

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 116

SHORT TITLE: Duty to Defend State Employees

SPONSOR(S): Senator Leslie Winner

FISCAL IMPACT: Expenditures: Increase (x) Decrease ()
 Revenues: Increase () Decrease ()
 No Impact ()
 No Estimate Available ()

FUNDS AFFECTED: General Fund (x) Highway Fund () Local Fund ()
 Other Fund ()

BILL SUMMARY: Amends G.S. 143-300.3 to require the state to provide a defense for its employees in civil proceeding and authorizes the state to provide a defense in criminal proceedings. Amends G.S. 143-300.4(a) to provide the following grounds for refusal of defense: (1) the act or omission was not within the employee's scope of authority and (2) the employee acted or failed to act because of gross negligence, wanton conduct, or intentional wrongdoing. Amends 143-300(b) to provide that the Attorney General must make the determination of conflict required by G.S. 143-300(a). Adds G.S. 143-300.4A to allow Attorney General to request the Governor to authorize employment of outside counsel when conflict of interest exists between the State and its employee. Amends G.S. 143-300.6 to provide (1) payment up to the amount payable under the Tort Claims Act, and any additional payments due will be paid from coverage under G.S. 58-32-15, (2) Commissioner of Insurance must approve settlement if employee is represented by counsel other than the Attorney General, (3) cumulative liability to all claimants on account of injury and damage to any one person is limited to \$1 million and (4) plaintiffs may not recover in excess of the Tort Claims Act limit for acts or omission specified in the bill, which are excluded by the state's insurance policy.

EFFECTIVE DATE: October 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Justice, Legal Services Division

FISCAL IMPACT

	<u>FY 95-96</u>	<u>FY 96-97</u>	<u>FY 97-98</u>	<u>FY 98-99</u>	<u>FY 99-00</u>
EXPENDITURES					
TOTAL EXPENDITURES					
STATE FUNDS	\$0-\$750,000	\$0-\$750,000	\$0-\$750,000	\$0-\$750,000	\$0-\$750,000
FEDERAL FUNDS					
LOCAL FUNDS					

**OTHER FUNDS
RECEIPTS/FEEES**

POSITIONS: 1

ASSUMPTIONS AND METHODOLOGY: The following information was provided by the General Research Division:

"This bill would require the State to defend state employees from civil liability claims that arise in the scope and course of the employee's employment and not caused by the gross negligence, wanton conduct or intentional wrongdoing of the employee, and would require the State to pay binding claims, most up to \$1,000,000.

Under current law, if a person is injured by a state employee acting within the course and scope of the state employee's job, the person can sue the State under the Tort Claim Act for a maximum recovery of \$150,000, and/or sue the employee. If the employee is sued and the Attorney General elects to defend the employee, the State provides for the employee's defense and pays most claims up to \$1 million, with the first \$150,000 paid by the employee's agency, and the balance paid by the State's excess liability insurance policy.

This bill would change current law to mandate that the State defend civil suits while continuing the discretion to defend in criminal actions. The bill also reduces the grounds under which the Attorney General can elect not to defend the employee by eliminating a determination of a potential conflict of interest or that the defense is not in the best interest of the State, as basis for not defending. Under the bill, when the Attorney General determines a conflict of interest exists, but a defense is otherwise required, the Governor must appoint outside counsel. The bill requires that the Commissioner of Insurance must approve any settlement reached by outside counsel on behalf of an employee before the State is obligated to pay.

The Attorney General's Office has interpreted the current law to say that if the Attorney General decides not to defend a state employee under one of the four current grounds, the State has no duty to defend the employee or indemnify the employee against any ultimate recovery.

Section 4 of the bill requires the State to pay up to \$1 million for all defended claims except claims arising in areas excluded from the current excess liability policy, for which the maximum payments by the State would be limited to \$150,000. Under current law, the Public Officers and Employees Liability Insurance Commission is given the discretion to acquire excess liability coverage on state employees for claims in excess of the Tort Claim limit, with premiums paid by the agencies on a per capita basis. If there is coverage in place, payment is made up to the policy limits. If no policy is in place the State would only indemnify the employee up to \$150,000."

According to legal counsel in the General Research Division, the State would not have to pay anything it doesn't pay now except for cases that the State has been leveraging.

Under present law, the Department of Justice can leverage civil cases by saying that the case must be heard by the Industrial Commission or the State would not defend the employee. This bill would mandate defense and not allow such leveraging. No estimates are available on how much is saved by such leveraging. It is estimated, however, that the Department declines representation because of a conflict of interest five times per year. Based on a maximum of \$150,000 per case, liability could range from \$0 to \$750,000.

SOURCES OF DATA: Department of Justice; General Research Division, N.C. General Assembly

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

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DATE: April 26, 1995



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