

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 1113
Senate Judiciary I (Civil) Committee Substitute Adopted 7/3/08
Third Edition Engrossed 7/7/08

Short Title: State Tort Claims/Public Duty Doctrine. (Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN
AFFIRMATIVE DEFENSE FOR CLAIMS UNDER THE STATE TORT CLAIMS
ACT IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF
THE ALLEGED NEGLIGENT FAILURE OF CERTAIN PARTIES TO PROTECT
CLAIMANTS FROM THE ACTION OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended
by adding a new section to read:

"§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.

(a) Except as provided in subsection (b) of this section, the public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

(1) The alleged negligent failure to protect the claimant from the action of others or from an act of God by a law enforcement officer as defined in subsection (d) of this section.

(2) The alleged negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health or safety inspection required by statute.

(b) Notwithstanding subsection (a) of this section, the affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

(1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.

(2) When the State, through its officers, employees, involuntary servants or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.

1 (3) Where the alleged failure to perform a health or safety inspection
2 required by statute was the result of gross negligence.

3 (c) Nothing in this section shall limit the assertion of the public duty doctrine as a
4 defense on the part of a unit of local government or its officers, employees, or agents.

5 (d) For purposes of this section, "law enforcement officer" means a full-time or
6 part-time employee or agent of a State department, institution, or agency or an agent of
7 the State operating under an agreement with a State department, institution, or agency of
8 the State who is any of the following:

9 (1) Actively serving in a position with assigned primary duties and
10 responsibilities for prevention and detection of crime or the general
11 enforcement of the criminal laws of the State or serving civil
12 processes.

13 (2) Possesses the power of arrest by virtue of an oath administered under
14 the authority of the State.

15 (3) Is a juvenile justice officer, chief court counselor, or juvenile court
16 counselor.

17 (4) Is a correctional officer performing duties of custody, supervision, and
18 treatment to control and rehabilitate criminal offenders.

19 (5) Is a firefighter as defined in G.S. 113-60.32(1).

20 (6) Is a probation officer appointed under Article 20 of Chapter 15 of the
21 General Statutes."

22 **SECTION 2.** This act becomes effective October 1, 2008, and applies to
23 claims arising on or after that date.