

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 859

Short Title: Tort Claims Act/Local Gov. Opt-in. (Public)

Sponsors: Senators Clodfelter; and Hartsell.

Referred to: Judiciary I.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW CITIES WITH POPULATION GREATER THAN FIVE HUNDRED THOUSAND TO BE SUBJECT TO THE STATE TORT CLAIMS ACT WITH CERTAIN MODIFICATIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.**

(a) Any city with a population of 500,000 or more is authorized to waive its immunity from civil liability in tort by passage of a resolution expressing the intent of the city to waive its sovereign immunity pursuant to Article 31 of Chapter 143 of the General Statutes, as modified by subsection (b) of this section, and subject to the limitations set forth by subsection (c) of this section.

(b) The following modifications of Article 31 of Chapter 143 of the General Statutes shall apply to the waiver of sovereign immunity described by subsection (a) of this section:

(1) Jurisdiction for tort claims against the city shall be vested in the Superior Court Division of the General Court of Justice of the county where the city is principally located, and, except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. The city shall be solely responsible for the expenses of its legal representation in connection with claims asserted against it, and for payment of the amount for which it is found liable under this section. Therefore, G.S. 143-291, 143-291.1, 143-291.2, 143-291.3, 143-292, 143-293, 143-295, 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not apply to claims under this section.

(2) Appeals to the Court of Appeals from a decision of the Superior Court Division shall be treated in the same manner as an appeal from a decision of the Industrial Commission under G.S. 143-294.

(3) The limitation on claims set forth in G.S. 143-299, the burden of proof and defense set forth in G.S. 143-299.1, and the limitation on payments set forth in G.S. 143-299.2 shall apply to claims filed with the Superior Court Division under this section.

(c) Should a city waive its immunity from civil liability pursuant to subsection (a) of this section, it may purchase liability insurance without the purchase being deemed a waiver of sovereign immunity as set forth by G.S. 160A-485. No document or exhibit that relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall



1 the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the  
2 jury any inference that the city's potential liability is covered by insurance. No judgment may  
3 be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law  
4 or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard  
5 and determined by the judge without resort to a jury. The jury shall be absent during all  
6 motions, arguments, testimony, or announcement of findings of fact or conclusions of law with  
7 respect to insurance coverage. The city may waive its right to have issues concerning insurance  
8 coverage determined by the judge without a jury and may request a jury trial on these issues."

9 **SECTION 2.** This act is effective when it becomes law.