LEGISLATIVE RESEARCH COMMISSION

STATE TORT LIABILITY AND IMMUNITY

REPORT TO THE
2001 SESSION OF THE
2001 GENERAL ASSEMBLY
OF NORTH CAROLINA

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is

cochaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1999 Session and 2000 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of state tort liability and immunity was authorized by Section 2.1 of Part II of Chapter 395 of the 1999 Session Laws (Regular Session, 1999). The relevant portions of Chapter 395 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Civil Liability and Structured Settlements area under the direction of Representative James W. Crawford, Jr. The Committee was chaired by Senator Brad Miller and Representative Martin Nesbitt. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library following the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

The State Tort Liability and Immunity Study Committee held four meetings after reporting to the 2000 Session of the 1999 General Assembly.

First Meeting - September 13, 2000

At its first meeting following the 2000 Short Session held on September 13, 2000, O. Walker Reagan, Committee Counsel, began the meeting with a brief recap of legislative action on the Committee's recommendations to the 2000 General Assembly. The Committee's Report to the 2000 General Assembly had recommended that the Tort Claims Cap be raised from $150,000 to $500,000, recommended creation of an Excess Liability Fund to pay for claims over $150,000, and recommended a $2,640,000 appropriation to establish that fund. Senator Miller and Representative Nesbitt introduced identical bills containing those recommendations. The House Ways and Means Committee considered Representative Nesbitt's bill and made a few technical changes after which the bill received a favorable report and was re-referred to the House Committee on Appropriations. Included in the House Appropriations Committee's budget bill was a provision to raise the cap to $500,000, however, other recommendations of the Committee were not included. In the Senate, Senator Miller worked to get the House Ways and Means Committee's substitute bill put into the budget bill. The substitute bill was adopted, made a part of the Senate budget and ultimately agreed upon by the budget conferees. As of July 1st, 2000, due to the provision's enactment, tort claims against the State could be paid up to $500,000. This change applied to claims pending on July 1st as well as those filed on or after July 1, 2000.

The Committee discussed the Excess Liability Fund, a recommendation from the Committee's Report that was not adopted. Mr. Reagan reported that the provision creating the Excess Liability Fund had been removed because, in the current budget, money from lapsed salaries was being used for this purpose and state agencies had been participating in that effort. Representative Haire expressed concern that the Excess Liability Fund had not been put into place and suggested that the Committee revisit that issue.

Ms. Anita Brown-Graham from the Institute of Government at the University of North Carolina spoke next and provided an overview of the liability of North Carolina cities and counties. Excerpts from her book, A Practical Guide to the Liability of North Carolina Cities and Counties had been distributed to the members prior to her presentation.

Ms. Brown-Graham reported there were many problematic issues regarding local governmental liability and that, in essence, these issues revolved around public sector liability issues generally. She described that a citizen of North Carolina injured by an employee of the public sector must grapple with:

- Who is a proper defendant,
- What is the proper forum, and
- What are the limits on recovery?

More particularly, the citizen has to determine whether a lawsuit may be brought against the employee in his individual capacity or merely in his official capacity, which in essence is seeking compensation from the appropriate governmental entity. The individual might also have to determine whether the proper entity

defendant is the State or local government. This is not always easy to answer. Recently courts have increasingly been willing to determine that local government employees, in certain instances, act as agents of the State rather than the local government, or sometimes "in officio" for local government. This means that the State might be, in certain instances, the proper defendant even though the person causing the injury is actually an employee of the local government.

Determining the proper defendant has significant implications in terms of the forum for the action. If the local government entity is the defendant, the action is brought in a State court. If the State is the defendant, then it is brought before the Industrial Commission.

Assuming an injured person is able to determine that the local government is the proper defendant, then the citizen must determine whether the activity that the local government was engaged in was a governmental or proprietary activity. While local governments are not immune from injuries caused while engaged in proprietary activities, they are generally immune from injury caused while engaged in governmental activities, unless they waive their immunity by purchasing liability insurance. The existence of insurance and the extent of the waiver of immunity through the purchase of insurance or some other means must also be considered.

If an injured party gets through that quagmire then the party still might have to grapple with whether the Public Duty Doctrine somehow bars local governmental liability. Additionally, if the party is seeking compensation from the governmental employee in that employee's individual capacity, the injured party must determine whether public official immunity or some other immunity like legislative immunity might apply to bar suit. Ms. Brown-Graham explained that this is a very confusing area of the law but that she wanted to give the Committee the sense of all of the issues that a citizen might have to deal with.

In the 1990s, a number of cases of the North Carolina Court of Appeals suggested that a plaintiff could not sue a public sector employee in that employee's individual capacity. To the extent that the injury was caused by the person while engaged in the scope of their public duty, the court said those persons were entitled to governmental immunity in their individual capacity and, therefore, could not be sued personally. The North Carolina Supreme Court has made clear that the plaintiff who was injured now has the option of suing the individual, the entity for which the individual works, or both.

The first hurdle for an injured party suing a local government in North Carolina is governmental immunity. North Carolina is one of a significant minority of states that still retains a distinction between governmental activities and proprietary activities. The basis for this distinction is that local governments provide services to benefit the public at large which are essentially unique to the government as an entity. The courts have determined these activities merit protection from liability. On the other hand, local governmental employees sometimes conduct activities similar or the same as activities conducted by the private sector. These things are considered proprietary activities and have not presented a rationale for protection from liability.

The tests the courts have traditionally utilized in determining whether an activity is governmental or proprietary in nature, include the following:

- Who traditionally performs the function? If it is a function that has traditionally been performed exclusively by local governments, then it is likely to be a governmental activity. On the other hand, if it is a function that the private sector has also been involved in for some amount of time, it is less likely to be a governmental activity. For

example, law enforcement is clearly quintessential governmental activity. On the other hand, public housing, is something that a court has ruled is a proprietary activity for which local governments do not have governmental immunity.

- Is a fee charged for the activity? The mere existence of a fee is not sufficient to make something proprietary. However, in every instance where the court has considered the fee issue where the local government has been making a profit on the activity, the courts have found that activity proprietary. Profit is not necessarily the litmus test, but, most likely, the courts will find that to be proprietary activity if a profit is made. On the other hand, if a fee is charged, but the local government is substantially subsidizing the activity, the activity will most likely be considered governmental.

- Is the activity absolutely governmental in nature such as in the area of public health and safety, such as a public health clinic?

- When all else fails, the courts resort to whether there is some public policy that exists to support the courts' finding that the activity is either governmental or proprietary. When the court has determined whether an activity is governmental or proprietary, there is not a lot of confusion thereafter.

Assuming that an activity is governmental in nature, the only way a local government in North Carolina can waive its immunity and consent to be sued is through the purchase of liability insurance. The North Carolina General Statutes authorize local governments to purchase liability insurance but do not require it, so some local governments have insurance and some do not. Those that do have insured in a variety of different ways.

The waiver of the immunity is only to the extent of insurance coverage. The purchase of insurance does not mean that a local government has opened itself up to all kinds of liability claims. Assume, for instance, the local government buys an insurance policy and the cap per claim is $10,000. If a plaintiff's injuries are $100,000, the plaintiff's recovery is limited to $10,000 if there is determination that a governmental activity was involved.

Clearly, insurance includes liability coverage by companies licensed to sell insurance. Article 23 of Chapter 58 of the NC General Statutes indicates that participation in local government risk pool is also deemed the purchase of insurance. The courts, in analyzing this, have determined that this is only true to the extent that two or more local governments share the risk. In essence, the policy behind governmental immunity is that local governments ought to be able to protect themselves from big hits from liability lawsuits in areas where the court has determined that there should be some protection. To protect itself, a local government needs to engage in some kind of insurance that spreads the risk. If the local government has a "self-insurance" mechanism whereby it pays itself for the claim, that is not deemed insurance under the statute because that doesn't spread the risk. If two or more local governments decide to pool their money, divide the local government risk, and pay claims out of that pool, such a mechanism is deemed the purchase of insurance for waiver purposes, unless the pool participant subject to the claim must reimburse the pool for losses resulting from the claim.

In a tort claim action against a local government, once a local government raises the issue of governmental immunity or any other immunity previously discussed, the court must first determine whether any immunity applies before the action proceeds. Everything stops while that decision is taking place. If the

court determines the immunity does not apply, the local government or its employee has immediate right of appeal to the Court of Appeals.

Even in cases where the local government may have waived its governmental immunity by purchasing liability insurance, it was sometimes possible, until April, 2000, for the local government to avoid liability by asserting the Public Duty Doctrine. The Public Duty Doctrine only applies where a plaintiff is asserting that the local government failed to protect the plaintiff from the injury of an independent third person.

Typically, the issue arises in claims against law enforcement where the plaintiff claims that there should have been better coverage and local government denies responsibility. In those cases, the courts have determined that the Public Duty Doctrine would be a defense for local governments. The Public Duty Doctrine stands for the idea that "there are some things that local governments do, for which they have a duty to all of their citizens, but no particular duty to anyone."

Until April, 2000, the Public Duty Doctrine had been applied by the North Carolina Court of Appeals in a variety of contexts: law enforcement, fire protection, building inspection, animal control, and other cases where a plaintiff asserted there should have been more resources devoted to address a particular problem.

In April 2000, the North Carolina Supreme Court determined in two cases that the Public Duty Doctrine only applies to a local government when it is engaged in a law enforcement activity. The Supreme Court also previously had determined that the Public Duty Doctrine applied to State government in health and safety issues. Thus the Public Duty Doctrine has been interpreted to be applicable under narrow circumstances.

Ms. Brown-Graham then explained what happens in North Carolina if an injured party seeks to sue the individual public employee who caused the injury. North Carolina tort law makes a very significant distinction between persons who are considered public "officers" and those considered public "employees." Public officers may not be held liable for simple negligence unless a plaintiff is able to show that the public officer acted with "malice, corruption, or outside the scope of his authority." On the other hand, those persons who are designated as public employees may be held liable for simple negligence.

The consequences rest on who is a public officer and who is a public employee. The courts have indicated that the test for a public officer is as follows:

- Persons whose positions are created by legislation;
- Person whose positions normally require them to take an oath of office;
- Persons who normally perform legally imposed duties; and
- Persons who exercise significant independent judgment in their jobs.

A person does not need to meet all four of these criteria in order to be deemed a public officer. Recently, courts have focused significantly on the fourth factor as a controlling factor for making the determination. This “public officer” immunity is rooted in public policy concerns. Some local government officials must make significant decisions every day in their jobs and the basis of this immunity is that those people will be significantly hampered from making decisions if they are under a threat of liability for their decision-making.

On the other hand, persons who are considered public employees are those who work under the general direction of a superior and who exercise little discretion in performing their duties. The courts have

determined that because these employees are not required to make decisions, there is no need to protect them with immunity.

Public officer immunity is what is known as a qualified immunity. That is, the court will look beyond the assertion of the immunity to determine whether this person was engaged in discretionary activity, was this person motivated by malice or corruption, and did this person act out of the scope of his authority.

The remaining public sector immunity is legislative immunity. On the other hand, legislative immunity is an absolute immunity that one is entitled to as a matter of law. To the extent that local legislators and government executives act in a legislative capacity and are involved in activity that does not violate criminal laws, they are absolutely immune from personal liability for their actions.

Regarding persons who are not covered by public officer immunity or legislative immunity when a lawsuit is brought against them in their personal capacity, local governments in North Carolina may provide the employee's defense for any civil or criminal action on account of acts or omissions committed in the scope of employment. The decision of the local government to pick up the cost of defending its individual employee is left completely to the discretion of the governing board.

Local governments are also authorized to pay any judgment or settlement that arises from a lawsuit against their employees in their individual capacity. There is no monetary limit under the statute. There are, however, statutory provisions governing the types of judgments that the local government cannot pay and the procedure for payment authorization. If the local governing board finds that the employee's actions were motivated by fraud, corruption, or malice, it may not pay the judgment or settlement. In addition, a notice of claim must be given before a settlement is reached or judgment is rendered in order for the local government to have the authority to make payment and the local government must previously have adopted a set of uniform standards under which claims may be paid.

Questioned to what extent a plaintiff could recover where the city had insurance coverage for claims in excess of $1 million and the plaintiff's claim was a lesser amount, Ms. Brown-Graham responded that in that instance the plaintiff couldn't recover because there would be no waiver of governmental immunity and further explained that a plaintiff's recovery, in any case, is limited to the amount of the local government's insurance coverage.

Compared to other states' systems, Ms. Brown-Graham stated, North Carolina's system is atypical. The trend in other states over the past several years was to enact a tort claims act that defines more uniformly the potential liability of local governments.

As to how local governments could afford seemingly costly attorneys' fees without insurance coverage, for a local government to provide private counsel to its employees sued in an individual capacity, insurance coverage is prudent. More often than not, the defense cost will far outweigh any potential judgment or settlement that might come out of a case. Nonetheless, it is also possible for a local government to have its city or county attorney provide a defense for the individual.

As to whether other states distinguish between proprietary and governmental activities, and between public officers and public employees, most states that have been looked at began with distinctions between proprietary and governmental activities but over time have abolished the distinction. Others have a distinction much like the federal government, which immunizes those activities that are considered discretionary policy-making activities but allows liability claims against all other activities. Other states make

a variety of distinctions, but most do not use the governmental/proprietary distinction the way that North Carolina does.

Regarding individual employee liability, local government employees are not covered by governmental immunity though some local government employees are protected by public officer immunity.

When a judgment is entered in excess of insurance coverage, the local government does not have to pay in excess of the coverage, which is a cap on the liability. It was noted that in that instance the plaintiff could pursue the individual for the balance of the judgment.

There are less traditional "insurance" mechanisms, by which a local government can waive immunity. If the local government participates in a risk-sharing pool, consisting of at least two or more local governments requiring each participant to bear the cost if one participant suffers a judgment, it waives immunity. A pool where only the judgment-stricken participant reimburses the pool does not qualify to waive sovereign immunity.

Andy Romanet, General Counsel with the North Carolina League of Municipalities, spoke next on the League's perspective. His remarks included the following:

- There appears to be no widespread failure to purchase insurance on the part of local governments.
- Brown v. Richmond County stands for the proposition that a local government cannot pay for something for which it is not legally responsible.
- The term "self-insured" means "I bear the risk." A large city that has lots of money and thinks it can bear the risk may choose not to purchase insurance from another but rather "self-insure" from its own funds. Most such cities do purchase "umbrella" coverage, however, for added protection.
- The issue of self-insurance has been even more obscured in Blackwater, a court case challenging the mechanism in the City of Winston-Salem where the city had set up a bonded entity to self-insure itself. This mechanism allowed the city to use the defense of governmental immunity in litigation when the alleged tort arose from a governmental function.
- The distinction between governmental functions and proprietary functions is "a very unclear distinction in the law."
- The League's risk pool was organized under Article 23 of Chapter 58, and participation in the pool waives sovereign immunity.
- The League's risk pool operates as follows: participating local governments pay a premium based on the normal underwriting standards and get insurance just like they would if they purchased it from a commercial carrier. Because they pool their risk, participants benefit by lower premiums if judgments do not exceed anticipated losses. The League pool offers benefits unavailable in the private sector, such as a full-blown risk program working with local governments to meet OSHA standards.
- 430 out of 522 League members participate in the pool. The rest are not necessarily uninsured. Most cities have insurance in excess of the State Tort Cap Limit.
- The League may settle cases. The League is concerned about the evaporation of the Public Duty Doctrine and intends to make an effort to replace some of it.

- The League would be willing to talk about having a liability cap likely no more and no less than the State. The League would also likely want the State court system, not the Industrial Commission, to be the proper forum for hearing these cases.
- Local governments want to be responsible, and they have had few claims over a ten-year period that have exceeded the amount of insurance coverage.

Representative Nesbitt asked if the League and the Counties were together in this and was informed that they were separate. Representative Nesbitt also said he felt that whether or not an injured party is paid for a claim shouldn't be dependent on where the injured party happens to be at the time the accident occurs. He further noted he has heard that in some instances local governments are either uninsured or insured in such a way that they don't have to pay. These mechanisms allow the local government to choose which claims to pay and under what terms to pay them.

Richard Taylor, Director of the Academy of Trial Lawyers pointed out that when municipalities self-insure, for instance at a million dollars, they claim absolutely that they are immune for any claims less than a million dollars and they pay claims only if they want to. Mr. Romanet agreed that if a local government is self-insured, it has not purchased insurance and can, therefore, plead immunity up to the level where any insurance coverage begins.

Representative Nesbitt said it was his understanding that if a local government self-insures, it can pay what it wants to if it is under the amount of any insurance coverage and inquired whether a local government with no obligation to pay could pay anything at all since the law appears to prohibit payments where there is no obligation. Responding, Mr. Romanet said that some local governments, such as Mecklenburg County and Raleigh, have local bills passed allowing them to pay claims if they want to.

Mr. Romanet stated that the modern rationale for sovereign immunity, having deviated some from the original concept that the "king can do no wrong," is that local governments are essentially not required to provide any services whatsoever in this State except building inspection and fire inspection and thus they should be protected from liability for services they “voluntarily” provide to the public.

Jim Blackburn from the NC County Commissioners Association was recognized to speak on the issue. His remarks included the following:

- The Association’s risk pool is structured similar to the League's.
- The level of participant coverage ranges from $500,000 up to in excess of $2 million. There was not an incentive for counties to buy real low levels of coverage.
- With respect to defense of employees, counties cannot pick and choose which employees to defend. Once a policy is adopted that says the county will defend its employees, then it must defend them regardless.
- Membership in a pool gives the counties the opportunity to gain risk control and other kinds of assistance that would not necessarily be available through commercial coverage.

The counties' relationship with the State differs from that of the cities because counties historically understand that it is their duty to implement State policy, particularly in human services areas. This sharing of responsibility has given rise in recent years to a great deal of confusion regarding liability for counties particularly in the areas of building inspections, inspector sanitarian work, and child and adult protective services, where county workers and agencies carry out State standards. There was a time when it was fairly clear that if somebody was acting as an agent of the State, even though they were a local government

employee, the State would be the potentially liable party and the Industrial Commission would be the appropriate forum. A few recent cases have confused the issues, even suggesting that a claimant in such actions may have a choice of forums. There is also confusion and fear on the part of the local government employee community in areas where they are enforcing State regulations. The concern is that they can be held liable either on a personal level or with the county.

Some counties self-insure; they are most likely the larger counties.

The difference between self-insured and uninsured is sometimes a distinction without a difference. The degree to which a local government is self-insured versus uninsured depends upon whether someone in an actuarial context determines the amount of money to put in the bank for liability, a procedure that is not unlike what a pool or commercial carrier would do. Counties that don't go through that actuarial analysis are for all intents and purposes uninsured.

Counties can self-insure without special legislation. Article 23 in Chapter 58 allows for the formation of risk pools that in some instances are to be overseen by the Department of Insurance. Risk pools, however, are not required to be overseen by the Department of Insurance, that is an option. For example, the risk pool in Charlotte/Mecklenburg involves the City of Charlotte, County of Mecklenburg, and the Charlotte/Mecklenburg School System. That is a single pool involving those three entities and to Mr. Blackburn's knowledge the Department of Insurance does not oversee them.

Mr. Romanet added that cities could also self-insure. The problem of self-insurance is the inability, based on current statutes, to waive immunity to settle claims. Some local governments chose to be able to settle in that area and they chose to get local legislation to be able to do that.

Senator Miller noted that being self-insured is the same as being uninsured in that neither waives sovereign immunity. Under the law, immunity has to be asserted when there is potential liability.

Ms. Brown-Graham said there is presently a case proceeding through the courts in which the Court of Appeals has suggested that it might be a violation of the equal protection clause or due process under the federal Constitution for a local government to sometimes assert governmental immunity and sometimes not assert it. Mr. Romanet said the advice currently being given local governments is that one should not assert it because the opinion is written such that a local government would then leave itself open for degrees of settlement with different parties.

Mr. Taylor introduced Stella Boswell, legal counsel to the Academy of Trial Lawyers, and proceeded to discuss the factual setting for the Greensboro case referred to by the previous speakers. It was noted that North Carolina requires all of its citizens to have minimum automobile insurance, but apparently the cities of Greensboro, Charlotte, Winston-Salem, and Fayetteville, carry no insurance, and each city decides whether or not it is going to pay claims against the city. In the Greensboro case, the Court of Appeals decided that this scheme was not only unfair but also unconstitutional. The ruling declared that a local government can't pick and choose whom to pay and whom not to pay and can't decide that it is going to pay some people more than others.

In most states local government immunity has been treated the same as state immunity with the trend of eliminating it altogether or allowing some recovery. North Carolina is unusual in the fact that it allows local governments to choose whether or not to compensate people injured by their employees. The first problem with this system is that there is a lack of uniformity, as there are many local governments that don't

carry insurance. He noted it should not be the "luck of the draw" about which town an injured person is in about whether or not that person is going to be able to have medical bills paid and injuries compensated.

There was discussion on the issue of excess insurance coverage in the larger cities. Charlotte, Greensboro, Winston-Salem and Fayetteville maintain that they have no insurance and that they will pay only at some large amount, such as $1 million or above that. A suggested fix to this problem might be to require that when sovereign immunity is waived by purchasing insurance, immunity be waived from the first dollar to the top dollar of the insurance.

Mr. Taylor emphasized what his organization considers the three most important issues related to local government tort liability: the need for uniformity among local government liability, the need for all cars to be insured not just nonfleet private passenger cars, and the need for waiver of governmental immunity from the first dollar up if it is waived at all.

Some states have eliminated sovereign immunity completely while some had a greater amount of recovery than North Carolina did prior to raising the State cap to $500,000. One state, Alabama, asserts complete sovereign immunity, but the trend is to eliminate it.

Representative Haire said he doesn't see how immunity can be asserted by an entity and that entity can be liable for excess over immunity, when it didn't have to pay anything to start with. Mr. Taylor said that was the current law and that's what the Academy would like for the Legislature to change.

Representative Nesbitt raised the issue of the problem of no recovery when there are two defendants in a car accident, the local government invokes governmental immunity, and the remaining defendant shifts the blame to the departed local government, leaving the plaintiff with no recovery. He inquired whether the Uninsured Motorist Statute would apply in that instance.

Bill Hale from the Department of Insurance was recognized to comment on the Uninsured Motorist law. He said that if you have uninsured motorist coverage and someone else without insurance hits your car, you are covered. What comes to play in this situation is if the injured person has a cause of action against the driver of the other car, as an individual, not an employee. The other question is whether that driver's personal auto policy covers that situation.

Mr. Reagan noted one of the issues is that when the local government has no liability under sovereign immunity, the driver of the car has none because of the Public Duty Doctrine. Since there is no liability, there is no coverage for the injured party.

Second Meeting - October 11, 2000

At its second meeting held on October 11, 2000, Committee Co-counsel Walker Reagan provided an overview of the meeting, explaining it was structured around how local governments handle tort claims and what concerns they would have if sovereign immunity were waived up to $500,000 for all local governments. Mr. Reagan also called the Committee's attention to a memo prepared by Co-counsel, Frank Folger.

Mr. Dudley Watts was recognized to discuss how Granville County handles its liability. He discussed how Granville County had participated in the County Commissioner Association’s Risk Management Pool at a cost of $100,000 a year for all insurance coverage, with a $5000 deductible for each claim. Mr. Watts

discussed how the county budgeted for claims, how a risk determination is made regarding areas with the greatest exposure, and his concern that waiving governmental immunity up to $500,000 for every local government might lead to more “self-insurers” and severely jeopardize small communities put together as municipalities primarily for planning issues. He noted that holding small local governments responsible for negligent actions of their agents is ultimately holding the citizens responsible.

Representative Nesbitt inquired whether Granville County’s participation in the Association’s pool waived governmental immunity to the extent of the pool’s coverage. Mr. Watts said he understood it did.

Mac McCarley, City Attorney for the City of Charlotte, was recognized to explain how the City of Charlotte handles its liability. He said that Charlotte has combination coverage and a large part of that coverage is self-funded. There is also private insurance coverage for the Charlotte Douglas International Airport, which performs or engages in a non-governmental function and therefore cannot use the defense of immunity. That coverage is from $50,000 up to $250 million. There is also private catastrophic coverage for claims between $2 million - $4 million, with no insurance for claims below $2 million and above $4 million. This is primarily for police activities. They also have a Risk Management Division that is jointly funded by the City of Charlotte, Mecklenburg County, and the Charlotte-Mecklenburg School System. This is not a risk pool, but a staff of employees paid jointly by these three entities to provide services that a pool staff or insurance company would provide. They place coverage and adjust claims. There is also private insurance for a fairly large aggregate stop-loss for approximately $20 million in case of a bad year.

He then explained why Charlotte chose this system and its benefits. He felt that Charlotte officials would support a local tort claims cap if the cap were the same as the State cap, and if there were a guarantee that the cap would stay tied to the State cap whether it goes up or down. The city prefers that cases be tried in local State courts rather than in front of the Industrial Commission. Charlotte desires to compensate injured persons but remains concerned about the “erosion of fault as the basis of the tort system.” He also urged the General Assembly to make a decision about this relatively soon because the recent ruling in Dobrowolska v. Wall & the City of Greensboro, 530 S.E.2d 590 (2000), the case referenced in the previous meeting, would likely force cities like Charlotte and Greensboro to settle "all or nothing."

Mr. McCarley said that when Charlotte had asserted governmental immunity, most of those cases involved determinations of pain and suffering, cases that are difficult to settle. In some of those instances Charlotte would assert immunity to get out of a suit especially when it felt that it could not make a reasonable settlement. While Charlotte does not have coverage for defense of their employees, a resolution was adopted in 1977 stating that, in accordance with the terms of the statutes, Charlotte will pay defense costs and judgments against employees in accordance with the statute and their resolution. There is no limit as to what amount can be paid for this purpose. The City of Charlotte is sued for tort-related issues two to three times a week and one-third of those suits are low-dollar, under $20,000. The rest, minus four or five a year, are between $20,000 to $200,000. About five a year are high-dollar claims up in the $500,000 range. 99.9% of those claims are settled.

Sovereign immunity is mentioned by Charlotte in all cases as they explain what used to be their policy, which was, if right, they would fight all the way, but if wrong, they would look for a quick and reasonable settlement. They had a good record for settling cases and did not have to plead sovereign immunity often.

Representative Nesbitt noted that the ruling in the *Dobrowolska* case made those approaches moot. He added that the term "reasonable" was in the eye of the beholder and that it certainly was advantageous when attempting to settle claims to be able to say, "I will pay you nothing." Mr. McCarley agreed.

A cap of $500,000 was discussed and Mr. McCarley said that, for Charlotte, it would make no difference because they are self-funded.

Brenda Gibson, Risk Manager for Forsyth County, was recognized to explain how Forsyth County handles its liability. She said Forsyth County has self-funded retention coverage for general liability up to $250,000. They used actuarial studies to determine that amount. They also have private insurance coverage of $750,000 and above and an umbrella policy of $9 million. Most coverage is for automobile liability and claims resulting from errors or omissions. This coverage includes Forsyth County School Systems, Forsyth Technical Community College, the ABC Board and the Mental Health Authority. Regarding the defense of employees, if they are sued, or if there is a potential suit or claim against their employee, the county provides coverage that is built into the self-funded retention and other layers of coverage previously mentioned. Forsyth County pays for the defense and for the judgment, if there is one.

Forsyth County chose insurance over pool participation to avoid waiving immunity from the first dollar up. The county also wanted to protect the taxpayers and not leave things wide open for an upper-limit judgment. Therefore, they selected $250,000 as a reasonable amount to self-fund.

Regarding Forsyth County's asserted governmental immunity, Ms. Gibson said that if the claim results from a governmental function, they do not have to pay; but it is their policy to pay for damages, though not for pain and suffering, if the county is at fault. If the county employee was responding to an emergency situation, then they would invoke governmental immunity and pay nothing. Ms. Gibson was reluctant to comment on Forsyth County's opinion on any proposed local government tort claims cap because she had not consulted with county officials.

Fred Marshall, Risk Administrator from the City of Winston-Salem was recognized to explain how the City of Winston-Salem handles its liability. He said that a self-funded, non-profit program (Risk Acceptance Management Corporation) has been set up outside the auspices of the City of Winston-Salem for this purpose. The City did a study to determine the best way to defend and protect the taxpayers of Winston-Salem against the variables of the insurance market while keeping within the authority granted to them by statute. Because this program is not considered insurance, they can use the defense of governmental immunity.

The program (Ramco) funds itself by selling variable-rate bonds to the open bond market and enters into an agreement with the bond holders that they will be paid back at a certain interest rate based on the best faith and credit of the City of Winston-Salem. Ramco entered into an agreement with the City of Winston-Salem stating that it would pay claims arising out of actions of City employees or the City itself. In turn, the City would reimburse Ramco. Therefore, the City of Winston-Salem has no insurance. The program has been challenged alleging it to be an insurance company, but the Supreme Court has ruled that it is not and therefore could use the defense of governmental immunity.

The Board has passed a resolution indicating that Winston-Salem will defend employees in performance of their duties. If, however, the act occurred outside the employee's duty and/or if some criminal activity is involved, they will not defend the employee. They participate in reasonable negotiations to settle claims. In cases involving a governmental function, they will pay actual damages, lost wages, property damages, as well as reasonable attorney fees. If it is a proprietary function, they don't have those defenses and have to defend the claim like everybody else does. They do not invoke governmental immunity until negotiations are over and a lawsuit is filed. Once the suit is filed in the court, they will utilize all appropriate defenses to defend that employee and the City of Winston-Salem.

As for a tort claims cap, they, like the City of Charlotte, would like to have the same cap as the State. This would not change things for them because they self-insure and treat all cases the same.

Considerable discussion followed about why local governments should have the immunity defense. Senator Miller said governments should be held accountable. Mr. Marshall said that State mandates made it difficult for local governments and they must have immunity to protect employees who work to carry out those mandates. Mr. McCarley said he felt that there needs to be some balance between damage to the individual and the need to protect the taxpayers. Ms. Gibson said that, without some immunity, it would be difficult to find employees to carry out governmental functions if they were under a constant threat of being sued. She also felt that some local governments don't want to pay claims. Mr. Romanet said he agreed with Mr. McCarley and would support a tort claims act. He would also like to see some form of the Public Duty Doctrine put back into place.

Erika Churchill, staff attorney, provided the Committee with an overview of the current arrangements in North Carolina, types of coverage and the general cost of coverage. Data from the League pool, the Association pool, and audits from the Local Government Commission were the main sources of this information.

Ms. Churchill said if a county or municipality participates in the League pool, then it has at least $1 million worth of coverage. For participants in the County Commissioners Association, there would be at least $2 million worth of coverage. Nine municipalities have no insurance coverage and, of those nine, the largest has a population of 315. One reason these have no insurance might be because they provide no services and therefore have no liability.
For auto liability, 185 out of 633 local governments (152 cities and towns and 33 counties) carry commercial insurance coverage.

Trina Griffin, Committee Co-Counsel, presented research on what other states do in the area of local government liability. There are about 13 other states that maintain the distinction between governmental and proprietary functions and, therefore, have immunity for all governmental functions, except to the extent that they purchase insurance. There really isn't one uniform model as to how other states address the issue of local governmental liability, but states can, however, be divided into about four categories. These include:

- Local governments that have immunity for governmental functions except to the extent of insurance,
- Local governments immune from liability except for enumerated exclusions,
- Local governments liable for negligent acts or omissions, and where immunity has been waived except for enumerated exclusions (i.e. they still have immunity for enumerated functions), and
- Miscellaneous - for example, Maine agrees to be liable for certain acts and not liable for others.

There is some commonality among the states in terms of the types of exclusions from the waiver of immunity. The most common exclusion was performance of discretionary functions. All 50 states give immunity to their elected officials or employees engaged in policy-making types of decisions, as well as qualified immunity such as legislative immunity. Also, some states (18) exclude from liability damages from accidents involving police protection and, emergency response activities. Licensing and issuing permits is

another liability exclusion in 16 states. She could find no state that provided immunity for a proprietary function.

Ms. Griffin then compared tort claims limits in other states. The lowest was $10,000 per person in Maine, and the highest was $750,000 per person in Montana. The majority of the states seem to fall in the $100,000 to $300,000 per person, about $250,000 to $600,000 per accident, and anywhere from $50,000 to $100,000 property damage. It appears that a majority of states stagger the limits for automobile liability while others have a cap.

Mr. Reagan distributed a Uniform Local Government Liability bill draft to the Committee that included an attempt to waive sovereign immunity for local governments, for both city and county governments, for the first $500,000 of negligent tort damages arising out of governmental functions. The draft did not, however, address proprietary issues. The State Tort Claims Act had been used as a model for the draft, but the fact that the State does not deal with proprietary functions, only governmental functions, created some difficulty in modeling one after the other. Also, the draft of the bill, tries to preserve the option for local governments to self-fund, and to give them the authority to purchase insurance. The bill draft also authorizes local governments to waive immunity in excess of $500,000 to the extent they purchase insurance.

Regarding defense of employees, the draft requires that local governments defend their employees up to $500,000 and allows local governments to defend them above that amount if they want to. They may also purchase insurance for that purpose. The bill also provides that claims do not have to be brought before the Industrial Commission.

Representative Nesbitt commented that the draft was a good framework and that he would like to have the League and the County Commissioners Association review it and come back to the Committee with suggestions and concerns. He felt that it was a good start in working toward creating a uniform system in North Carolina.

Third Meeting - December 12, 2000

At its third meeting on December 12, 2000, the Committee heard a presentation by Committee counsel, O. Walker Reagan, on a revised bill draft that included changes suggested in a letter to the Committee from Andy Romanet, legal counsel for the North Carolina League of Municipalities. The revised bill draft does the following:

- Ties local government tort liability cap to cap in State Tort Claims Act.
- Authorizes local governments to waive immunity in excess of cap through purchase of insurance or through self-funded reserve.
- Clarifies that contributory negligence is a defense.
- Provides that commercial insurance purchased would be in lieu of the local government's obligation.
- Clarifies that the intent and effect is the same for cities and counties.
- Requires local governments to provide a defense for employees and pay judgments up to the tort claim limit.
- Authorizes local governments to defend employees in excess of the tort claim limit through purchase of insurance or through self-funded reserve.

- Provides that the tort claim limit includes "medical and other expenses".
- Clarifies that, under the defense of employee provisions, "employee" does not include independent contractors.

There were two issues raised in Mr. Romanet's letter to the Committee that were not fully addressed in the revised bill draft. The first is that the bill draft does not eliminate the distinction between governmental functions, those that are exclusively performed by governments, and proprietary functions, those that could also be performed by private industry. Currently, sovereign immunity only applies to governmental functions. The League would like the distinction eliminated so that, while they would pay claims for governmental functions, as well as proprietary functions, up to the tort claim limit, they would also have immunity for proprietary functions in excess of the limit.

The second issue deals with giving the local government discretion as to whether a defense should be provided for an employee. Mr. Romanet suggested including four exceptions in the bill for situations where the local government should refuse to provide a defense. Two of the exceptions were included: 1) if the employee was acting outside the scope of his employment, and 2) if the employee acted with malice, corruption, or actual fraud. Two of the exceptions were not included: 1) if there is a conflict of interest between the local government and the employee, and 2) if it would not be in the local government's best interest. Mr. Reagan explained to the committee that there are other ways to deal with a conflict of interest, such as hiring outside counsel, and that it is in the best interest of taxpayers to pay claims because people would not be willing to work for local governments if they are not protected from claims.

Mr. Romanet addressed the Committee next. He expressed his concerns over the problems that would be caused if local governments had to go to court to fight for immunity based on whether a function was governmental or proprietary and said that the League would like to see the distinction eliminated.

The Committee members then discussed their individual thoughts on the issues addressed by the bill draft and how the Committee should proceed. Richard Taylor, Director of the Academy of Trial Lawyers, told the Committee that he didn't think the legislation would have a significant economic impact on cities since almost all local governments currently have liability insurance or are self-insured, and that their main concern was with local governments who self-insure up to the amount of commercial coverage and pick and choose which claims under that amount they will pay. Mr. Taylor informed the Committee that the trial lawyers supported the bill draft before the Committee.

Mr. Romanet and Jim Blackburn, of the County Commissioners Association, both indicated that they would oppose the bill draft as it is. Mr. Romanet said that the bill draft would be more palatable if the distinction between governmental and proprietary functions was eliminated, and that the League also wanted to have the Public Duty Doctrine available to local governments.

Mr. Taylor stated opposition to the statutory removal of the court-created distinction between governmental and proprietary functions, and likewise to the codification and/or expansion of the Public Duty Doctrine, claiming it was no deal for the citizens of North Carolina. Representative Nesbitt said that there probably is a public purpose to have some limit on what can be recovered from government, be it State or local governments. Governments have to deal with large numbers of people and provide a lot of services for people. There is a lot of opportunity for something to go wrong and it would not be a good thing to bankrupt government. He said perhaps there should be some limits on how much exposure governments have.

The Committee members agreed there was not consensus among the parties involved with regards to a uniform mandatory minimum waiver of immunity or for the elimination of the distinction between liability and immunity for governmental and proprietary functions. But the Committee agreed that these were important issues that deserved more study and work for a consensus solution.

The Committee discussed that with the Dobrowolska pending there was a need for clarification on local governments authority to be able to settle claims and lawsuits in self-insurance situations. Since three local governments have special authority through local actions to waive sovereign immunity by adopting self insurance plans it was discussed that this option should be made available to all local governments. It was felt that this would solve the problem presented by the Dobrowolska case. Rep. Nesbitt expressed his opinion that this solution should make it clear that by adopting a self insurance plan the local government was waiving its sovereign immunity up to the limits of the self insurance plan. There was also further discussion that if local governments waived sovereign immunity by the purchase of insurance, in conjunction with the ability to waive sovereign immunity through self-insurance programs, immunity should be waived from the first dollar of damages. The Committee was concerned that plaintiff's with smaller claims should not be denied the right to recover when plaintiff's with larger claims could recover because of higher levels of insurance that constituted a waiver of sovereign immunity. The Committee discussed that the local governments should have the discretion to decide how to cover their liabilities through insurance or self insurance programs, or a combination of both, but that where sovereign immunity was waived by the purchase of insurance, or through self insurance, sovereign immunity should be considered waived from the first dollar of damages.

To avoid the problems addressed in the Dobrowolska case, the Committee instructed staff to draft a new bill, to be included in the Committee's final report, authorizing local governments to self-insure only by adopting a resolution waiving sovereign immunity to the level of self-funding and for liability in all situations where sovereign immunity is deemed to have been waived, to be from the first dollar of damages. The Committee discussed that this solution should address the biggest problem, but that it does not address where there is no insurance coverage, which seems to only apply to a few local governments and it also does not address uniformity in coverage between various local governments and between local governments and the State. The Committee decided to suggest that these issues be studied further. Rep. Nesbitt asked that the report reflect the sentiment of the Committee that local governments should provide compensation for citizens when they are injured or damaged by the negligent acts of the government and their employees.

Fourth Meeting - December 28, 2000

The Committee held its final meeting on December 28, 2000.

O. Walker Reagan, Committee Co-counsel, reviewed salient aspects of the proposed Committee report, which had been mailed to Committee members the week before the meeting. Mr. Reagan noted that the section on Committee Proceedings was fairly extensive. He emphasized the Committee had considered many issues and laid the groundwork for following through with its recommendation to further study the issues related to state and local government tort liability. He stated that the report as a whole was presented with sufficient detail to assist a future review of the Committee's diligent consideration of the issues. The Committee Proceedings and Appendices, in particular, were substantial, with that purpose in mind.

Mr. Reagan then reviewed the two bill drafts proposed to be included in the report as legislation recommended by the Committee. Regarding the first bill, he referred the Committee members to the bill summary being distributed simultaneously. The first bill would amend the current tort liability statutes for

cities and counties. It would permit cities and counties to establish self-funded liability reserves. Pursuant to the bill, a city or county that adopts a resolution to establish such a reserve waives its governmental immunity to the extent provided for in the resolution, but in no case greater than the amount available in the fund. The bill also provides that cities and counties which do waive governmental immunity via purchase of insurance or establishment of a self-funded reserve are subject to liability from the first dollar of damages up to the extent of coverage by insurance or by self-funded reserve. This bill was modeled after two local acts that currently authorize Mecklenburg-Cabarrus Counties and Raleigh to use self-funded reserves to waive governmental immunity.

Mr. Reagan stated that the second bill authorizes the continued study of State and local tort claims issues.

Jim Blackburn of the N.C. County Commissioners Association informed the Committee that his group appreciated the depth of the report but that he had been unable to get a response on the report from his members prior to the meeting, given the timing of the meeting between Christmas and New Year. He said he would get his group's thoughts to the members as the legislation progressed through to the 2001 General Assembly.

Andy Romanet, General Counsel for the N. C. League of Municipalities, stated his general concurrence with Mr. Blackburn's comments. He, too, noted his inability to get member response on the Committee's proposed report prior to the meeting because of the holidays. He thanked the Committee for including the League's offer in the report and stated he felt it important that someone reviewing the Committee's work would see that the League had made a reasonable offer regarding the drafting of substantive legislation.

Charles Cromer, representing the N.C. Academy of Trial Lawyers, stated that the Academy appreciated the efforts of the Committee, had reviewed the proposed report and agreed with its contents.

The Committee discussed language in the proposed bill amending the local government tort liability that restricts waiver of governmental liability under the self-funded reserve method to an amount no greater than funds available in the reserve for claims payment. Mr. Reagan, Committee Co-counsel, indicated that this language had been cloned from language in existing local acts that provide for self-funded reserves and waiver in Mecklenburg and Cabarrus counties and the City of Raleigh. He further stated that the apparent objective of the language is to protect local governments from suffering devastating financial loss from too many large claims by restricting waiver to the amount of available funds. Representative Nesbitt stated that the language might complicate matters by creating further uncertainty for injured parties. As the fiscal year progressed and reserve funds were depleted, claimants increasingly would be faced with the threat of governmental immunity precluding recovery. Other Committee members noted the potential for unfairness and complication in leaving that language in the bill.

Noting the presence of a quorum of the Committee, Representative Nesbitt moved to amend the first bill in the report to remove the language restricting waiver in self-funded reserve situations. The motion passed. Representative Nesbitt then moved that the previously distributed bill summary for the first bill be included in the Committee's report. The motion passed. Representative Nesbitt lastly moved that the Committee adopt the report as amended for recommendation to the Legislative Research Commission. The motion passed.

FINDINGS AND RECOMMENDATIONS

FINDINGS

The Legislative Research Commission's Committee on State Tort Liability and Immunity met four times since the conclusion of the 2000 Short Session. The primary focus of these meetings was the liability of local governments for negligent acts by employees and public officials, governmental immunity, and the extent of insurance coverage by local governments.

GOVERNMENTAL IMMUNITY

In its study of the relevant case law governing local government liability, the Committee found that both a unit of local government and its individual employees or officials may be liable for negligent acts that occur in the scope of employment or in the course of carrying out official duties. Local governments are shielded from liability for tort claims to a limited extent by governmental immunity. While local governments may have immunity for governmental functions, they do not have immunity for proprietary functions. The Committee found that the distinction between governmental and proprietary functions is not always clear, but the North Carolina courts have provided some guidelines on a case-by-case basis. The courts consider several factors to determine whether a function performed by a local governmental agency is governmental or proprietary, including who traditionally performs the function, whether a fee is charged, who the primary beneficiary is, and whether a public policy exists to support a finding that the activity is either governmental or proprietary. Activities that are exclusively performed by local governments, such as law enforcement, or that involve the exercise of judicial, discretionary, or legislative authority are generally governmental functions. Activities where the local government makes a profit or that are also performed by the private sector, such as trash collection, are generally proprietary functions.

In its extensive study of how other states deal with the issue of local government liability, the Committee found that the majority of other states have either eliminated the distinction between governmental and proprietary functions or statutorily defined the terms.

INSURANCE COVERAGE

The Committee found that local governments are authorized but not required to purchase liability insurance. If a local government decides to purchase insurance, the city council or board of commissioners has full discretion in determining the type or types of coverage to be purchased. The Committee also found that the purchase of liability insurance waives a local government's immunity for governmental functions to the extent of insurance coverage. A plaintiff may not receive damages in excess of the policy limits. To the extent that an injury is not of the type covered by insurance, the local government may assert the defense of governmental immunity. The Committee determined that because local governments are not statutorily required to obtain insurance, injured parties may not recover for damages incurred unless the local government has purchased insurance that covers the type of negligent act involved or the party was injured in the exercise of a proprietary function.

The Committee also studied the various types of insurance coverage or alternative coverage mechanisms available to cities and counties. As part of its study, the Committee researched how almost every city and county in North Carolina handles risk management to determine the type of coverage mechanism used, the policy limits, and the types of acts covered. The Committee found that the types of coverage

mechanisms used by local governments include private insurance, local government risk pools, catastrophic coverage, self-funded coverage, risk management corporations, and various combinations. The Committee also found that almost all North Carolina counties have some form of insurance and only 9 to 10 municipalities are without insurance. The largest city without some form of insurance is Casar with a population of 350. The Committee further determined that the majority of cities and counties with some form of insurance coverage have limits of at least $1 million.

However, not all types of coverage constitute insurance for purposes of waiving governmental immunity. The Committee found that there are only two types of coverage that constitute insurance for purposes of waiving immunity: liability coverage by a company licensed to execute insurance in North Carolina and participation in a local government risk pool where the risk is shared by two or more local governments and the local government does not reimburse the pool for payment of its claims. Self-insurance or a self-funded reserve does not constitute "insurance" for purposes of waiving governmental immunity. The Committee found local governments that self-fund may arbitrarily choose whether to settle a claim with a particular individual or to claim the immunity defense. The Committee found that this discretion among local governments has led to inconsistency and inequitable results for citizens who are injured at the fault of local governments. In addition, some local governments have purchased liability insurance that only covers claims in excess of $2 million. The Committee found that, in this instance, the local government's immunity would be waived only if a person's damages exceeded $2 million but would not provide coverage for negligence resulting in damages of less than $2 million.

The Committee found several reasons why local governments would purchase insurance even though they are not required to and even though the purchase of insurance waives their governmental immunity. The Committee determined that local governments purchase insurance to protect themselves from proprietary claims, federal claims, and claims against officials and employees in their individual capacities and because generally, they want to compensate injured parties harmed by the city or county's negligence. The Committee also found that despite the fact that most local governments have insurance, there is a lack of uniformity in the coverages. Moreover, the Committee found that there is inconsistency with regard to the protection offered by local governments through insurance coverage and by the State under the State Tort Claims Act. A person injured by a state employee could recover up to $500,000 under the State Tort Claims Act whereas a person injured by a county or city employee could recover up to the policy limits or could recover nothing if the locality has no insurance and therefore has not waived its immunity.

The Committee also studied the Dobrowolska v. Wall and the City of Greensboro case where the North Carolina Court of Appeals held, in part, that a local government violates a person's equal protection and due process rights by arbitrarily settling some claims but not others involving similarly situated individuals. In response to this case, the Committee agreed on proposed legislation that makes self-funded reserves a form of insurance for purposes of waiving immunity and makes any purchase of insurance a waiver of immunity from the first dollar of damages.

Although there were several other issues that require further study or remain unresolved, the Committee found that this legislation would be a partial solution to ensure that the immunity defense is not asserted arbitrarily.

REMAINING QUESTIONS

- Should the distinction between governmental and proprietary functions be defined statutorily, modified, or eliminated?

- Should all local governments be required to pay claims to the same minimal extent? Should that extent be the same as the State is required to pay claims under the State Tort Claims Act?
- Should some form of a Local Government Tort Claims Act be adopted? If so, should governmental immunity be waived in some manner in exchange for a cap on liability for proprietary functions, for governmental functions, or for both?

RECOMMENDATIONS

RECOMMENDATION 1: That the General Assembly enact a law that would make a self-funded reserve qualify as a form of "insurance" for purposes of waiving governmental immunity and that would make any purchase of insurance a waiver of governmental immunity from the first dollar of damages. (See LEGISLATIVE PROPOSAL 1 at Appendix G)

RECOMMENDATION 2: That the General Assembly authorize the Legislative Research Commission to study the issue of local government liability, including the issue of eliminating the distinction between governmental and proprietary functions and the issue of uniform minimal liability coverage waiving sovereign immunity, and authorize the Commission to report to the 2002 Session of the 2001 General Assembly (See LEGISLATIVE PROPOSAL 2 at Appendix H).

APPENDIX A

CHAPTER 395

1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

(1) Governmental Agency and Personnel Issues:

…j. State tort liability and immunity (Walend, Nesbitt)…

PART XXII.-----BILL AND RESOLUTIONS REFERENCES

Section 22.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

APPENDIX B

MEMBERSHIP
STATE TORT LIABILITY AND IMMUNITY COMMITTEE (LRC)
1999-2001
S.L. 1999-395

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