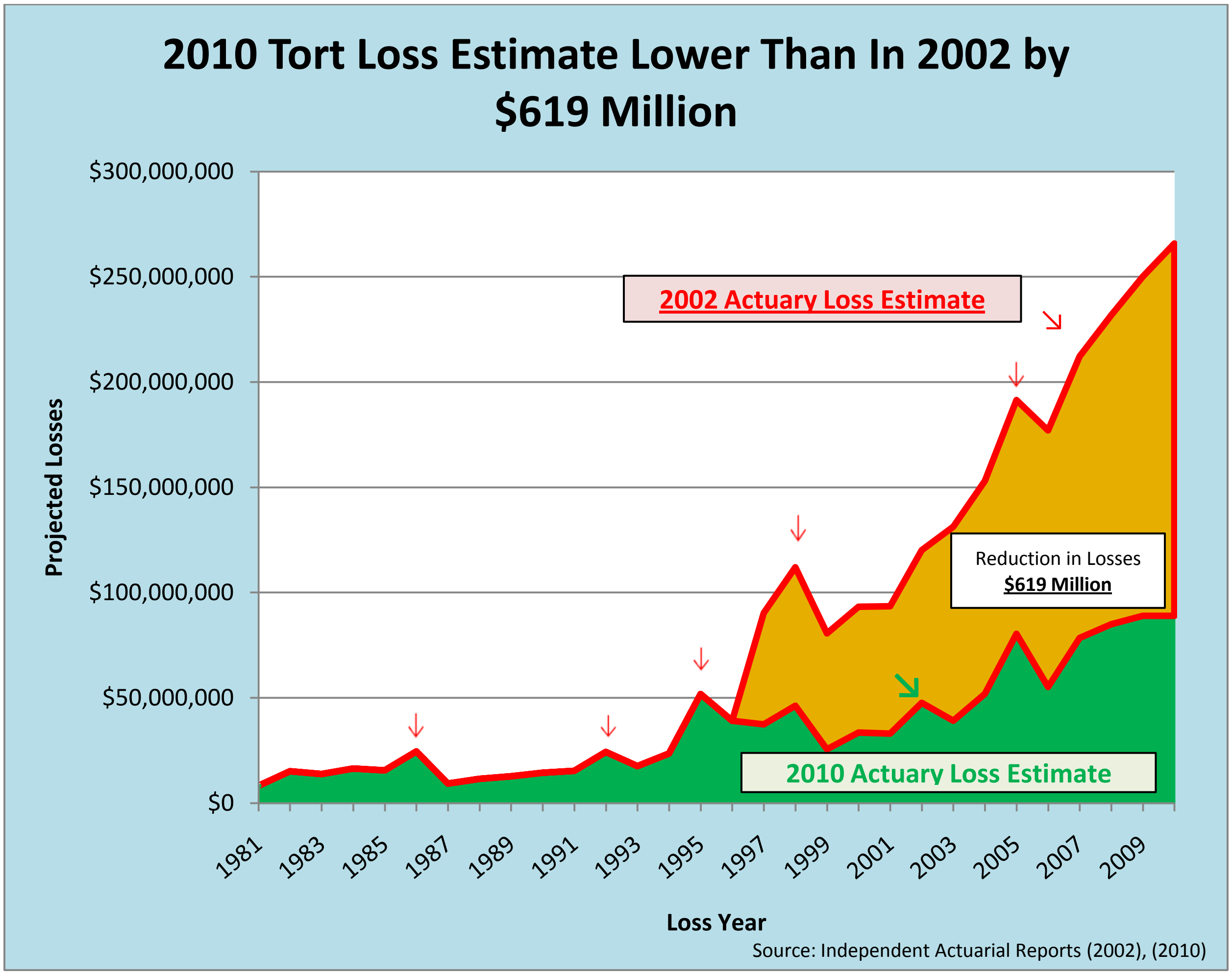
The graph presented below (Figure 1) compares actuarial studies from 2002 and 2010. These years were selected because they represent the situation before and after the statewide efforts to enhance all agencies' risk management and loss prevention programs. It shows that the estimated outstanding state liability between 2002 and 2010 substantially decreased during these years.

Figure 1 shows estimated losses due to incidents that occurred between 1981 and 2010. It includes payouts that have already been made that are related to incidents occurring during the year, together with estimated losses that have not been paid yet. (It excludes losses for payouts associated with the State Ferry System, which are not included in SILP.)

[5] See Appendix A.

Source: Independent Actuarial Reviews (2002), (2010)

Figure 1



The top line (indicated by the red arrows) shows the loss estimates from the 2002 actuarial report. The bottom line (indicated by the green arrow) shows the loss estimates from the 2010 actuarial report.

Between 2002 and 2010, there were no other statewide policy changes (such as enactment of statutory limitations on liability, or judicial decisions decreasing liability) that reduced losses amongst the agencies, other than the increased risk management efforts described above. The estimated reduction in losses by all agencies is expressed by the gold area between the red and green lines, and is also provided in tabular form in Chart 1. The total loss reduction is $619,433,083.

Source: Independent Actuarial Reviews (2002), (2010)

Chart 1

Year	2002 Actuary Report	2010 Actuary Report	Difference
1997	52,950,000	37,431,639	15,518,361
1998	65,775,000	46,296,425	19,478,575
1999	55,050,000	25,596,546	29,453,454
2000	59,750,000	33,570,094	26,179,906
2001	60,500,000	33,048,677	27,451,323
2002	72,500,000	47,677,389	24,822,611
2003	92,162,918	39,164,126	52,998,792
2004	101,157,180	51,932,460	49,224,720
2005	111,029,344	80,461,339	30,568,005
2006	121,865,109	55,200,000	66,665,109
2007	133,758,545	78,500,000	55,258,545
2008	146,812,970	85,000,000	61,812,970
2009	161,141,668	89,000,000	72,141,668
2010	176,869,044	89,000,000	87,869,044
		Total:	619,443,083

<u>Why doesn't RMD use payouts made during the year to judge the effectiveness of loss prevention?</u>

In risk management, it's better to look at potential claims by the year the incident occurred, not by the year it was paid for. In FY10, payments were made for incidents that occurred as far back as 1990, so the total payments during the year are not a good indicator of whether current practices are effectively preventing new incidents.

Source: Independent Actuarial Reviews (2002), (2010)

Appendix A

EXECUTIVE ORDER 01-05

STATE AGENCY RISK MANAGEMENT

WHEREAS, the state of Washington, its employees and licensees provide critical and necessary daily services to tens of thousands of citizens of our state in many settings, and those services protect vulnerable people and the general public from harm;

WHEREAS, the people, state executives, the courts and the legislature recognize that law enforcement, child protective services, prison and correctional services, and long-term care for people with disabilities are just a few of the areas where the state is facing tremendous challenges in delivering services to an expanding population;

WHEREAS, in recent years, incidents of harm to innocent members of the public have received significant attention from state executives, the legislature, the courts, the public and the media, and some of those incidents have resulted in significant liability for the state;

WHEREAS, it is important that we do everything we can to reduce harm to vulnerable individuals and other citizens of our state, whether it is caused by criminals under state supervision, contractors, licensees, or any other factor related to a state service or program;

WHEREAS, judgments and claims against the state have reached unprecedented levels as the state is held liable for injuries and losses - some of which may have been avoidable - and all stemming from findings that the state, and often, others with whom the state is jointly and severally liable, were negligent;

NOW THEREFORE, I, Gary Locke, Governor of the state of Washington, hereby order and direct the following actions:

1. Best Practices

All agencies shall:

a. Prioritize loss prevention through developing and meeting focused management goals and efforts in partnership with the state's risk management office.
b. Allocate resources, to the greatest extent feasible, to services for which the state is at greatest risk of liability, with the goal of preventing or mitigating loss while meeting service expectations and responsibilities. In doing so, agencies should: 1) among information systems, technologies, and funding requests, prioritize those that support high-risk services and serve to mitigate risk; and 2) within available resources, prioritize training for service delivery staff and supervisors relevant to reducing losses and significant claims.
c. Manage all aspects of employee performance, including holding people accountable for agreed-upon performance expectations.
d. Review agency policies and, as necessary, simplify and provide written guidance to program staff and service providers that is concise, relevant, easy to understand, and provides practical direction for quality services.
e. Identify and take steps to involve employees, community members served by the agency, and advocates in efforts to lessen the risk associated with services delivered by the agency.

2. Miscellaneous

This executive order shall take effect immediately. This order does not create any right, duty or benefit, substantive or procedural, at law or in equity, that may be asserted against the state, its officers, employees, licensees, or any other person. This order is intended solely to improve the internal management of the executive branch and enhance compliance with the law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the

Additional

seal of the State of Washington to be
Affixed at Olympia this 7th day of
December A.D., Two thousand one.

GARY LOCKE
Governor of Washington

BY THE GOVERNOR:

Secretary of State