

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 742\*

Short Title: Local Government Tort Liability.

(Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR  
NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE  
AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE  
FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE  
RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 153A-435 reads as rewritten:

**"§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.**

(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental ~~immunity, immunity from the first dollar of damages up to the extent of insurance coverage, coverage or to the extent waived by the adoption of a resolution creating a funded reserve under this subsection,~~ for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute

1 liability for damage to person or property caused by an act or omission of the county or  
2 any of its officers, agents, or employees acting within the scope of their authority and  
3 the course of their employment, the county shall adopt a resolution that deems the  
4 creation of a funded reserve to be the same as the purchase of insurance under this  
5 section. Adoption of such a resolution waives the county's governmental immunity only  
6 to the extent specified in the commission's resolution.

7 (b) If a county has waived its governmental immunity pursuant to subsection (a)  
8 of this section, any person, or if he dies, his personal representative, sustaining damages  
9 as a result of an act or omission of the county or any of its officers, agents, or  
10 employees, occurring in the exercise of a governmental function, may sue the county for  
11 recovery of damages. To the extent of the coverage of insurance purchased pursuant to  
12 subsection (a) of this section, and to the extent provided by resolution adopted pursuant  
13 to subsection (a) of this section, governmental immunity may not be a defense to the  
14 action. Otherwise, however, the county has all defenses available to private litigants in  
15 any action brought pursuant to this section without restriction, limitation, or other effect,  
16 whether the defense arises from common law or by virtue of a statute.

17 Despite the purchase of insurance or the adoption of a resolution as authorized by  
18 subsection (a) of this section, the liability of a county for acts or omissions occurring in  
19 the exercise of governmental functions does not attach unless the plaintiff waives the  
20 right to have all issues of law or fact relating to insurance in the action determined by a  
21 jury. The judge shall hear and determine these issues without resort to a jury, and the  
22 jury shall be absent during any motion, argument, testimony, or announcement of  
23 findings of fact or conclusions of law relating to these issues unless the defendant  
24 requests a jury trial on them.

25 (c) Nothing in this section shall apply to any claim in tort against a county for  
26 which the county is not immune from liability under the statutes or common law of this  
27 State."

28 **SECTION 2.** G.S. 160A-485 reads as rewritten:

29 "**§ 160A-485. Waiver of immunity through insurance purchase.**

30 (a) Any city is authorized to waive its immunity from civil liability in tort by the  
31 act of purchasing liability insurance. Participation in a local government risk pool  
32 pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase  
33 of insurance for the purposes of this section. Immunity shall be waived ~~only to the from~~  
34 the first dollar of damages up to the extent that the city is indemnified by the insurance  
35 contract from tort liability. ~~liability or to the extent waived by the adoption of a~~  
36 resolution creating a funded reserve. No formal action other than the purchase of  
37 liability insurance shall be required to waive tort ~~immunity, and no immunity.~~ No city  
38 shall be deemed to have waived its tort immunity by any action other than the purchase  
39 of liability insurance. ~~insurance or the adoption of a resolution creating a funded reserve~~  
40 under this subsection.

41 If a city uses a funded reserve instead of purchasing insurance against liability for  
42 wrongful death, negligence, or intentional damage to personal property, or absolute  
43 liability for damage to person or property caused by an act or omission of the city or any  
44 of its officers, agents, or employees acting within the scope of their authority and the

1 course of their employment, the city shall adopt a resolution that deems the creation of a  
2 funded reserve to be the same as the purchase of insurance under this section. Adoption  
3 of such a resolution waives the city's governmental immunity only to the extent  
4 specified in the council's resolution.

5 (b) An insurance contract purchased pursuant to this section may cover such torts  
6 and such officials, employees, and agents of the city as the governing board may  
7 determine. The city may purchase one or more insurance contracts, each covering  
8 different torts or different officials, employees, or agents of the city. An insurer who  
9 issues a contract of insurance to a city pursuant to this section thereby waives any  
10 defense based upon the governmental immunity of the city, and any defense based upon  
11 lack of authority for the city to enter into the contract. Each city is authorized to pay the  
12 lawful premiums for insurance purchased pursuant to this section.

13 (c) Any plaintiff may maintain a tort claim against a city insured under this  
14 section in any court of competent jurisdiction. As to any such claim, to the extent that  
15 the city is insured against such claim pursuant to this section, governmental immunity  
16 shall be no defense. Except as expressly provided herein, nothing in this section shall be  
17 construed to deprive any city of any defense to any tort claim lodged against it, or to  
18 restrict, limit, or otherwise affect any defense that the city may have at common law or  
19 by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to  
20 give notice of his claim to the city, or to commence his action within the applicable  
21 period of time limited by statute. No judgment may be entered against a city in excess  
22 of its insurance policy limits on any tort claim for which it would have been immune but  
23 for the purchase of liability insurance pursuant to this section. No judgment may be  
24 entered against a city on any tort claim for which it would have been immune but for the  
25 purchase of liability insurance pursuant to this section except a claim arising at a time  
26 when the city is insured under an insurance contract purchased and issued pursuant to  
27 this section. If, in the trial of any tort claim against a city for which it would have been  
28 immune but for the purchase of liability insurance pursuant to this section, a verdict is  
29 returned awarding damages to the plaintiff in excess of the insurance limits, the  
30 presiding judge shall reduce the award to the maximum policy limits before entering  
31 judgment.

32 (d) Except as otherwise provided in this section, tort claims against a city shall be  
33 governed by the North Carolina Rules of Civil Procedure. No document or exhibit  
34 which relates to or alleges facts as to the city's insurance against liability shall be read,  
35 exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought  
36 pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his  
37 behalf directly or indirectly convey to the jury any inference that the city's potential  
38 liability is covered by insurance. No judgment may be entered against the city unless the  
39 plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance  
40 coverage. All issues relating to insurance coverage shall be heard and determined by the  
41 judge without resort to a jury. The jury shall be absent during all motions, arguments,  
42 testimony, or announcement of findings of fact or conclusions of law with respect to  
43 insurance coverage. The city may waive its right to have issues concerning insurance

1 coverage determined by the judge without a jury, and may request a jury trial on these  
2 issues.

3 (e) Nothing in this section shall apply to any claim in tort against a city for which  
4 the city is not immune from liability under the statutes or common law of this State."

5 **SECTION 3.** S.L. 1987-980 is repealed.

6 **SECTION 4.** Section 2 of S.L. 1998-200 is repealed.

7 **SECTION 5.** This act becomes effective October 1, 2001, and applies to  
8 causes of action arising on or after that date.