

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH30265-LBf-205 (04/12)

Short Title: Municipal Tort Claims Act. (Public)

Sponsors: Representative Jones.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE MUNICIPAL TORT CLAIMS ACT.

The General Assembly of North Carolina enacts:

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

"Article 29.

"Municipal Tort Claims Act.

**"§ 160A-681. Definitions.**

As used in this Article, "municipal corporation" has the same meaning as "city" in G.S. 160A-1, and thus also includes incorporated towns and villages.

**"§ 160A-682. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.**

(a) The North Carolina Industrial Commission is constituted a court for the purpose of hearing and passing upon tort claims against any municipal corporation of this State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant, or agent of the municipal corporation while acting within the scope of his office, employment, service, agency, or authority, under circumstances where the municipal corporation, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was negligence on the part of an officer, employee, involuntary servant, or agent of the municipal corporation while acting within the scope of his office, employment, service, agency, or authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of damages as provided in this Article, but in no event shall the amount of damages awarded exceed

1 the amounts authorized in G.S. 160A-694 cumulatively to all claimants on account of  
2 injury and damage to any one person arising out of a single occurrence.

3 (b) If a municipal corporation, otherwise authorized to purchase insurance,  
4 purchases a policy of commercial liability insurance providing coverage in an amount at  
5 least equal to the limits of this Article, such insurance coverage shall be in lieu of the  
6 municipal corporation's obligation for payment under this Article.

7 **"§ 160A-683. Costs.**

8 (a) The Industrial Commission may by order tax the costs against the loser in the  
9 same manner as costs are taxed by the superior court in civil actions. When a municipal  
10 corporation appeals the decision rendered by the hearing commissioner to the full  
11 Commission, the municipal corporation shall furnish a copy of the transcript of the  
12 hearing to the appellee without cost therefor. The municipal corporation may pay the  
13 costs as may pay taxed against it. When costs are not paid by a party from whom they  
14 are due, the Industrial Commission shall issue an execution for the costs and attach a  
15 bill of costs to each execution. The Sheriff shall levy upon the execution as provided in  
16 Chapter 6 of the General Statutes in civil actions.

17 (b) The Industrial Commission shall charge a filing fee for each affidavit  
18 initiating a claim filed under this Article in an amount equal to the filing fee charged for  
19 civil actions in the Superior Court Division of the General Court of Justice. No filing fee  
20 shall be required of indigent persons, provided each claim by an indigent complies with  
21 all statutory and administrative requirements applicable to the filing of civil actions by  
22 indigents in the Superior Court Division of the General Court of Justice.

23 **"§ 160A-684. Counterclaims by municipal corporation.**

24 The filing of a claim under this Article shall constitute consent by the plaintiff to the  
25 jurisdiction of the Industrial Commission to hear and determine any counterclaim of the  
26 maximum amount authorized for a claim in this Article or less that may be filed on  
27 behalf of a municipal corporation. A final award of the Industrial Commission awarding  
28 damages on a counterclaim shall be filed with the clerk of the superior court of the  
29 county where the case was heard. These awards shall be docketed and shall be  
30 enforceable in the same manner as judgments of the General Court of Justice.  
31 Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in  
32 this section shall require the filing of a counterclaim.

33 **"§ 160A-685. Notice of determination of claim; appeal to full Commission.**

34 Upon determination of said claim the Commission shall notify all parties concerned  
35 in writing of its decision and either party shall have 15 days after receipt of such notice  
36 within which to file notice of appeal with the Industrial Commission. Such appeal, when  
37 so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on  
38 the basis of the record in the matter and upon oral argument of the parties, and said full  
39 Commission may amend, set aside, or strike out the decision of the hearing  
40 commissioner and may issue its own findings of fact and conclusions of law. Upon  
41 determination of said claim by the Industrial Commission, sitting as a full Commission,  
42 the Commission shall notify all parties concerned in writing of its decision. Such  
43 determination by the Industrial Commission, sitting as a full Commission, upon claims

1 or counterclaims in an amount of five hundred dollars (\$500.00) or less per claim shall  
2 be final as to all parties and no appeal shall lie therefrom.

3 **"§ 160A-686. Appeals to Court of Appeals.**

4 (a) Either the claimant or the municipal corporation may, within 30 days after  
5 receipt of the decision and order of the full Commission, to be sent by registered or  
6 certified mail, but not thereafter, appeal from the decision of the Commission to the  
7 Court of Appeals. Such appeal shall be for errors of law only under the same terms and  
8 conditions as govern appeals in ordinary civil actions, and the findings of fact of the  
9 Commission shall be conclusive if there is any competent evidence to support them. The  
10 appellant shall cause to be prepared a statement of the case as required by the rules of  
11 the Court of Appeals. A copy of this statement shall be served on the respondent within  
12 45 days from the entry of the appeal taken; within 20 days after such service, the  
13 appellee shall return the copy with his approval or specified amendments endorsed or  
14 attached; if the statement is approved by the appellee, it shall be filed with the clerk of  
15 the Court of Appeals as a part of the record; if not returned with objections within the  
16 time prescribed, it shall be deemed approved. The chairman of the Industrial  
17 Commission shall have the power, in the exercise of his discretion, to enlarge the time  
18 in which to serve statement of case on appeal and exceptions thereto or  
19 counterstatement of the case.

20 (b) If the case on appeal is returned by the appellee with objections as prescribed,  
21 or if a counterstatement of the case is served on appellant, the appellant shall  
22 immediately request the chairman of the Industrial Commission to fix a time and place  
23 for settling the case before him. If the appellant delays longer than 15 days after the  
24 appellee serves his counterstatement or exceptions to request the chairman to settle the  
25 case on appeal, then the exceptions filed by the appellee shall be allowed; or the  
26 counterstatement served by him shall constitute the case on appeal; but the time may be  
27 extended by agreement of counsel.

28 (c) The chairman shall forthwith notify the attorneys of the parties to appear  
29 before the chairman for that purpose at a certain time and place, which time shall not be  
30 more than 20 days from the receipt of the request. At the time and place stated, the  
31 chairman of the Industrial Commission or the chairman's designee shall settle and sign  
32 the case and deliver a copy to the attorneys of each party. The appellant shall within five  
33 days thereafter file it with the clerk of the Court of Appeals, and if he fails to do so, the  
34 appellee may file his copy.

35 (d) No appeal bond or supersedeas bond shall be required of a municipal  
36 corporation.

37 **"§ 160A-687. Appeal to Court of Appeals to act as supersedeas.**

38 The appeal from the decision of the Industrial Commission to the Court of Appeals  
39 shall act as a supersedeas, and the municipal corporation shall not be required to make  
40 payment of any judgment until the questions at issue therein shall have been finally  
41 determined as provided in this Article.

42 **"§ 160A-688. Settlement of claims.**

43 (a) Any claims except claims of minors pending or hereafter filed against a  
44 municipal corporation may be settled upon agreement between the claimant and the

1 municipal corporation for an amount not in excess of twenty-five thousand dollars  
2 (\$25,000), without the approval of the Industrial Commission. The municipal  
3 corporation may also make settlements by agreement for claims in excess of twenty-five  
4 thousand dollars (\$25,000) and claims of infants or persons non sui juris, provided such  
5 claims have been subject to review and approval by the Industrial Commission.

6 (b) In settlements under twenty-five thousand dollars (\$25,000), agreed upon  
7 between the parties, the filing of an affidavit as set forth in this Article shall not be  
8 required.

9 **"§ 160A-689. Powers of Industrial Commission; deputies.**

10 The members of the Industrial Commission, or a deputy thereof, shall have power to  
11 issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders,  
12 opinions, and awards based thereon, punish for contempt, and issue writs of habeas  
13 corpus ad testificandum pursuant to G.S. 97-101.1. The Industrial Commission is  
14 authorized to appoint deputies and clerical assistants to carry out the purpose and intent  
15 of this Article, and such deputy or deputies are hereby vested with the same power and  
16 authority to hear and determine tort claims against a municipal corporation as is by this  
17 Article vested in the members of the Industrial Commission. The Commission may  
18 order parties to participate in mediation, under rules substantially similar to those  
19 approved by the Supreme Court for use in the Superior Court division, except the  
20 Commission shall determine the manner in which payment of the costs of the mediated  
21 settlement conference is assessed.

22 **"§ 160A-690. Affidavit of claimant; docketing; venue; notice of hearing; answer,**  
23 **demurrer, or other pleading to affidavit.**

24 (a) In all claims which may hereafter be filed against a municipal corporation,  
25 the claimant or the person in whose behalf the claim is made shall file with the  
26 Industrial Commission an affidavit in duplicate, setting forth the following information:

27 (1) The name of the claimant;

28 (2) The name of the municipal corporation against which the claim is  
29 asserted, and the name of the municipal corporation employee upon  
30 whose alleged negligence the claim is based;

31 (3) The amount of damages sought to be recovered;

32 (4) The time and place where the injury occurred;

33 (5) A brief statement of the facts and circumstances surrounding the injury  
34 and giving rise to the claim.

35 (b) Upon receipt of such affidavit in duplicate, the Industrial Commission shall  
36 enter the case upon its hearing docket and shall hear and determine the matter in the  
37 county where the injury occurred unless the parties agree or the Industrial Commission  
38 directs that the case may be heard in some other county. All parties shall be given  
39 reasonable notice of the date when and the place where the claim will be heard.

40 (c) Immediately upon docketing the case, the Industrial Commission shall  
41 forward one copy of plaintiff's affidavit to the clerk of the municipal corporation.

42 (d) The municipal corporation against whom the claim is asserted shall file  
43 answer, demurrer, or other pleading to the affidavit within 30 days after receipt of copy  
44 of same setting forth any defense it proposes to make in the hearing or trial, and no

1 defense may be asserted in the hearing or trial unless it is alleged in such answer, except  
2 such defenses as are not required by the Rules of Civil Procedure or other laws to be  
3 alleged.

4 **"§ 160A-691. Subpoenas.**

5 Subpoenas for any purpose authorized by G.S. 1A-1, Rule 45 may be issued by an  
6 Attorney of Record for either party in all proceedings under this Article and served by  
7 the means specified in the Rules of Civil Procedure or served by registered or certified  
8 mail, and service shall be proved by filing of the return receipt.

9 **"§ 160A-692. Limitation on claims.**

10 All claims against any and all municipal corporations shall henceforth be forever  
11 barred unless a claim be filed with the Industrial Commission within three years after  
12 the accrual of such claim, or if death results from the accident, the claim for wrongful  
13 death shall be forever barred unless a claim be filed by the personal representative of the  
14 deceased with the Industrial Commission within two years after such death.

15 **"§ 160A-693. Contributory negligence a matter of defense; burden of proof.**

16 Contributory negligence on the part of the claimant or the person in whose behalf the  
17 claim is asserted shall be deemed to be a matter of defense on the part of the municipal  
18 corporation against which the claim is asserted, and such municipal corporation shall  
19 have the burden of proving that the claimant or the person in whose behalf the claim is  
20 asserted was guilty of contributory negligence.

21 **"§ 160A-694. Limitation on payments by the municipal corporation.**

22 The maximum amount that the municipal corporation may pay cumulatively to all  
23 claimants on account of injury and damage to any one person arising out of any one  
24 occurrence shall be five hundred thousand dollars (\$500,000), less any commercial  
25 liability insurance purchased by the municipal corporation and applicable to the claim.

26 **"§ 160A-695. Rules and regulations of Industrial Commission; destruction of**  
27 **records.**

28 The Industrial Commission may adopt such rules and regulations as may, in the  
29 discretion of the Commission, be necessary to carry out the purpose and intent of this  
30 Article. The North Carolina Rules of Civil Procedure and Rules of Evidence, insofar as  
31 they are not in conflict with the provisions of this Article, shall be followed in  
32 proceedings under this Article. When any case or claim under this Article has been  
33 closed by proper order or award, all records concerning such case or claim may, after  
34 five years, in the discretion of the Industrial Commission with and by the authorization  
35 of the Department of Cultural Resources, be destroyed by burning or otherwise;  
36 provided, that no record pertaining to a case or claim of a minor shall be destroyed until  
37 the expiration of three years after such minor attains the age of 18 years."

38 **SECTION 2.** This act becomes effective with respect to causes of action  
39 accruing on or after July 1, 2005.