

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1538

Short Title: Municipal Tort Claims Act. (Public)

Sponsors: Representatives Jones; and Harrison.

Referred to: Judiciary I.

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THE MUNICIPAL TORT CLAIMS ACT.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 160A of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 29.

7 "Municipal Tort Claims Act.

8 **"§ 160A-681. Definitions.**

9 As used in this Article, "municipal corporation" has the same meaning as "city" in
10 G.S. 160A-1, and thus also includes incorporated towns and villages.

11 **"§ 160A-682. Industrial Commission constituted a court to hear and determine
12 claims; damages; liability insurance in lieu of obligation under Article.**

13 (a) The North Carolina Industrial Commission is constituted a court for the
14 purpose of hearing and passing upon tort claims against any municipal corporation of
15 this State. The Industrial Commission shall determine whether or not each individual
16 claim arose as a result of the negligence of any officer, employee, involuntary servant,
17 or agent of the municipal corporation while acting within the scope of his office,
18 employment, service, agency, or authority, under circumstances where the municipal
19 corporation, if a private person, would be liable to the claimant in accordance with the
20 laws of North Carolina. If the Commission finds that there was negligence on the part of
21 an officer, employee, involuntary servant, or agent of the municipal corporation while
22 acting within the scope of his office, employment, service, agency, or authority that was
23 the proximate cause of the injury and that there was no contributory negligence on the
24 part of the claimant or the person in whose behalf the claim is asserted, the Commission
25 shall determine the amount of damages that the claimant is entitled to be paid, including
26 medical and other expenses, and by appropriate order direct the payment of damages as
27 provided in this Article, but in no event shall the amount of damages awarded exceed
28 the amounts authorized in G.S. 160A-694 cumulatively to all claimants on account of
29 injury and damage to any one person arising out of a single occurrence.

1 (b) If a municipal corporation, otherwise authorized to purchase insurance,
2 purchases a policy of commercial liability insurance providing coverage in an amount at
3 least equal to the limits of this Article, such insurance coverage shall be in lieu of the
4 municipal corporation's obligation for payment under this Article.

5 **"§ 160A-683. Costs.**

6 (a) The Industrial Commission may by order tax the costs against the loser in the
7 same manner as costs are taxed by the superior court in civil actions. When a municipal
8 corporation appeals the decision rendered by the hearing commissioner to the full
9 Commission, the municipal corporation shall furnish a copy of the transcript of the
10 hearing to the appellee without cost therefor. The municipal corporation may pay the
11 costs as may pay taxed against it. When costs are not paid by a party from whom they
12 are due, the Industrial Commission shall issue an execution for the costs and attach a
13 bill of costs to each execution. The Sheriff shall levy upon the execution as provided in
14 Chapter 6 of the General Statutes in civil actions.

15 (b) The Industrial Commission shall charge a filing fee for each affidavit
16 initiating a claim filed under this Article in an amount equal to the filing fee charged for
17 civil actions in the Superior Court Division of the General Court of Justice. No filing fee
18 shall be required of indigent persons, provided each claim by an indigent complies with
19 all statutory and administrative requirements applicable to the filing of civil actions by
20 indigents in the Superior Court Division of the General Court of Justice.

21 **"§ 160A-684. Counterclaims by municipal corporation.**

22 The filing of a claim under this Article shall constitute consent by the plaintiff to the
23 jurisdiction of the Industrial Commission to hear and determine any counterclaim of the
24 maximum amount authorized for a claim in this Article or less that may be filed on
25 behalf of a municipal corporation. A final award of the Industrial Commission awarding
26 damages on a counterclaim shall be filed with the clerk of the superior court of the
27 county where the case was heard. These awards shall be docketed and shall be
28 enforceable in the same manner as judgments of the General Court of Justice.
29 Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in
30 this section shall require the filing of a counterclaim.

31 **"§ 160A-685. Notice of determination of claim; appeal to full Commission.**

32 Upon determination of said claim the Commission shall notify all parties concerned
33 in writing of its decision and either party shall have 15 days after receipt of such notice
34 within which to file notice of appeal with the Industrial Commission. Such appeal, when
35 so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on
36 the basis of the record in the matter and upon oral argument of the parties, and said full
37 Commission may amend, set aside, or strike out the decision of the hearing
38 commissioner and may issue its own findings of fact and conclusions of law. Upon
39 determination of said claim by the Industrial Commission, sitting as a full Commission,
40 the Commission shall notify all parties concerned in writing of its decision. Such
41 determination by the Industrial Commission, sitting as a full Commission, upon claims
42 or counterclaims in an amount of five hundred dollars (\$500.00) or less per claim shall
43 be final as to all parties and no appeal shall lie therefrom.

44 **"§ 160A-686. Appeals to Court of Appeals.**

1 (a) Either the claimant or the municipal corporation may, within 30 days after
2 receipt of the decision and order of the full Commission, to be sent by registered or
3 certified mail, but not thereafter, appeal from the decision of the Commission to the
4 Court of Appeals. Such appeal shall be for errors of law only under the same terms and
5 conditions as govern appeals in ordinary civil actions, and the findings of fact of the
6 Commission shall be conclusive if there is any competent evidence to support them. The
7 appellant shall cause to be prepared a statement of the case as required by the rules of
8 the Court of Appeals. A copy of this statement shall be served on the respondent within
9 45 days from the entry of the appeal taken; within 20 days after such service, the
10 appellee shall return the copy with his approval or specified amendments endorsed or
11 attached; if the statement is approved by the appellee, it shall be filed with the clerk of
12 the Court of Appeals as a part of the record; if not returned with objections within the
13 time prescribed, it shall be deemed approved. The chairman of the Industrial
14 Commission shall have the power, in the exercise of his discretion, to enlarge the time
15 in which to serve statement of case on appeal and exceptions thereto or
16 counterstatement of the case.

17 (b) If the case on appeal is returned by the appellee with objections as prescribed,
18 or if a counterstatement of the case is served on appellant, the appellant shall
19 immediately request the chairman of the Industrial Commission to fix a time and place
20 for settling the case before him. If the appellant delays longer than 15 days after the
21 appellee serves his counterstatement or exceptions to request the chairman to settle the
22 case on appeal, then the exceptions filed by the appellee shall be allowed; or the
23 counterstatement served by him shall constitute the case on appeal; but the time may be
24 extended by agreement of counsel.

25 (c) The chairman shall forthwith notify the attorneys of the parties to appear
26 before the chairman for that purpose at a certain time and place, which time shall not be
27 more than 20 days from the receipt of the request. At the time and place stated, the
28 chairman of the Industrial Commission or the chairman's designee shall settle and sign
29 the case and deliver a copy to the attorneys of each party. The appellant shall within five
30 days thereafter file it with the clerk of the Court of Appeals, and if he fails to do so, the
31 appellee may file his copy.

32 (d) No appeal bond or supersedeas bond shall be required of a municipal
33 corporation.

34 **"§ 160A-687. Appeal to Court of Appeals to act as supersedeas.**

35 The appeal from the decision of the Industrial Commission to the Court of Appeals
36 shall act as a supersedeas, and the municipal corporation shall not be required to make
37 payment of any judgment until the questions at issue therein shall have been finally
38 determined as provided in this Article.

39 **"§ 160A-688. Settlement of claims.**

40 (a) Any claims except claims of minors pending or hereafter filed against a
41 municipal corporation may be settled upon agreement between the claimant and the
42 municipal corporation for an amount not in excess of twenty-five thousand dollars
43 (\$25,000), without the approval of the Industrial Commission. The municipal
44 corporation may also make settlements by agreement for claims in excess of twenty-five

1 thousand dollars (\$25,000) and claims of infants or persons non sui juris, provided such
2 claims have been subject to review and approval by the Industrial Commission.

3 (b) In settlements under twenty-five thousand dollars (\$25,000), agreed upon
4 between the parties, the filing of an affidavit as set forth in this Article shall not be
5 required.

6 **"§ 160A-689. Powers of Industrial Commission; deputies.**

7 The members of the Industrial Commission, or a deputy thereof, shall have power to
8 issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders,
9 opinions, and awards based thereon, punish for contempt, and issue writs of habeas
10 corpus ad testificandum pursuant to G.S. 97-101.1. The Industrial Commission is
11 authorized to appoint deputies and clerical assistants to carry out the purpose and intent
12 of this Article, and such deputy or deputies are hereby vested with the same power and
13 authority to hear and determine tort claims against a municipal corporation as is by this
14 Article vested in the members of the Industrial Commission. The Commission may
15 order parties to participate in mediation, under rules substantially similar to those
16 approved by the Supreme Court for use in the Superior Court division, except the
17 Commission shall determine the manner in which payment of the costs of the mediated
18 settlement conference is assessed.

19 **"§ 160A-690. Affidavit of claimant; docketing; venue; notice of hearing; answer,**
20 **demurrer, or other pleading to affidavit.**

21 (a) In all claims which may hereafter be filed against a municipal corporation,
22 the claimant or the person in whose behalf the claim is made shall file with the
23 Industrial Commission an affidavit in duplicate, setting forth the following information:

24 (1) The name of the claimant;

25 (2) The name of the municipal corporation against which the claim is
26 asserted, and the name of the municipal corporation employee upon
27 whose alleged negligence the claim is based;

28 (3) The amount of damages sought to be recovered;

29 (4) The time and place where the injury occurred;

30 (5) A brief statement of the facts and circumstances surrounding the injury
31 and giving rise to the claim.

32 (b) Upon receipt of such affidavit in duplicate, the Industrial Commission shall
33 enter the case upon its hearing docket and shall hear and determine the matter in the
34 county where the injury occurred unless the parties agree or the Industrial Commission
35 directs that the case may be heard in some other county. All parties shall be given
36 reasonable notice of the date when and the place where the claim will be heard.

37 (c) Immediately upon docketing the case, the Industrial Commission shall
38 forward one copy of plaintiff's affidavit to the clerk of the municipal corporation.

39 (d) The municipal corporation against whom the claim is asserted shall file
40 answer, demurrer, or other pleading to the affidavit within 30 days after receipt of copy
41 of same setting forth any defense it proposes to make in the hearing or trial, and no
42 defense may be asserted in the hearing or trial unless it is alleged in such answer, except
43 such defenses as are not required by the Rules of Civil Procedure or other laws to be
44 alleged.

1 **"§ 160A-691. Subpoenas.**

2 Subpoenas for any purpose authorized by G.S. 1A-1, Rule 45 may be issued by an
3 Attorney of Record for either party in all proceedings under this Article and served by
4 the means specified in the Rules of Civil Procedure or served by registered or certified
5 mail, and service shall be proved by filing of the return receipt.

6 **"§ 160A-692. Limitation on claims.**

7 All claims against any and all municipal corporations shall henceforth be forever
8 barred unless a claim be filed with the Industrial Commission within three years after
9 the accrual of such claim, or if death results from the accident, the claim for wrongful
10 death shall be forever barred unless a claim be filed by the personal representative of the
11 deceased with the Industrial Commission within two years after such death.

12 **"§ 160A-693. Contributory negligence a matter of defense; burden of proof.**

13 Contributory negligence on the part of the claimant or the person in whose behalf the
14 claim is asserted shall be deemed to be a matter of defense on the part of the municipal
15 corporation against which the claim is asserted, and such municipal corporation shall
16 have the burden of proving that the claimant or the person in whose behalf the claim is
17 asserted was guilty of contributory negligence.

18 **"§ 160A-694. Limitation on payments by the municipal corporation.**

19 The maximum amount that the municipal corporation may pay cumulatively to all
20 claimants on account of injury and damage to any one person arising out of any one
21 occurrence shall be five hundred thousand dollars (\$500,000), less any commercial
22 liability insurance purchased by the municipal corporation and applicable to the claim.

23 **"§ 160A-695. Rules and regulations of Industrial Commission; destruction of**
24 **records.**

25 The Industrial Commission may adopt such rules and regulations as may, in the
26 discretion of the Commission, be necessary to carry out the purpose and intent of this
27 Article. The North Carolina Rules of Civil Procedure and Rules of Evidence, insofar as
28 they are not in conflict with the provisions of this Article, shall be followed in
29 proceedings under this Article. When any case or claim under this Article has been
30 closed by proper order or award, all records concerning such case or claim may, after
31 five years, in the discretion of the Industrial Commission with and by the authorization
32 of the Department of Cultural Resources, be destroyed by burning or otherwise;
33 provided, that no record pertaining to a case or claim of a minor shall be destroyed until
34 the expiration of three years after such minor attains the age of 18 years."

35 **SECTION 2.** This act becomes effective with respect to causes of action
36 accruing on or after July 1, 2005.