

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2007**

**Legislative Fiscal Note**

**BILL NUMBER:** Senate Bill 586 (First Edition)

**SHORT TITLE:** Tort Claims Limit Increased.

**SPONSOR(S):** Senator Nesbitt

	<b>FISCAL IMPACT</b>				
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>
<b>REVENUES:</b>					
<b>EXPENDITURES:</b>					
<b>Department of Justice</b>	\$81,828	\$278,909	\$278,909	\$278,909	\$278,909
<i>Non-recurring</i>	\$10,284	-	-	-	-
<i>Recurring</i>	\$71,544	\$278,909	\$278,909	\$278,909	\$278,909
<b>Auto Liability Insurance Premium*</b>	\$1,129,914	\$1,129,914	\$1,129,914	\$1,129,914	\$1,129,914
<b>Department of Public Instruction</b>			Amount cannot be determined.		
<b>Department of Transportation</b>			Amount cannot be determined.		
<b>Other State Agencies</b>			Amount cannot be determined.		
<b>POSITIONS (cumulative):</b>					
<b>Department of Justice</b>	1	3	3	3	3
<i>* Across all State agencies, departments, and institutions</i>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice, Legal Division – Tort Claim Section; Industrial Commission; Department of Public Instruction; Department of Transportation; all other state agencies, departments, and institutions.					
<b>EFFECTIVE DATE:</b> When act becomes law.					

**BILL SUMMARY:** S.B. 586 would increase State tort claim liability from \$500,000 to \$1,000,000.

**ASSUMPTIONS AND METHODOLOGY:**

**General**

Based on information provided by the Department of Justice, Department of Insurance, and Industrial Commission, Fiscal Research anticipates that this proposal could have three principal effects:

- 1) Increase the amount paid by State agencies, departments, and institutions for tort claim awards and/or settlements;
- 2) Where applicable, increase liability insurance premiums for State agencies, departments, and institutions.
- 3) *Potentially* increase the number of claims filed, and consequently, the workload and staffing demands for claim processing and case disposition.

However, historical information concerning actual claim dispositions, payments (awards/settlements), and insurance coverage is not readily available.<sup>1</sup> Thus, Fiscal Research does not have an accurate estimate of annual fiscal impact.

**Awards/Settlements:**

The Department of Justice estimates that approximately 632 cases have been resolved since 2001, following the last tort claim liability limit increase.

- Of the total cases filed since 2001, 392 were either settled or dismissed
- Since 2001, 240 cases have been litigated, with an estimated award rate of 50 percent <sup>2</sup>
- There are 75 cases still pending from prior to 2001, and 609 cases pending from after 2001

Approximately 143 (23%) of all pending cases involve estimates of high damage – mostly for death or serious injury (medical expenses exceeding \$100,000). The Department indicates that these are the most likely to be litigated.

For illustrative purposes, assuming that 50 percent (70) of these cases result in maximum awards under the proposed limit, the increase in total State liability could be \$35 million. *This figure constitutes a conservative ceiling estimate across all agencies.* It is not known how many awards would occur, or when they would actually be paid out. According to DOJ, the primary impact of any increase in award or settlement amounts would be assumed by the Department of Public Instruction and the Department of Transportation.<sup>3</sup>

The Tort Claims Section does not record annual data on the amount requested per claim; or the amount settled and paid for each claim. Therefore, FRD is unable to estimate the potential impact of this proposal for future claims and payments (e.g. the number of claims, the extent to which

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<sup>1</sup> Specific, historical case records distinguishing case disposition are not readily available, especially with respect to non-litigated cases (settlements/dismissals), actual awards, and settlement payments. Individual case information is archived.

<sup>2</sup> According to the Department of Justice, the average duration from claim filing to case disposal is five years, and approximately 48 cases are tried per year. DOJ estimates that 50% of litigated cases result in plaintiff award.

<sup>3</sup> DOJ indicates that a higher case volume is experienced by DPI and DOT; DOT awards/settlements are deducted from the Highway Fund.

settlement or award amounts would increase, or the extent to which purchased liability insurance might provide coverage).

**Liability Insurance:**

Under Office of State Budget and Management policy, agencies and departments are responsible for tort claim settlements and awards up to the limit specified by G.S. 143-299.2, and must pay the claims using available funds. Consequently, to the extent that purchased liability insurance does not cover liability, agencies will bear the burden of identifying funds.

There are certain exceptions in which the purchase of liability insurance is authorized: 1) G.S. 58-31-50 requires every State department, agency, or institution to acquire motor vehicle liability insurance for State-owned vehicles under its control; 2) G.S. 116-219 permits the University of North Carolina to purchase malpractice insurance for system healthcare providers; and, 3) malpractice insurance for other health care providers in State government, primarily for the Department of Health and Human Services and the Department of Correction.

Presently, the Department of Insurance estimates that if the tort claim limit is increased to \$1 million, annual premiums for the State’s motor vehicle liability insurance plan could increase by approximately \$1.13 million (8-10% increase, *cumulative across all agencies*). Accordingly, the Department of Public Instruction, Department of Transportation, and any other agency with control of State-owned vehicles would become subject to the rate increase.<sup>4</sup> At this time, no other estimates are available. Because employees of State agencies and departments are covered by excess liability insurance up to \$5 million in excess of the current limit, increasing the limit is not expected to directly affect premium levels.

**Processing and Disposition:**

Department of Justice staff anticipate that increasing the tort claim limit will increase future workload, and estimate that additional attorneys, claims adjusters, and clerical staff will be needed for case disposition. However, the number of claims filed with both the Industrial Commission and Department of Justice has varied annually since 1999. Thus, a clear association between an increased tort claim limit and rising caseloads cannot be established.

In 2000, when the tort claims limit increased to \$500,000, the General Assembly funded two additional positions within the Department of Justice. Given this staffing increase, and the lack of reliable data to project future workload, the Fiscal Research Division revised the Department’s recommendation for six additional positions, instead recommending that funding be provided initially for three total positions by FY 2008-09 – Tort Claims Adjuster, Attorney I, and Attorney II. Total costs for these positions are represented in the Fiscal Impact Table.

**SOURCES OF DATA:** Department of Justice – Legal Division, Tort Claims Section; Industrial Commission; Department of Insurance – Office of the State Fire Marshall, Risk Management Division.

**TECHNICAL CONSIDERATIONS:** It is unclear whether the proposed claim limit will apply to all claims submitted after the bill’s effective date, or all claims settled after that date.

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<sup>4</sup> Because the State motor fleet (Department of Administration) is receipt supported, the cost of any potential premium increase is expected to be diffused among fleet users.

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**DATE:** May 17, 2007



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