

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS85161-ST-5* (01/01)

Short Title: Local Government Tort Claims Act. (Public)

Sponsors: Senator Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A LOCAL GOVERNMENT TORT CLAIMS ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

5 **"Chapter 158A.**

6 **"Local Government Tort Claims Act.**

7 **"Article 1.**

8 **"General Provisions.**

9 **"§ 158A-100. Title.**

10 This Chapter shall be known and may be cited as the 'Local Government Tort Claims Act.'

11 **"§ 158A-101. Definitions.**

12 The following definitions apply in this Chapter:

13 (1) 'Local government.' – Any of the following:

- 14 a. Local school administrative unit under Article 5 of Chapter 115C of
15 the General Statutes.
16 b. A county or unified government under Chapter 153A of the General
17 Statutes.
18 c. A municipality under Chapter 160A of the General Statutes.
19 d. A consolidated city-county under Chapter 160B of the General
20 Statutes.

21 (2) 'Proprietary Function' is limited to the following activities of local
22 government:

- 23 a. The operation of a hospital;
24 b. The provision of medical, dental, or other health care by an officer,
25 employee, servant, or agent of a local government;
26 c. The establishment, maintenance, and operation of a public enterprise
27 as defined in Chapter 153A and 160A of the General Statutes;
28 d. The design, construction, maintenance, and operation of a stadium,
29 auditorium, civic center, or exhibition hall;
30 e. The design, construction, and maintenance of public streets,
31 sidewalks, alleys, and bridges subject to the local government's
32 authority and control under Chapter 160A of the General Statutes.

33 **"§ 158A-102. Waiver of immunity.**

34 The trial court shall determine whether or not each individual claim arose as a result of the
35 negligence of any officer, employee, involuntary servant, or agent of the local government



1 while acting within the scope of his or her office, employment, service, agency, or authority,
2 under circumstances where the local government, if a private person, would be liable to the
3 claimant in accordance with the laws of North Carolina. If the trial court finds that there was
4 negligence on the part of an officer, employee, involuntary servant, or agent of the local
5 government while acting within the scope of his or her office, employment, service, agency, or
6 authority that was the proximate cause of the injury and that there was no contributory
7 negligence on the part of the claimant or the person in whose behalf the claim is asserted, the
8 trial court shall determine the amount of damages that the claimant is entitled to be paid,
9 including medical and other expenses, and by appropriate order, direct the payment of
10 damages. In no event shall the amount of damages awarded exceed the amounts authorized in
11 G.S. 158A-402 cumulatively to all claimants on account of injury and damage to any one
12 person arising out of a single occurrence.

13 **"§ 158A-103. Purchase of insurance.**

14 (a) If a local government contracts for liability insurance providing coverage in an
15 amount at least equal to the limits of the Local Government Tort Claims Act, such liability
16 insurance coverage shall be in lieu of the local government's obligation for payment under this
17 Chapter.

18 (b) A local government may purchase one or more insurance contracts, each covering
19 different torts or different officials, employees, or agents of the local government. The purchase
20 of such liability insurance may be through any of the following contracts:

21 (1) Participation in a local government risk pool under Article 23 of Chapter 58
22 of the General Statutes.

23 (2) Participation in an interlocal agreement under Article 20 of Chapter 160A of
24 the General Statutes.

25 (3) Purchase of commercial policies from an entity licensed to provide liability
26 insurance under Chapter 58 of the General Statutes.

27 (c) An insurer who issues a contract of insurance to a local government under this
28 section thereby waives any defense based upon the governmental immunity of the local
29 government and any defense based upon lack of authority for the local government to enter into
30 the contract.

31 (d) Each local government is authorized to pay the lawful premiums for insurance
32 purchased under this section.

33 **"§ 158A-104. Costs.**

34 The local government concerned is authorized and directed to pay such costs as may be
35 taxed against it, including all costs heretofore taxed against local government.

36 "Article 2.

37 "Procedures.

38 **"§ 158A-200. Court fees.**

39 No filing fee shall be required of indigent persons, provided each claim by an indigent
40 complies with all statutory and administrative requirements applicable to the filing of civil
41 actions by indigents in the Superior Court Division of the General Court of Justice.

42 **"§ 158A-201. Counterclaims.**

43 Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this
44 section shall require the filing of a counterclaim.

45 **"§ 158A-202. Trial procedures.**

46 (a) Except as otherwise provided in this section, tort claims against a city shall be
47 governed by the North Carolina Rules of Civil Procedure.

48 (b) No document or exhibit which relates to or alleges facts as to the local government's
49 insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury
50 in the trial of any claim brought under this Chapter. The plaintiff, plaintiff's counsel, nor

1 anyone testifying in the plaintiff's behalf may directly or indirectly convey to the jury any
2 inference that the local government's potential liability is covered by liability insurance.

3 (c) No judgment may be entered against the local government unless the plaintiff
4 waives the right to a jury trial on all issues of law or fact relating to liability insurance
5 coverage. All issues relating to liability insurance coverage shall be heard and determined by
6 the judge without resort to a jury. The jury shall be absent during all motions, arguments,
7 testimony, or announcement of findings of fact or conclusions of law with respect to liability
8 insurance coverage. The local government may waive its right to have issues concerning
9 liability insurance coverage determined by the judge without a jury and may request a jury trial
10 on these issues.

11 **"§ 158A-203. Appeals to Court of Appeals.**

12 No appeal bond or supersedeas bond shall be required of local governments.

13 **"§ 158A-204. Appeal to Court of Appeals to act as supersedeas.**

14 The appeal from the decision of the trial court to the Court of Appeals shall act as a
15 supersedeas, and the local government shall not be required to make payment of any judgment
16 until the questions at issue therein shall have been finally determined as provided in this
17 Chapter.

18 **"§ 158A-207. Statute of limitation on claims.**

19 All claims against any and all local governments shall henceforth be forever barred unless a
20 claim be filed with the trial court within three years after the accrual of such claim, or if death
21 results from the accident, the claim for wrongful death shall be forever barred unless a claim be
22 filed by the personal representative of the deceased with the trial court within two years after
23 such death.

24 "Article 3.

25 "Exceptions and Defenses.

26 **"§ 158A-300. Exceptions.**

27 The waiver of immunity in G.S. 158A-102 shall not apply to any of the following claims:

- 28 (1) Any claim by an employee of the local government that is covered by the
29 workers' compensation law.
- 30 (2) Any claim in connection with the assessment or collection of taxes.
- 31 (3) Any claim arising out of the exercise of legislative functions.
- 32 (4) Any claim arising out of the exercise of judicial or prosecutorial functions.
- 33 (5) Any claim for double, treble, punitive, or liquidated damages.
- 34 (6) Any claim arising out of or in connection with war, invasion, civil war,
35 insurrection, rebellion, revolution, or terrorism.
- 36 (7) Any claim covered under G.S. 143-300.1.

37 **"§ 158A-301. Common law defenses.**

38 Except as expressly provided in this Chapter, nothing in this Chapter shall be construed to
39 deprive any local government of any defense to any tort claim lodged against it, or to restrict,
40 limit, or otherwise affect any defense that the local government may have at common law or by
41 virtue of any statute.

42 **"§ 158A-302. Contributory negligence a matter of defense; burden of proof.**

43 Contributory negligence on the part of the claimant or the person in whose behalf the claim
44 is asserted shall be deemed to be a matter of defense on the part of the local government against
45 which the claim is asserted, and such local government shall have the burden of proving that
46 the claimant or the person in whose behalf the claim is asserted was guilty of contributory
47 negligence.

48 **"§ 158A-303. Limit use of public duty doctrine as an affirmative defense.**

49 (a) Except as provided in subsection (b) of this section, the public duty doctrine is an
50 affirmative defense on the part of the local government against which a claim is asserted if and
51 only if the injury of the claimant is the result of any of the following:

- 1 (1) The alleged negligent failure to protect the claimant from the action of others
2 or from an act of God by a law enforcement officer as defined in subsection
3 (d) of this section.
- 4 (2) The alleged negligent failure of an officer, employee, involuntary servant, or
5 agent of the local government to perform a health or safety inspection
6 required by statute.
- 7 (b) Notwithstanding subsection (a) of this section, the affirmative defense of the public
8 duty doctrine may not be asserted in any of the following instances:
- 9 (1) Where there is a special relationship between the claimant and the officer,
10 employee, involuntary servant, or agent of the local government.
- 11 (2) When the local government, through its officers, employees, involuntary
12 servants, or agents, has created a special duty owed to the claimant and the
13 claimant's reliance on that duty is causally related to the injury suffered by
14 the claimant.
- 15 (3) Where the alleged failure to perform a health or safety inspection required
16 by statute was the result of gross negligence.
- 17 (c) For purposes of this section, 'law enforcement officer' means a full-time or part-time
18 employee or agent of a local government or an agent of the local government operating under
19 an agreement with a local government who is any of the following:
- 20 (1) Actively serving in a position with assigned primary duties and
21 responsibilities for prevention and detection of crime or the general
22 enforcement of the criminal laws of the State or serving civil processes.
- 23 (2) Possesses the power of arrest by virtue of an oath administered under the
24 authority of the State.
- 25 (3) Is a correctional officer performing duties of custody, supervision, and
26 treatment to control and rehabilitate criminal offenders.

27 "Article 4.

28 "Settlement and Judgments.

29 **"§ 158A-400. Settlement of claims.**

30 (a) Any claims except claims of minors pending or hereafter filed against the various
31 local governments may be settled upon agreement between the claimant and the appointed
32 attorney for the local government for an amount not in excess of twenty-five thousand dollars
33 (\$25,000), without the approval of the trial court. The appointed attorney for the local
34 government may also make settlements by agreement for claims in excess of twenty-five
35 thousand dollars (\$25,000) and claims of infants or persons non sui juris, provided such claims
36 have been subject to review and approval by the trial court.

37 (b) Transfer of title of a motor vehicle acquired in behalf of a local government in
38 settlement of claim pursuant to the provisions of this Chapter may be transferred by the
39 attorney for the local government in the same manner as provided for such transfer by an
40 insurance company under the provisions of G.S. 20-75.

41 **"§ 158A-401. Settlement of small claims against confinement facilities.**

42 When the property of a resident of a confinement facility operated by a local government is
43 lost, destroyed, or otherwise damaged through negligent handling by the local government, and
44 the amount of damages is less than five hundred dollars (\$500.00), the local government may
45 make direct payment or provide replacement of the item to the resident without recourse to the
46 procedures otherwise provided by this Chapter.

47 **"§ 158A-402. Limitation on payments by local governments.**

48 (a) Except as provided herein, the maximum amount that a local government may pay
49 cumulatively to all claimants on account of injury and damage to any one person arising out of
50 any one occurrence shall be one million dollars (\$1,000,000), less any commercial liability
51 insurance purchased by the local government.

1 (b) Claims against local government arising out of the exercise of proprietary functions
2 shall have no limitation on damages.

3 **SECTION 2.(a)** G.S. 115C-42 is repealed.

4 **SECTION 2.(b)** G.S. 115C-47(25) reads as rewritten:

5 "(25) To Secure Liability Insurance. – Local boards of education are authorized to
6 secure liability insurance, ~~as provided in G.S. 115C-42, so as to waive their~~
7 ~~immunity for liability for certain negligent acts of their~~
8 ~~employees.~~insurance."

9 **SECTION 2.(c)** G.S. 115C-243(b)(3) reads as rewritten:

10 "(3) That adequate liability insurance is maintained ~~under G.S. 115C-42~~ to insure
11 the board of education, and that adequate insurance is maintained to protect
12 the property of the board of education. The minimum limit of liability
13 insurance shall not be less than the maximum amount of damages which
14 may be awarded under the Tort Claims Act, G.S. 143-291. The costs of said
15 insurance shall be paid by the agency contracting for the use of the bus,
16 either directly or through the fee established by the agreement."

17 **SECTION 2.(d)** G.S. 115C-247 reads as rewritten:

18 **"§ 115C-247. Purchase of activity buses by local boards.**

19 The several local boards of education in the State are hereby authorized and empowered to
20 take title to school buses purchased with local or community funds for the purpose of
21 transporting pupils to and from athletic events and for other local school activity purposes, and
22 commonly referred to as activity buses.

23 Each local board of education that operates activity buses shall adopt a policy relative to the
24 proper use of the vehicles. The policy shall permit the use of these buses for travel to athletic
25 events during the regular season and playoffs and for travel to other school-sponsored
26 activities.

27 The provisions of ~~G.S. 115C-42~~ Chapter 158A of the General Statutes shall be fully
28 applicable to the ownership and operation of such activity school buses. Activity buses may
29 also be used as provided in G.S. 115C-243."

30 **SECTION 2.(e)** G.S. 115C-255 reads as rewritten:

31 **"§ 115C-255. Liability insurance and waiver of immunity as to certain acts of bus drivers.**

32 The securing of liability insurance and the waiver of immunity as to certain torts of school
33 bus drivers, school transportation service vehicle drivers and school activity bus drivers, is
34 subject to the provisions of ~~G.S. 115C-42, Chapter 158A of the General Statutes~~ except when
35 such vehicles are operated with funds from the State Public School Fund."

36 **SECTION 2.(f)** G.S. 115C-262 reads as rewritten:

37 **"§ 115C-262. Liability insurance and tort liability.**

38 Liability insurance and tort liability of local boards of education for actions arising out of
39 activities conducted pursuant to this Part, are subject to the provisions of ~~G.S. 115C-42, Chapter~~
40 158A of the General Statutes."

41 **SECTION 3.** G.S. 153A-435 is repealed.

42 **SECTION 4.(a)** G.S. 160A-485 is repealed.

43 **SECTION 4.(b)** G.S. 160A-627 reads as rewritten:

44 **"§ 160A-627. Civil liability.**

45 Except as provided in G.S. 160A-626, the Authority shall be deemed a city for purposes of
46 civil liability pursuant to G.S. 160A-485. Governmental immunity of the Authority is waived to
47 a minimum of twenty million dollars (\$20,000,000) per single accident or incident. The
48 Authority shall maintain a minimum of twenty million dollars (\$20,000,000) per single
49 accident or incident of liability insurance. Participation in a local government risk pool
50 pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase
51 of insurance for the purpose of this section."

1 **SECTION 5.** This act becomes effective October 1, 2010, and applies to claims
2 arising on or after that date.