

March 27, 2009

S 1026. LOCAL GOVERNMENT TORT CLAIMS ACT. Filed 3/26/09. *TO ESTABLISH A LOCAL GOVERNMENT TORT CLAIMS ACT.*

Enacts new GS Chapter 158A, *Local Government Tort Claims Act* (act).

Creates a waiver of immunity by local governments, directing that in legal actions against local government that the trial court is to determine whether the claim arose as the result of the negligence of any officer, employee, involuntary servant, or agent of the local government (local government employee) while acting within the scope of his or her office, employment, service, agency, or authority (scope of authority), under circumstances where if the local government was a private person, it would be liable to the person filing the claim under state law. Directs the trial court to determine the amount of damages and order payment upon making the following findings: (1) there was negligence on the part of a local government employee while acting within the employee's scope of authority, (2) the local government employee's negligence was the proximate cause of injury, and (3) there was no contributory negligence on the part of the person filing the claim or the person on whose behalf the claim is asserted. Defines *local government* to mean: (1) a local school administrative unit, (2) a county or unified government under GS Chapter 153A, (3) a municipality under GS Chapter 160A, and (4) a consolidated city-county under GS Chapter 160B.

Sets limits on the amount of damages the trial court may award, providing that the maximum amount that a local government may cumulatively pay to all claimants on account of injury and damage to (1) any one person and (2) arising out of any one occurrence, is \$1 million, minus any commercial liability insurance purchased by the local government. Provides that a local government may elect to purchase one or more insurance contracts and prescribe acceptable contracts for the purchase of such insurance. Also provides that if the liability insurance coverage is of an amount that is at least equal to the limits of this act, the liability insurance coverage substitutes for the local government's obligation for payment under this act. Provides an exception to the limit on damages, asserting that there are no limitations on damages for claims against local governments that arise out of the local government's exercise of its proprietary functions. Defines *proprietary function* as limited to the following activities of local government: (1) the operation of a hospital; (2) the provision of medical, dental, or other health care by a local government employee; (3) the establishment, maintenance, and operation of a public enterprise as defined in GS Chapters 153A and 160A; (4) the design, construction, and maintenance of public streets, sidewalks, alleys, and bridges subject to a local government's authority and control under GS Chapter 160A; and (5) the design, construction, maintenance, and operation of a stadium, auditorium, civic center, or exhibition hall. Also provides guidelines for the settlement of a claim without the approval of the trial court, providing that (1) it is not a pending claim on behalf of a minor and (2) settlement amount is not more than \$25,000. Permits settlements by agreement for claims in excess of \$25,000 and claims of infants and persons *non sui juris* (lacking the legal capacity to act on his or her behalf) but requires such claims to be reviewed and approved by the trial court. Provides additional guidelines regarding the settlement of small claims against confinement facilities.

Delineates exceptions and defenses to claims. Lists claims to which the waiver of immunity by local governments does not apply. Provides that common law defenses and any other provisions of law except as expressly restricted in this act may be used by local governments as a defense to any tort claim against it. Places the burden of proving contributory negligence on the part of the claimant or the person on whose behalf the claim was filed on the local government. Places limitations on the use of the public duty doctrine as an affirmative defense.

Does not require a filing fee from indigent persons who file a claim. Provides that a tort claim against a city is to be governed by the NC Rules of Civil Procedure except as may be otherwise provided in this act. Provides additional procedural information including appeal rights. Sets a three year statute of limitation for filing a tort claim against a local government, except provides that if the alleged tort action resulted in death, then the personal representative of the deceased has two years after the death to file a claim for wrongful death.

Repeals GS 115C-42 (regarding liability insurance and immunity), GS 153A-435 (regarding liability insurance and damage suits against a county), and GS 160A-485 (regarding the waiver of immunity through the purchase of insurance). Makes conforming changes to GS 115C-47(25),

115C-243(b)(3), 115C-247, 115C-255, and 115C-262. Apparently intends to also make conforming change to GS 160A-627.

Effective October 1, 2010, and applies to claims arising on or after that date.

Intro. by Rand.

GS 115C, 158A, 160A