

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS35164-LD-73 (03/26)

Short Title: Limited Local Waiver of Sovereign Immunity.

(Public)

Sponsors: Senator Gulley.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO, BY RESOLUTION,
CREATE A SELF-FUNDED RISK PROGRAM AND THEREBY WAIVE
GOVERNMENTAL IMMUNITY FROM CIVIL LIABILITY IN TORT TO THE
EXTENT THAT FUNDS ARE AVAILABLE IN THE FUNDED RESERVE FOR
THE PAYMENT OF CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-485(a) reads as rewritten:

"(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. 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. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

SECTION 2. G.S. 153A-435(a) reads as rewritten:

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

8 Purchase of insurance pursuant to this subsection waives the county's governmental
9 immunity, to the extent of insurance coverage, for any act or omission occurring in the
10 exercise of a governmental function. Participation in a local government risk pool
11 pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase
12 of insurance for the purposes of this section. By entering into an insurance contract with
13 the county, an insurer waives any defense based upon the governmental immunity of the
14 county.

15 If a county uses a funded reserve instead of purchasing insurance against liability for
16 wrongful death, negligence or intentional damage to personal property, or absolute
17 liability for damage to person or property caused by an act or omission of the county or
18 any of its officers, agents, or employees acting within the scope of their authority and
19 the course of their employment, the county board of commissioners may adopt a
20 resolution that deems the creation of a funded reserve to be the same as the purchase of
21 insurance under this section. Adoption of such a resolution waives the county's
22 governmental immunity only to the extent specified in the board's resolution, but in no
23 event greater than funds available in the funded reserve for the payment of claims."

24 **SECTION 3.** This act is effective when it becomes law.