

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1131 (=Senate Bill 1033)

SHORT TITLE: Raise Tort Claims Cap

SPONSOR(S): Representatives. Trudi Walend and Martin Nesbitt; Senator Robert Carpenter

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>
REVENUES	NONE				
EXPENDITURES					
Claims Paid through					
Industrial Comm Action	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
Premium Increase to					
Retrospective Rating					
Plan					
Highway Fund	\$917,140	\$917,140	\$917,140	\$917,140	\$917,140
General Fund	\$664,136	\$664,136	\$664,136	\$664,136	\$664,136
TOTAL	\$1,581,276	\$1,581,276	\$1,581,276	\$1,581,276	\$1,581,276
POSITIONS:	NONE				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice (defends State) ; Industrial Commission (hears cases); All State Departments who participate in NC Retrospective Rating Adjustment Fund are affected (insurance cost increase); all State agencies are potentially affected ; Administrative Office of the Courts.					
EFFECTIVE DATE: When it becomes law; applies to judgements entered on or after date of enactment					

BILL SUMMARY: *TO INCREASE THE STATE TORT CLAIM LIMIT.* Amends GS 143-291(a) to increase limit on claims under State Tort Claims Act from \$150,000 to \$300,000. Makes conforming amendment to GS 143-299.2.

ASSUMPTIONS AND METHODOLOGY:

Under current law, the maximum amount which the State may pay on account of injury and damage to any one person under the Tort Claims Act is \$150,000. This Bill would raise that limit to \$300,000.

There are two kinds of fiscal impact from this Bill. The first impact relates to claims awarded by the Industrial Commission.

Claims Through Industrial Commission

There are relatively few cases that would be directly affected by this change in maximum. Because the \$150,000 cap is in place, few parties file claims for more than \$150,000 and the Industrial Commission does not keep records of claims above this amount.

In Fiscal Year 1996-7, there were 47 claims filed for \$100,000 or more; 4 claims were paid at \$150,000. In 1997-8 there were 32 claims filed for \$100,000 or more and 6 claims were paid at \$150,000 (out of a total of 660 claims filed). Using an average of the prior 2 years, we assume there will be 5 cases per year through the Industrial Commission for whom the current ceiling is binding. Based on discussions with the Industrial Commission (and the observation that of all the claims granted where the request was over \$100,000, the ceiling amount was paid), we also assume these would be serious cases (e.g. death cases) where the ceiling will be binding on the judgement amount. Based on 5 cases and \$150,000 additional liability from doubling the ceiling, the cost to the State as a whole would be \$750,000

Claims Involving State Vehicles

In addition, Torts involving state owned vehicles (Highway Patrol, Department of Transportation, Universities, State Motor Pool) are handled through the Department of Insurance. The North Carolina Retrospective Rating Adjustment Fund is a self-insuring fund to cover incidents related to all rolling stock—35,000 vehicles ranging from lawnmowers to tanks. DOI contracts with Travelers Insurance to administer the program. They advise the State on the amount required for the fund and that cost is shared among participating agencies based on their number of vehicles. Claims are paid from this fund rather than from participating agencies. The State also purchases excess insurance coverage for particularly large claims (out-of-state claims or multi-party accidents). The total cost of this program in 1998-99 is \$8.3 Million.

The Department of Insurance obtained from Travelers an analysis of the increase in funds required if the Tort Claims ceiling is raised from \$150,000 to \$300,000. Assuming the number of incidents remains the same but that the average claim would increase from \$3,350 to \$3,864 (16%), contributions to the Fund would need to increase by \$1,581,276. This increase would be shared among participating agencies. For instance, Motor Fleet Management/Department of Administration pays 25% of the premium, Community Colleges combined pay .5%, EHNR pays 7.3%, the Universities pay 10.15%, Highway Patrol pays 9%, DOT Highway Division pays 33%. Some fee-supported entities (Ports Authority) are also included.

We note that the incidence of Tort Claims is completely unpredictable; the number on page 1 is an approximation based on the past 2 years and the assumption that claims that were bound by the current ceiling will justify a payment at the new ceiling level. The estimated impact on premiums paid by state agencies to the Retrospective Rating Adjustment Fund is, however, based on actuarial calculations and the history of claims.

Additional Potential Costs

There are areas of potential additional cost that are not included in the \$750,000 liability figure. Doubling the ceiling could increase the volume of claims and the rigor with which claims are pursued. This would affect the State's costs in handling Tort Claims (expert witnesses, depositions, transcripts). While this would also affect the workload of the Department of Justice and the Industrial Commission, there is no evidence at this point that such an increase could not be absorbed within existing resources.

Under current law GS 143-300.2-6, the limit on the amount the state might pay in a suit against an employee of the State is tied to the limit under the Tort Claims Act. Raising the ceiling from \$150,000 to \$300,000 will automatically raise the ceiling in 143-300.6 as well, further increasing the State's potential liability.

Application to Pending Cases

Under this Bill, the new ceiling will apply to judgements rendered after enactment. That means it will apply to some Torts that have already occurred but where the case had not yet been closed. If there are some high dollar claims in process, this provision will increase the first years' fiscal impact beyond where it would be if the new ceiling only applied to incidents on or after date of enactment. Over time, however, this aspect of the Bill will not affect the ongoing cost.

There are currently 12 claims over \$100,000 pending through the Retrospective Rating Adjustment Program, some dating back as far as 1994. Because they are open claims with potential for jury trials, the final judgement could be affected by the ceiling change. Based on this, the additional cost of applying this change to pending cases could cost an extra \$1.8 Million (12 * \$150,000) in the first couple of years.

Impact on Small Agencies

State Agencies other than the Department of Public Instruction pay Tort Claims judgement out of available funds. Because there is no expected level of Tort Claims judgements each year, it is not feasible to budget for that expenses. Smaller Departments sometimes have difficulty securing the necessary funds under the current limit; the increased limit would exacerbate this problem if any of the affected judgements relate to those agencies with lower lapsed salary balances. Even for a large agency such as the Department of Transportation, several \$300,000 claims in one year, as may happen with the new ceiling applying to incidents that have already occurred, could be problematic.

Judicial System

Although some tort claims against the state are heard initially in superior court, and court appeals from administrative decisions are available, the Judicial System does not anticipate a major fiscal impact from this bill on court workload. It is possible that the increase in allowable damages could lead to more appeals and/or increase the complexity of some cases but they expect that even with a change in the amount of the ceiling, the same cases will be filed and the same major issues will be litigated.

TECHNICAL CONSIDERATIONS: None

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