

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 859  
House Committee Substitute Favorable 7/30/09

Short Title: Tort Claims Act/Local Gov. Opt-In.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW CITIES WITH POPULATION GREATER THAN A CERTAIN  
3 POPULATION THRESHOLD TO BE SUBJECT TO THE STATE TORT CLAIMS ACT  
4 WITH CERTAIN MODIFICATIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 21 of Chapter 160A of the General Statutes is amended by  
7 adding a new section to read:

8 "**§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.**

9 (a) Any city with a population of 500,000 or more is authorized to waive its immunity  
10 from civil liability in tort by passage of a resolution expressing the intent of the city to waive its  
11 sovereign immunity pursuant to Article 31 of Chapter 143 of the General Statutes, as modified  
12 by subsection (b) of this section, and subject to the limitations set forth by subsection (c) of this  
13 section. Any resolution passed pursuant to this section shall apply to all claims arising on or  
14 after the passage of the resolution, until repealed.

15 (b) The following modifications of Article 31 of Chapter 143 of the General Statutes  
16 shall apply to the waiver of sovereign immunity described by subsection (a) of this section:

17 (1) Jurisdiction for tort claims against the city shall be vested in the Superior  
18 Court Division of the General Court of Justice of the county where the city is  
19 principally located, and, except as otherwise provided in this section, tort  
20 claims against a city shall be governed by the North Carolina Rules of Civil  
21 Procedure. The city shall be solely responsible for the expenses of its legal  
22 representation in connection with claims asserted against it, and for payment  
23 of the amount for which it is found liable under this section. Therefore,  
24 G.S. 143-291, 143-291.1, 143-291.2, 143-291.3, 143-292, 143-293, 143-295,  
25 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not  
26 apply to claims under this section.

27 (2) Appeals to the Court of Appeals from a decision of the Superior Court  
28 Division shall be treated in the same manner as an appeal from a decision of  
29 the Industrial Commission under G.S. 143-294.

30 (3) The limitation on claims set forth in G.S. 143-299; the burden of proof and  
31 defense set forth in G.S. 143-299.1; notwithstanding G.S. 143-299.1A(c), the  
32 defense set forth in G.S. 143-299.1A; and the limitation on payments set  
33 forth in G.S. 143-299.2 shall apply to claims filed with the Superior Court  
34 Division under this section.

35 (c) If a city waives its immunity pursuant to subsection (a) of this section,  
36 G.S. 160A-485 shall not apply to that city. The city may purchase liability insurance or adopt a  
37 resolution creating a self-funded reserve to insure liability for negligence of any officer,



1 employee, involuntary servant or agent of the city while acting within the scope of his office,  
2 employment, service, agency or authority, under circumstances where the city, if a private  
3 person, would be liable to the claimant in accordance with the laws of North Carolina.

4 (d) No document or exhibit that relates to or alleges facts as to the city's insurance  
5 against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the  
6 trial of any claim brought pursuant to this section, nor shall the plaintiff, plaintiff's counsel, or  
7 anyone testifying on the plaintiff's behalf directly or indirectly convey to the jury any inference  
8 that the city's potential liability is covered by insurance. No judgment may be entered against  
9 the city unless the plaintiff waives the plaintiff's right to a jury trial on all issues of law or fact  
10 relating to insurance coverage. All issues relating to insurance coverage shall be heard and  
11 determined by the judge without resort to a jury. The jury shall be absent during all motions,  
12 arguments, testimony, or announcement of findings of fact or conclusions of law with respect  
13 to insurance coverage. The city may waive its right to have issues concerning insurance  
14 coverage determined by the judge without a jury and may request a jury trial on these issues."

15 **SECTION 2.** This act becomes effective October 1, 2009.