59:10-5 to 59:10-9

LEGISLATIVE HISTORY CHECKLIST

NJSA: 59:10-5 to 59:10-9 (Tort claims act-- indemnify state authorities, agencies and commissioner)

LAWS OF: 1987 **CHAPTER:** 278

Bill No: S3012

Sponsor(s): Orechio

Date Introduced: February 19, 1978

Committee: **Assembly:** ----------

Senate: Labor, Industry & Professions

Amended during passage: No

Date of Passage: **Assembly:** September 10, 1987

Senate: June 25, 1987

Date of Approval: October 2, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: Yes

Hearings: No

974.90 M966 1986a New Jersey. County and Municipal Government Study Commission
Local government liability insurance: a crisis . . . May, 1986. Trenton, 1986.
(see especially pp. 79 and 95)

CHAPTER 278 LAWS OF N.J. 1987
APPROVED 10-2-87

SENATE, No. 3012

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 19, 1987

By Senator ORECHIO

Referred to Committee on Labor, Industry and Professions

AN ACT concerning certain authorities, commissions and agencies and supplementing Title 59 of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. State authorities, State commissions and State agencies which are authorized by statute to sue and be sued may obtain coverage for liability and representation by the Attorney General's Office for defense of liability cases under the "New Jersey Tort Claims Act," N. J. S. 59:1-1 et seq., for themselves and their public employees from the fund established under N. J. S. 58:12-1 when:

a. The governing body of the authority, commission or agency petitions the State Treasurer and the Attorney General for such coverage; and

b. The State Treasurer and the Attorney General determine that such coverage would be in the public interest and that adequate coverage is unavailable at reasonable rates.

2. Coverage afforded pursuant to this supplementary act shall provide indemnification for awards within the limitations of the "New Jersey Tort Claims Act."

3. Coverage afforded pursuant to this supplementary act shall expire on the 30th day of June following the approval of coverage. Coverage may be extended for additional one year terms on conditions fixed by the State Treasurer and the Attorney General, provided that for each renewal they determine that coverage would be in the public interest and that adequate coverage is unavailable at reasonable rates.

4. The State Treasurer and the Attorney General shall have the power to set annual fees and charges payable by the authority, commission or agency for coverage and fix monetary limits on the extent of coverage to be afforded an authority, commission or agency and its employees shall cooperate with the Attorney General in the defense of all covered claims. The Attorney General shall have the exclusive right to control all such litigation.

5. Nothing contained in this supplementary act shall inure to the benefit of any insurance company which has issued a policy of liability insurance or to any person who is obligated to indemnify a public entity or public employee.

6. This act shall take effect immediately.

STATEMENT

State authorities, commissions and agencies have been seriously affected by the liability insurance costs. This bill would allow State authorities, State commissions and State agencies to petition the Attorney General and State Treasurer to be indemnified by the tort claims fund and represented by the Attorney General's Office. The Attorney General and State Treasurer would have discretion to indemnify the authority, commission, or agency and determine the conditions for indemnification. The indemnification agreement would be renewable annually at the discretion of and upon conditions fixed by the Attorney General and the State Treasurer.

AUTHORITIES AND REGIONAL COMMISSIONS

Authorizes N. J. Tort Claims Act indemnification of State authorities, commissions, and agencies.

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SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3012

STATE OF NEW JERSEY

DATED: JUNE 15, 1987

This bill would permit State authorities, commissions, and agencies which have statutory authority to sue and be sued to obtain coverage for liability and representation by the Attorney General's Office in the defense of liability actions brought against them. Coverage would be provided by the fund established by the "New Jersey Tort Claims Act," N. J. S. 59:1–1 et seq., which was created to pay these claims.

Under the provisions of this bill, coverage and representation would be available to these entities if, upon the petition of the governing body of the authority, commission, or agency, the State Treasurer and the Attorney General determine that the coverage would be in the public interest and that adequate commercial insurance coverage is unavailable at reasonable rates. Coverage which is extended to the authorities, commissions, or agencies would only be available to pay claims within the limitations established by the "New Jersey Tort Claims Act." Coverage extended to these entities would expire on the 30th day of June following the approval of coverage; the coverage could be extended for additional one year terms on conditions fixed by the State Treasurer and the Attorney General.

The State Treasurer and Attorney General would have the power to set annual fees and charges payable by the entities being covered, as well as the power to fix monetary limits on the coverage. The bill gives the Attorney General the exclusive right to control all litigation which relates to the coverage extended to the entities.

This bill is in response to the problems which have recently been experienced by authorities, commissions and agencies with respect to getting liability insurance coverage at an affordable price.

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OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-001
Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625
Release: MON. OCT. 5, 1987

Governor Thomas H. Kean today signed the following legislation:

S-3012/A-3818, authorizes certain public entities, such as the Pinelands Commission, the Natural Lands Trust, and the Hazardous Waste Siting Commission, to obtain indemnification under the New Jersey Tort Claims Act and defense of claims by the Attorney General.

The legislation, sponsored by Assembly Speaker Chuck Hardwick, R-Westfield, and Senator Carmen Orechio, D-Essex, authorizes authorities with no independent source of revenues to apply to the State Treasurer and the Attorney General for permission to obtain coverage for liability and representation.

Under current law, public entities other than the State itself are not eligible to use either the Tort Claims fund or to be represented by the Attorney General, in defense of claims filed under the Tort Claims Act.

The legislation is effective immediately.

A-4327/S-3466, sponsored by Assemblyman Robert Franks, R-Union, Assemblyman Thomas Foy, D-Burlington and Senator Chris Jackman, D-Hudson, permits up to 20 persons registered by the Waterfront Commission of New York Harbor as "scalemen" to be transferred to the "deepsea" longshoremen's register.

- more -

STATE OF NEW JERSEY
COUNTY AND MUNICIPAL GOVERNMENT
STUDY COMMISSION

A Legislative Agency

LOCAL GOVERNMENT LIABILITY INSURANCE: A CRISIS

May, 1986

administration.[6]

(2) Indemnification in Title 59

This solution must be used if either of solutions (3) or (4) or self-insurance pools in solution 1, Option (d), are to be used. At present, Title 59 authorizes, and the Legislature recommended, indemnification of all public officials and employees of public entities for acts committed on behalf of the entity. State officials and employees are indemnified under Title 59. School district employees and officials must be indemnified by statute. Police and firemen must be defended, but not indemnified, by statute. Various negotiating agreements have produced a variety of indemnification agreements. In order to produce a coherent understanding of the exposures involved, it is recommended that the recommendation of the Attorney-General in 1975 and 1980 be implemented and that all public officials and employees be idemnified. Furthermore, the exposure under Title 59 to public employees is greater than the exposure to the entity he or she represents, particularly with regard to punitive damages and notices of action against public officials and employees. When acting in the capacity of a public official representing a public entity, the rights of and actions against public officials and employees should be made one and the same as against the entity. Not to do so would create uncertainties in assessing the true cost of insurance to local government entities.

(3) Reduce the Maximum Value of Any Tort Action to a Known Limit

Maximum payments may be established either as maximum compensation for all loss or as maximum compensation for non-economic loss. They may be structured as a maximum per claimant, or a maximum per occurrence, or a combination thereof. A per claim maximum will not have much effect

upon a multi-claimant school bus or building collapse, or explosion type of claim. A maximum per occurrence will control compensation for the catastrophic occurrence but by reduction of individual compensation.

Establishing a maximum tort limit such as the limit that exists in Pennsylvania will have a considerable effect on the exposure of public entities and will reduce their reliance on and need for excess liability insurance to a great extent. In doing so, it would allow local entities either to insure or self-insure, separately or jointly, the primary retained exposure. This permits a freedom of choice that will allow the commercial insurance market to compete with the alternatives. If the industry fails to do so, then the alternatives become a fact of life. A major question would be the fair limit of such a 'cap'. A recent article in Fortune magazine "How Much is Your Life Worth?" by Daniel Seligman establishes a probable range of $600,000 to $7,500,000 depending on the intent of the valuation. Presumably the range of $600,000 to $1,000,000 would be reasonable.

In New Jersey, the courts presently require that instantaneous death cases be valued on the economic value of the deceased. Delayed death cases allow additional payment for pain and suffering. Permanent disability cases are valued on economic value plus cost of maintenance of the injured plus pain and suffering, reduction in the quality of living and loss of consortium, which is the loss of the support, comfort and love of one's spouse. At present, the trend in such disability cases is to create a structured settlement agreement between the parties. In such a settlement, payments are normally continued for the lifetime of the injured with a minimum guarantee, including allowance for inflationary trends. The total benefits paid may be substantial but the total cost because of the

annuity concept is substantially less than an equivalent lump-sum settlement. It must be stated that, with the probable exception of class action claims, there is no indication of any substantial number of claims in excess of $500,000 or that such non-class action judgements where rendered were truly excessive.

All claims information from ISO, as well as the courts, establish that claims in excess of $30,000 would range from 10 per cent to 40 per cent of total cost. Claims in excess of $500,000 would probably not exceed 5 per cent to 10 per cent of total cost.

Though maximum compensation may be limited for tort actions under Title 59, it cannot at present be limited in actions under Federal statutes or by interstate activities or by contract. Supplementary funding will be required to compensate for that exposure.

It has been suggested that, if maximum compensation is controlled, then a minimum compensation should also be established. At first this might seem illogical. However, if the concept were extended, it might well be reasonable to establish that the prevailing party in an action should be entitled to minimum compensation, perhaps $1,000 to $5,000. Thus, if a frivolous or weak case were found to be without merit and dismissed, plaintiff would have to pay minimum compensation to defendant. In the reverse, a minimum would allow greater net payment to plaintiff after payment of legal fees.

(4) Providing Additional Capital Contribution to the Insurance Industry

This is an accelerated variant of paying only insurance premiums requested by an insurer. If a commercial insurer would guarantee that a direct contribution to equity or surplus would be used to support the

underwriting of liability coverage for public entities in New Jersey, then consideration could be given to such an approach. A capital contribution of $10,000,000 could support a premium volume of $30-40 million per year. Based on the data used in this report, that would be a sufficient premium to handle all tort claims against local public entities. As an alternative, a captive public entity insurer could be established by New Jersey local public entities to provide this capacity. Any profits or losses will then fall back to the entities.

Such an approach will require substantial changes in legislation as local public entities do not appear to be authorized to make such capital contributions.

(5) A Statewide Excess and/or Primary Liability Pool for all New Jersey Local Public Entities

This concept is perhaps the easiest to envisage and to implement, particularly if it is used as an excess liability fund only.

The data available indicated that a contribution of about $10,000,000 per year would easily fund all expected non-class action claims in excess of $500,000 per claim. This represents about .1 per cent of the current direct operating budget of all local public entities, excluding capital, debt service, and transfer items. The major argument against such a fund is that it would be difficult to establish the contribution to be made by each entity because exposures are so different. There does not, in fact, appear to be any easy means of evaluating the cost of disparate exposures such as existence and maintenance of streets vs. existence and operations of schools vs. existence and operation of sewerage treatment plants vs. existence and operation of housing projects. In fact, theoretically credible insurance rate classifications are viable only for the

first $30,000, or basic limits of any liability policy. Limits in excess thereof are increased by one factor for existence hazards and a separate factor for operations hazards. The factor is common to all classifications in each group. There is no credible data to suggest that any type of entity may be more subject to a claim in excess of $500,000 than another. There is no past experience to establish such data. Therefore, the simplest means to establish the fund would be to levy an identical percentage contribution based on direct operating budget from all local public entities.

The State of New Jersey has not been included within this concept. The State is presently maintaining self-insurance trust funds for its general liability exposures. It would seem best to separate the State from local public entities in order to maintain the traditional separation as well as to prevent allegations of potential conflict of interest.

Establishment of a fund of this type eliminates the need for excess liability insurance to be carried by local public entities. Assuming that the fund will assume payment of claims in excess of $500,000 per claim, the local entity can either purchase conventional insurance coverage for the primary exposure, self-insure the exposure, or pool the exposure with other local entities.

Though the entities' contribution to the excess fund would be less than present costs of excess liability insurance, if available, there would still be a cost.

In the long run, a mandatory primary liability pool would be highly effective for the reasons which resulted in legislative approval of the pooling statutes. It is not suggested at present for the following reasons:-

(a) Implementation is more complex requiring evaluation of each entity for exposure and loss experience as well as establishing a full administrative and claims handling staff almost overnight;

(b) Competition at this level is desirable between the concepts of commercial insurance and single or pooled self-insurance;

(c) The right of self-determination of each entity is not restrained; the State has intervened only to the extent that a monopolistic excess liability pool would be more effective and cost-efficient for all entities;

(d) It is recognized that primary self-insurance pools already exist and have acted as pioneers in providing this concept. It would be improper and costly to eliminate that which is established and working well;

(e) Major local entities have no need, or desire, to join in a pool with smaller entities, and as long as their loss experience so justifies, there is no reason for them to do so; and

(f) Conversely, most small local entities have no desire to share risks with major entities, but rather with others more similar in size.

(6) Establish an Assigned Risk or MAP[7] for Local Public Entities

This approach was effective in 1977, in part because the crisis was not severe and passed more rapidly. The MAP committee could dissolve proudly knowing that no local entity went without insurance. In fact, many of the accommodations, adjustment and placements initiated by the committee resulted in lower costs to the entity than before.

In September 1985 joint discussion between the insurance industry and the Department of Insurance could not produce a voluntary market assistance program, nor have they to the present. As a result, the emergency non-renewal regulations were enacted.

It is hoped that the insurance industry can react properly to the present crisis, especially since the magnitude of the problem can be determined.

The crisis with respect to public entities is only one effect of the severe capital shortage within the industry. As a result, the industry may not be able to react to the public entity crisis without further diversion of inadequate capital from other areas of crisis. The forced diversion of capital via an Assigned Risk Plan may tend to aggravate an abnormal condition further without reduction in costs to the entities.

In summary, the establishment of a Market Assistance Plan would prove that the insurance industry can still respond to its public duties. Because of the capital shortage the insurance industry may not be able to do so. An Assigned Risk Plan would only serve to weaken an already severely debilitated insurance industry.

CONCLUSION

One cannot but acknowledge that a crisis exists in providing liability insurance for local public entities in New Jersey and the United States at affordable rates. A review of all the available data concerning insurers' reserves for such losses and cost records of tort actions indicates that:-

(a) The frequency of tort claims in New Jersey may be twice the per capita average country-wide;

(b) The average cost of tort claims in New Jersey is about equal

to the national per capita average;

(c) The total cost of tort claims, excluding class actions, would appear to be about $10,000,000 for all local public entities in New Jersey in 1986; and

(d) Few claims exceed $500,000 in value. Over a five-year period, such claims were random in nature occurring in large and small public entities without a pattern.

Recommendations for improvement or correction of this crisis, in so far as they affect the provision and cost of insurance for local public entities include:-

(a) Indemnification under the Tort Claims Act;

(b) Establishing a maximum compensation per claim or per occurrence;

(c) Establishing an excess liability claim fund; and

(d) Establishing a Market Assistance Plan or Assigned Risk Plan.

Footnotes for Chapter III

[1] The Commission is indebted to Mr. Richard C. Lofberg, CPCU, Chief Executive, Clarence Lofberg, Inc. 303 Cedar Lane, Teaneck, New Jersey, 07666, who acted as consultant to the Commission and prepared the present chapter on insurance options.

[2] Insurance Services Office, Inc., "The Coming Capacity Shortage", New York, February 1985, p.5.

[3] Ayers et al. v Jackson Twp. was excluded, originally, from the data provided to the Administrative Office of the Court. The verdict was rendered on December 16, 1983 in the sum of $15,892,304. It has been excluded from the data because it originated prior to 1980.

[4] The judgement amount of the Jackson Twp. case has been omitted.

[5] Unfortunately, some court data from the period January 1, 1980, to September 1, 1981 are missing; apparently relocated without address during the move of the administrative offices to the new judicial complex.

[6] NJ State Legislature, Joint Education Committee, Task Force on Business Efficiency of the Public Schools, Insurance Sub-Committee, Trenton, NJ, 1978. Studies in 1977 showed that about 3 pools, established on a geopolitical basis would handle all school boards properly except for major cities which could stand alone as self-insureds.

[7] Market Assistance Plan

CHAPTER IV

RECOMMENDATIONS

FINDINGS

The Commission has reviewed many aspects of the present insurance crisis affecting local public entities in New Jersey. Perhaps, the most noticeable finding to be made is the fact that local public entities are being requested to pay excessively large increases in premiums for the same or reduced coverage in their comprehensive general liability policies. This situation is not localized or peculiar to a few local governments with bad loss experiences. These increases are general and apply to all local governments, regardless of good or bad claims records - here in New Jersey and across the country.

However pervasive these increases have been, the causes of this crisis are not simple and the cure is not easy.

Recent history indicates that, the insurance industry recovered from its previous downturn of 1977 more swiftly than was expected. Reinsurance capital then flowed in from overseas. Other capital from U.S. companies was pumped into the market as well and investment income soared from staggeringly high interest rates. Additionally, State control over rates was deregulated in 1981.

The increase in available investment funds and the deregulation by the State of rates, produced an intense competition for insureds within the industry. It is fair to say that, at this point, the insurance industry behaved imprudently in setting prices for their products.

Subsequently, economic conditions have changed considerably, foreign reinsurers have left the U.S. market and losses in the early 1980s were much greater than anticipated.

Today, the insurance industry is severly depleted of both capital and reserves. In 1985, 18 property and casualty companies and one life insurer became insolvent. 789 companies, or some 16 per cent of the total property and casualty market, are in serious financial condition. The situation in 1986 is expected only to get worse. In one case a number of New Jersey local governments do not know who their insurer is, because of the precarious nature of the company's condition that had hitherto insured them.

As a result, many local governments in New Jersey are without adequate insurance coverage in the face of a potentially catastrophic claim.

The immediacy of the present crisis requires public action. The Commission believes that it will be necessary to establish a statewide excess liability fund for local public entities to cover claims, awards and/or settlements in excess of $500,000. It will be a requirement of the fund that all local public entities participate. Not to do so would seriously weaken the effectiveness of the fund. Indeed, to ensure the viability of the fund it is essential that there be a legislative requirement the fund have as broad a financial base as possible. Thus, the fund will require all local public entities to participate unless they can document that they have comparable terms and conditions of insurance from another source.

There is an overriding benefit that will accrue to local governments in the operation of such a fund. On their own, local governments

will no longer be responsible for funding coverage for incidents greater than $500,000. Local governments, individually, and insurance companies, insuring them collectively, will have a definite limit to their risk exposure. As for the insurance companies, they can set rates appropriately and responsibly in the knowledge that their risk is now once again predictable and manageable. Setting up such an excess liability fund will encourage the insurance companies to stay in the market and provide primary insurance without taxing their already depleted reserves.

Nevertheless, the Commission believes that to establish an excess liability fund is not the whole answer. Indeed, setting up a fund without an appropriate response to the increasingly popular use of local public entities in tort actions will only exacerbate the situation and provide a bigger 'pot of gold' for plaintiffs who seek to maximize the return on injuries they have suffered.

The Commission believes that a limitation should be placed on the amount of money a claimant can recover in an action against a public entity. The arguments for and against this notion have been discussed in detail in chapter II. It is sufficient to say that local public entities are exposed to a considerable degree of liability; more than can be reasonably imposed upon them in the furtherance of their governmental functions. It was the Legislature's positive declaration under the Tort Claims Act that public entities "should not have the duty to do everything that might be done", because of the special responsibility they have in serving the citizens of the state. The Legislature intended to have government held to a different duty of care from that expected of a private person. Moreover, it is unreasonable for local governments to have to assume additional financial responsibility for the actions of private

parties when joined in suit with other tortfeasors. This is a burden unintended by the Tort Claims Act and one which restricts the ability of government to provide for the well-being of all its citizens. Therefore, in order to discourage the use of public entities as defendants for the purpose of maximizing the value of any award to a claimant, it is in the public interest to limit the financial responsibility of local governments.

In only the rare case, has a plaintiff been awarded or settled for more than $1 million against a local public entity. The lack of information indicating that public entities are likely to pay a sum higher than that is a strong argument for setting a maximum compensation at $1 million. It cannot be said that arriving at such a figure is arbitrary. Indeed, it would only be so were there positive evidence that the figure was unrelated to actual fact. The Commission has found the loss expérience of New Jersey's local public entities is such that a maximum compensation of $1 million in any case against a local government will not unreasonably limit any future claimant's anticipated award.

A 'cap' will go further. It will set a positive and known limit to the expected losses of local governments and those insurance companies that insure them, allowing the insurance industry to set rates responsibly for coverages up to that limit.

There are other issues affecting local governments concerning tort liability. Although local governments were not absolutely immune from suit prior to the State's abrogation of sovereign immunity in 1972, the perception that they have become less immune since that date prevails among local public officials. A recent special report of the International City Management Association (ICMA) bears out this feeling. Of the nationwide survey conducted by the Association, 72.5 per cent of the responding public

officials believed that they had no immunity from suit. In New Jersey, that figure was 81.4 per cent.

What may have strengthened that perception is the doctrine of 'joint and several' liability. Under this doctrine, any party to an action brought against it is responsible not only for its actionable behavior but also for the other parties named 'jointly' with it. Therefore, it is possible that one party, minimally negligent in an action, may well have to pay the entire award adjudged because the other parties named are insolvent, cannot be found or are in some other way unable to meet their financial responsibility. Local governments, undoubtedly, have become favorite targets in joint tort actions with other private parties, as they represent a party with, supposedly, unlimited resources. In effect, they have become a 'guarantor' of a substantial payment in actions with other tortfeasors. They are thus viewed as a 'deep pocket' for the payment of claims. This is particularly so when the insurance company is found to be responsible for indemnification of the public entity.

The inherent complexities of the comparative negligence statutes have been dealt with at length in Chapter II. It is clear to the Commission that the Legislature's 1982 amendments to the Tort Claims Act and the Comparative Negligence Act have resulted in some unanticipated results. In an effort to soften the demand that the plaintiff be less negligent than each defendant so named in a suit in order to recover damages, the amendments merely required the plaintiff to be less negligent than the combined negligence of all defendants. Consequently, as the Commission has been told, in those situations where private parties are held as joint tortfeasors with public entities and are impecunious in one fashion or another,

the public entity is found liable for a considerable amount of the verdict without regard to negligence.

The Commission finds that the intent of the Tort Claims Act of 1972 was specifically to re-instate immunity for public entities with the exception of certain circumstances when public entities would be liable for their actions or omissions. Over the years, the courts have diluted such basic immunity. Both in the areas of discretionary immunity and design immunity, it is no longer satisfactory to show evidence of a governmental decision. Consideration of the plans by decision makers must be proved. Also, weather-related claims are a continued source of aggravation to already over-burdened local public entities, by virtue of the condition for immunity that any harm be 'solely' caused by the weather.

Finally, the Ayers et al. v Jackson Twp. case has had enormous implications for both the liability of local public entities and their insurers. It is fair to say that the 'novel' cause of action allowed by the trial court, and even to some extent the appellate court, has put virtually every insurance company on the defensive. Although the matter is on appeal to the Supreme Court, there are certain settled issues that have come out of the case. One is the language of the insurance contract. Effectively, insurance companies have found their pollution exclusion clause to be virtually worthless, the courts having prescribed by dictum that provided the insured did not mean the harm to occur then the insurer had a duty to defend and indemnify.

RECOMMENDATIONS

With a view to relieving both the immediate shortage of insurance coverage and some inherent legal inequities for local public entities, the Commission makes the following recommendations:-

(a) That there be a limitation upon the amount of recovery in any one incident against a public entity, such limit being $1,000,000 per occurrence, with the term occurrence defined by statute to mean that repeated or continuous actions of substantially the same type are to be construed as a single event.

(b) That there be set up, for the purposes of ensuring coverage against catastrophic claims, an excess liability fund. This fund should be established on a statewide basis for all local public entities and should require their participation unless they can show another source of insurance which will provide them with comparable terms and conditions as the fund. The fund will cover such claims and/or awards in excess of $500,000.

(c) That the Tort Claims Act of 1972 be the sole method of handling tort actions against public entities, superseding and presiding over all other laws to the contrary. That the Tort Claims Act be revised so as to relieve local public entities of the responsibility for the assessed negligence of other tortfeasors sued co-jointly with them.

  (i) Public entities should be held 'severally' liable only and <u>not</u> 'jointly' liable with other tortfeasors; and

  (ii) A public entity should be responsible only for its share of 'wrongdoing' and a plaintiff may only recover that share from the public entity.

(d) That the Tort Claims Act be amended to state:

  (i) Regarding discretionary immunity, there be a

presumption that a duly authorized official in the exercise of his or her discretionary powers is immune from suit;

(ii) Regarding design immunity, there be a presumption that a plan or design was duly approved;

(iii) Regarding weather-related immunity, that the word 'solely' be deleted and that immunity be extended to all public property; and

(iv) Regarding indemnification, that all public officials and employees be indemnified.

(e) That, in order to maintain the level of activity of local governments in this field and to ensure that accurate data are available on the incidence of tort actions against local governments, consideration should be given to requiring every local public entity to report annually to the State the number of claims made against it, their description, and the disposition of such claims.

(f) That local public entities should institute effective risk management programs. The involvement of the insurance industry and the Attorney-General in helping local governments to address ways in which to reduce risk is paramount in this approach.