

N.C. GENERAL ASSEMBLY LEGISLATIVE FISCAL NOTE

Fiscal Research  
733-4910

Prepared By: Michele T. Nelson | Date Prepared: May 2, 1989 | Bill No.: H 1236 | Edition: First  
 Approved By: Tom L. Covington | | | | Sponsor: Rep. Sharon Thompson  
 Short Title: COMPARATIVE FAULT - 1 (Inapplicable to State Torts)

TYPE OF FISCAL IMPACT	COUNTY/		FUNDS AFFECTED:			
	State Gov't	Local Gov't	(x) General	( ) Highway	( ) Other: (x) Local	
			State Fiscal Impact	FY 89-90	FY 90-91	FY
No Fiscal Impact	( )	( )	State Total Req'ments	\$817,046	\$807,526	
			Receipts/Revenues	-0-	-0-	
Increase Expenditure	(x)	(x)	Net State Expend./Rev.	\$817,046	\$807,526	
			No. of Positions	3	3	
Decrease Expenditure	( )	( )				
			Local Fiscal Impact	FY 89-90	FY 90-91	FY
Increase Revenue	( )	( )	Local Total Req'ments	\$395,890	\$395,890	
			Receipts/Revenues	-0-	-0-	
Decrease Revenue	( )	( )	Net Local Expend./Rev.	\$395,890	\$395,890	
			No. of Positions	-0-		
No Estimate Avail.	( )	( )				

Description of Legislation

1. Summary of Legislation

Adds new Article 43E to General Statutes Chapter 1, establishing comparative fault liability in North Carolina. Provides that contributory negligence not an absolute bar to recovery in tort action, as long as plaintiff's negligence is less than defendant's. Requires judge or jury in actions involving comparative fault to make special findings indicating percentage of total fault attributable to all parties and to award damages accordingly. Makes conforming change to GS 1B-2, concerning sharing of costs among joint tort-feasors. Adds GS 143-300.1A, making comparative fault system established by act inapplicable to tort claims against the State.

2. Effective Date - October 1, 1989

3. Fund or Tax Affected - General Fund

4. Principal Department/Program Affected

All State departments and agencies and State and Public School employees.

Cost or Revenue Impact on State

	FY 89-90	FY 90-91	FY
1. Non-Recurring Costs/Revenues	-0-	-0-	
2. Recurring Costs/Revenues	\$817,046	\$807,526	

1 The total includes \$508,806 each fiscal year, which is the estimated increase in payments; \$100,120 in FY 89-90 and \$90,500 in FY 90-91 to support new personnel; and \$208,120 each year to support additional court costs.

3. Fiscal/Revenue Assumptions

Under the current State Tort Claims law claimants who are contributory negligent (even less than one percent) have claims denied and receive no reimbursement. House Bill 1236 offers a recourse for claimants who have or would have fallen into this category. The adoption of a Comparative Fault System under the provisions of this bill is estimated to result in an increase of approximately 946 additional claims (25% x 3,785 claims paid in FY 87-88)<sup>2</sup> that would be successful in collecting payments for injuries or damages from the State each year. The average claim payment is estimated to be somewhat less under Comparative Fault than Contributory Negligence, but the total payout by the State is estimated to increase approximately \$508,806 (10% x \$5,088,059 total payment in FY 87-88)<sup>2</sup> each year. It appears that the State could incur a greater cost increase than estimated if judgment is entered on occasion against State and Public School Employees on the basis of Joint-and-Several Liability or if the current limits of reimbursement are increased.

Under the provisions of this bill a claimant has the alternative of filing a tort claim against a State department under the Contributory Negligence System (Article 31A of GS 143) or a public school employee (Article 31B of GS 143) under the Comparative Fault System. It is assumed, a claimant at fault to some degree would be inclined to file for recovery from the respective employee under the comparative fault system because the claimant's recovery would be barred under the Contributory Negligence System.

If the Comparative Fault System is adopted and applicable to Tort Claims Against the

State Departments and Agencies, or for claims asserted against State and Public School employees, an additional \$100,120 in FY 89-90 and \$90,500 in FY 90-91 will be necessary. The additional funding will employ two (2) Claims Adjusters and one (1) Secretary for the Tort Claims Division in the Department of Justice to handle the increased workload.

Additionally, the Judicial System may experience an increase in the number of cases filed alleging negligence in both District and Superior Courts. The Administrative Office of the Courts, however, can only estimate court cost for cases alleging negligence in Superior Court. The estimate of \$220 per case takes into account the case being heard in Superior Court or District Court and cost associated therewith, including the Judge's and court reporter's salaries, the Clerk's office time, the time of the Judicial secretary, and any jury fees. Applying the cost of \$220 per case to the estimated number of additional claims (946) would result in a cost of \$208,120 each year.

2 The percentages used to estimate the increase in claimants (25%) and the increase in payments (10%) were presented in a publication prepared by the Rand Corporation in 1985.

Cost/Revenue Impact on County or Local Government

	FY 89-90	FY 90-91	FY
1. Non-Recurring Costs/Revenues	-0-	-0-	
2. Recurring Costs/Revenues	\$395,8903	\$395,8903	
3. Fiscal/Revenue Assumptions			

While Local Governments have sovereign immunity from liability for torts in the performance of their governmental functions, most have derogated that immunity either by acquiring liability insurance, establishing a self-insurance plan or joining a "risk pool". The adoption of a Comparative Fault System of insurance under the provisions of this bill is estimated to result in an increase of approximately 25% in the number of claims that are successful in collecting payments for injuries or damages asserted against Local Governments who have derogated their sovereign immunity. The average claim payments is estimated to be somewhat less under the Comparative Fault system, but the total payout to settle the claims is estimated to increase by approximately 10% each year. The potential exists for Local Governments' costs to increase more than the estimated amount if judgment is entered on occasion against a local government on the basis of Joint-and-Several Liability. The source

of payment in settlement of the claims would vary by entity in accordance with the provisions each had established in the derogation of their sovereign immunity, such as self-insurance, risk pool, or private insurance coverage.

Based upon data from 41 counties in FY 87-88, 234 claims were paid at a cost of \$211,090. It is estimated that under comparative fault there would be approximately 59 additional claims (25% x 234) reimbursed, and an estimated increase in total payments of \$21,109 (10% x \$211,090).

In regards to municipalities, data from 150 municipalities in FY 87-88 indicates that there were 3,716 claims paid at a cost of \$1,574,210. Under comparative fault there would be approximately 929 additional claims (25% x 3,716) and an estimated increase of \$157,421 in settlement costs.

The experience in counties and municipalities will also affect court cost. Based upon the number of additional claims and data from AOC, the cost each year would be approximately \$217,360 (988 x \$220).

#### Sources of Data for Fiscal Note

Department of Justice; Tort Claims Division; Rand Corporation; Fred S. James Company of the Carolinas, Inc. (claims processor for the North Carolina Association of County Commissioners); and League of Municipalities.

#### Technical Considerations/Comments

- 3 The total for each year includes increases in payments for counties and municipalities and court costs.



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