

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS15159-MH-72 (3/13)

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

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CITIES WITH POPULATION GREATER THAN FIVE HUNDRED
3 THOUSAND TO BE SUBJECT TO THE STATE TORT CLAIMS ACT WITH CERTAIN
4 MODIFICATIONS.

5 The General Assembly of North Carolina enacts:

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

8 "**§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.**

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

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

16 (1) Jurisdiction for tort claims against the city shall be vested in the Superior
17 Court Division of the General Court of Justice of the county where the city is
18 principally located, and, except as otherwise provided in this section, tort
19 claims against a city shall be governed by the North Carolina Rules of Civil
20 Procedure. The city shall be solely responsible for the expenses of its legal
21 representation in connection with claims asserted against it, and for payment
22 of the amount for which it is found liable under this section. Therefore,
23 G.S. 143-291, 143-291.1, 143-291.2, 143-291.3, 143-292, 143-293, 143-295,
24 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not
25 apply to claims under this section.

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

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

33 (c) Should a city waive its immunity from civil liability pursuant to subsection (a) of
34 this section, it may purchase liability insurance without the purchase being deemed a waiver of
35 sovereign immunity as set forth by G.S. 160A-485. No document or exhibit that relates to or



1 alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in
2 the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall
3 the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the
4 jury any inference that the city's potential liability is covered by insurance. No judgment may
5 be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law
6 or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard
7 and determined by the judge without resort to a jury. The jury shall be absent during all
8 motions, arguments, testimony, or announcement of findings of fact or conclusions of law with
9 respect to insurance coverage. The city may waive its right to have issues concerning insurance
10 coverage determined by the judge without a jury and may request a jury trial on these issues."

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