

59:10A-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1972 CHAPTER: 48

NJSA: 59:10A-1 (Requires the Attorney General, upon request of an employee or former employee of the State to provide for the defense of any action in tort brought against the employee on account of an act or omission in the scope of his employment.)

BILL NO: S993

SPONSOR: Schiaffo and others

DATE INTRODUCED: May 4, 1972

COMMITTEE: ASSEMBLY: ---

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: May 18, 1972

SENATE: May 11, 1972

DATE OF ENACTEMENT: June 1, 1972

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of bill enacted)

SPONSOR'S STATEMENT: (Begins on page 2 of original bill)

Yes

COMMITTEE STATEMENT:

ASSEMBLY:

No

SENATE:

No

FLOOR AMENDMENT STATEMENT:

No

LEGISLATIVE FISCAL ESTIMATE:

No

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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REPORTS:

Yes

HEARINGS:

No

NEWSPAPER ARTICLES:

No

(continued on next pg)

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1972n New Jersey Attorney General's Task Force on Sovereign Immunity. [Newark, N.J.] : Institute for Continuing Legal Education [1975]. Reprint of the 1972 ed. published by the Task Force, Trenton.

LAW

SENATE, No. 993

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1972

By Senator SCHIAFFO

(Without Reference)

AN ACT concerning the defense of State employees and former employees in relation to claims arising out of or in connection with their employment by the State.

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

1 1. Attorney General's duty to defend State employees.

2 Except as provided in section 2 hereof, the Attorney General
3 shall, upon a request of an employee or former employee of the
4 State, provide for the defense of any action brought against such
5 State employee or former State employee on account of an act or
6 omission in the scope of his employment.

7 For the purposes of this section, the Attorney General's duty
8 to defend shall extend to a cross-action, counterclaim or cross-
9 complaint against an employee or former employee.

1 2. Grounds for refusal to provide defense.

2 The Attorney General may refuse to provide for the defense of
3 an action referred to in section 1 if he determines that:

4 a. the act or omission was not within the scope of employment; or

5 b. the act or the failure to act was because of actual fraud,
6 willful misconduct or actual malice; or

7 c. the defense of the action or proceeding by the Attorney
8 General would create a conflict of interest between the State and
9 the employee or former employee.

1 3. The Attorney General's authority to represent.

2 In any other action or proceeding, including criminal proceedings,
3 the Attorney General may provide for the defense of a State em-
4 ployee or former State employee, if he concludes that such repre-
5 sentation is in the best interest of the State.

1 4. Attorney General's exclusive control over litigation.

2 Whenever the Attorney General provides for the defense of a
3 State employee or former State employee pursuant to this act, the

4 Attorney General may assume exclusive control over the repre-
5 sentation of such employee or former State employee and such
6 employee or former State employee shall cooperate fully with the
7 Attorney General's defense.

1 5. Methods of providing defense.

2 The Attorney General may provide for a defense pursuant to
3 this act by an attorney from his own staff or by employing other
4 counsel for this purpose or by asserting the State's right under any
5 appropriate insurance policy which requires the insurer to provide
6 the defense.

1 6. Powers not in derogation of existing authority.

2 The authority granted to the Attorney General by this act shall
3 be in addition to and not in derogation of his existing authority to
4 represent and defend State employees and former State employees.

1 7. This act shall take effect immediately.

SPONSOR'S

STATEMENT

This bill is a companion bill to Senate Bill No. 969. It is primarily
for the purpose of satisfying the needs for representation of State
employees and former State employees resulting from the passage
of Senate Bill No. 969, the New Jersey Tort and Contractual Claims
Act. Although this authority is undoubtedly possessed by the
Attorney General under his existing powers, this amendment is
intended to explicitly establish that authority and the circum-
stances under which it will be exercised.

In addition, this amendment makes clear that the Attorney
General shall have exclusive control of the litigation and State em-
ployees and former State employees must cooperate with him
fully or lose their right to indemnification provided in Chapter 10
of the New Jersey Tort and Contractual Claims Act.

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FROM THE OFFICE OF THE GOVERNOR

JUNE 1, 1972

FOR RELEASE:
IMMEDIATE

Governor William T. Cahill today signed into law two bills to implement the abolition of the sovereign immunity of the State and other public bodies in claims for injuries and damages. The bills also provide for the waiver of sovereign immunity by the State in contract matters.

The Governor signed S-969, sponsored by Senator Alfred D. Schiaffo (R., Bergen), which provides the procedure for processing claims against the State. He also signed S-993, also sponsored by Senator Schiaffo, which authorizes the Attorney General to defend State employees in suits arising out of their duties as employees of the State.

This legislation provides for the selected abolition of sovereign immunity in claims matters. Under provision of the legislation, a public body is liable for claims for injury caused by a public employee while performing his duties. The government or other public bodies will be liable to the same extent as a private individual in similar cases.

Immunity will continue, however, in certain areas. No liability will result from:

- (a) High-level discretionary activities.
- (b) The issuance, denial, suspension or revocation of permits, licenses, etc.
- (c) The failure to inspect or negligent inspection of property.
- (d) Actual fraud, malice or willful misconduct of public employees.
- (e) Injuries occurring on unimproved property.
- (f) Other areas of continued immunity are set forth.

Under the provision of the bill, public employees will be indemnified for claims against them arising out of the course of their employment. Such claims must be filed within 90 days after the time of the alleged incident.

The State is permitted six months in which to review the claim. If there is no settlement, a suit may be instituted within two years. Claims will be tried by a judge without a jury.

No damages will be awarded for pain and suffering except in cases of permanent loss of bodily function, permanent disfigurement or dismemberment where the medical expenses exceed \$1,000. Such benefits will be reduced by the amount of benefits received from collateral sources.

The Attorney General will represent State employees on their request for the defense of matters arising out of the scope of their employment, except in the case of actual fraud, willful misconduct or actual malice of the employee. In criminal proceedings, the Attorney General may represent State employees if he concludes that such representation is in the best interests of the State. The Attorney General shall assume exclusive control over the representation of such State employees.

This legislation will safeguard the rights of citizens who have claims against the State and other public entities while, at the same time, protecting State employees who are sued as a result of their State employment.

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