

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-175
SENATE BILL 647

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

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:

"(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, to the extent of insurance coverage, 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 liability for damage to person or property caused by an act or omission of the county or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county board of commissioners 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 county's governmental immunity only to the extent specified in the board's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

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 Section 1 of Chapter 980 of the 1988 Session Laws and Section 2 of S.L. 1998-200, as amended by S.L. 2002-79, are repealed, but any resolution adopted under those sections and still effective on the effective date of this act shall continue to be valid as if they were adopted under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

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

In the General Assembly read three times and ratified this the 4th day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:05 a.m. this 12th day of June, 2003