

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 647
Judiciary I Committee Substitute Adopted 4/14/03**

Short Title: Self-Insured Localities.

(Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO MAKE STATEWIDE AN ACT CURRENTLY APPLICABLE TO
3 MECKLENBURG AND CATAWBA COUNTIES AND CHARLOTTE AND
4 RALEIGH THAT DEEMS THE CREATION OF A SELF-FUNDED RISK
5 PROGRAM AS THE PURCHASE OF INSURANCE FOR THE PURPOSE OF
6 WAIVING GOVERNMENTAL IMMUNITY.

7 The General Assembly of North Carolina enacts:

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

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

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

27 "(a) A county may contract to insure itself and any of its officers, agents, or
28 employees against liability for wrongful death or negligent or intentional damage to
29 person or property or against absolute liability for damage to person or property caused

1 by an act or omission of the county or of any of its officers, agents, or employees when
2 acting within the scope of their authority and the course of their employment. The board
3 of commissioners shall determine what liabilities and what officers, agents, and
4 employees shall be covered by any insurance purchased pursuant to this subsection.

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

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

21 **SECTION 3.** Section 1 of Chapter 980 of the 1988 Session Laws and
22 Section 2 of S.L. 1998-200, as amended by S.L. 2002-79, are repealed, but any
23 resolution adopted under those sections and still effective on the effective date of this
24 act shall continue to be valid as if they were adopted under G.S. 153A-435(a) or G.S.
25 160A-485(a) as amended by this act.

26 **SECTION 4.** This act is effective when it becomes law.