

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1326

Short Title: Consistency/Waiver of Governmental Immunity. (Public)

Sponsors: Senator Berger of Rockingham.

Referred to: Judiciary I (Civil).

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE CONSISTENCY IN WAIVER OF IMMUNITY BY LOCAL
3 GOVERNMENT BY TREATING PARTICIPATION IN RISK POOLS AND
4 TRUSTS FOR PAYMENT OF LIABILITY CLAIMS BY SCHOOL BOARDS
5 LIKE PARTICIPATION IN OTHER GOVERNMENTAL RISK POOLS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 58-23-1 reads as rewritten:

8 "**§ 58-23-1. Short title; definition.**

9 This Article shall be known and may be cited as the Local Government Risk Pool
10 Act. As used in this Article, "local government" means any county, city, local board of
11 education, or housing authority located in this State."

12 **SECTION 2.** G.S. 115C-42 reads as rewritten:

13 "**§ 115C-42. Liability insurance and immunity.**

14 Any local board of education, by securing liability insurance as hereinafter provided,
15 is hereby authorized and empowered to waive its governmental immunity from liability
16 for damage by reason of death or injury to person or property caused by the negligence
17 or tort of any agent or employee of such board of education when acting within the
18 scope of his authority or within the course of his employment. Such immunity shall be
19 deemed to have been waived by the act of obtaining such insurance, but such immunity
20 is waived only to the extent that said board of education is indemnified by insurance for
21 such negligence or tort.

22 Any contract of insurance purchased pursuant to this section shall be issued by a
23 company or corporation duly licensed and authorized to execute insurance contracts in
24 this ~~State~~ State, including the North Carolina School Boards Trust, or by a qualified
25 insurer as determined by the Department of ~~Insurance~~ Insurance or by a local
26 government risk pool, and shall by its terms adequately insure the local board of
27 education against liability for damages by reason of death or injury to person or
28 property proximately caused by the negligent act or torts of the agents and employees of
29 said board of education or the agents and employees of a particular school in a local

1 administrative unit when acting within the scope of their authority. The local board of
2 education shall determine what liabilities and what officers, agents and employees shall
3 be covered by any insurance purchased pursuant to this section. Any company or
4 corporation which enters into a contract of insurance as above described with a local
5 board of education, by such act waives any defense based upon the governmental
6 immunity of such local board of education.

7 Every local board of education in this State is authorized and empowered to pay as a
8 necessary expense the lawful premiums for such insurance.

9 Any person sustaining damages, or in case of death, his personal representative may
10 sue a local board of education insured under this section for the recovery of such
11 damages in any court of competent jurisdiction in this State, but only in the county of
12 such board of education; and it shall be no defense to any such action that the
13 negligence or tort complained of was in pursuance of governmental, municipal or
14 discretionary function of such local board of education if, and to the extent, such local
15 board of education has insurance coverage as provided by this section.

16 Except as hereinbefore expressly provided, nothing in this section shall be construed
17 to deprive any local board of education of any defense whatsoever to any such action
18 for damages or to restrict, limit, or otherwise affect any such defense which said board
19 of education may have at common law or by virtue of any statute; and nothing in this
20 section shall be construed to relieve any person sustaining damages or any personal
21 representative of any decedent from any duty to give notice of such claim to said local
22 board of education or to commence any civil action for the recovery of damages within
23 the applicable period of time prescribed or limited by statute.

24 A local board of education may incur liability pursuant to this section only with
25 respect to a claim arising after such board of education has procured liability insurance
26 pursuant to this section and during the time when such insurance is in force.

27 No part of the pleadings which relate to or allege facts as to a defendant's insurance
28 against liability shall be read or mentioned in the presence of the trial jury in any action
29 brought pursuant to this section. Such liability shall not attach unless the plaintiff shall
30 waive the right to have all issues of law or fact relating to insurance in such an action
31 determined by a jury and such issues shall be heard and determined by the judge
32 without resort to a jury and the jury shall be absent during any motions, arguments,
33 testimony or announcement of findings of fact or conclusions of law with respect
34 thereto unless the defendant shall request a jury trial thereon: Provided, that this section
35 shall not apply to claims for damages caused by the negligent acts or torts of public
36 school bus, or school transportation service vehicle drivers, while driving school buses
37 and school transportation service vehicles when the operation of such school buses and
38 service vehicles is paid from the State Public School Fund."

39 **SECTION 3.** This act becomes effective July 1, 2007.