A Commission Report to the
101st General Assembly

# Local Government Tort Liability Issues In Tennessee

by the
Tennessee Advisory Commission
on Intergovernmental Relations

January 1999

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**Tennessee Advisory Commission**
**on Intergovernmental Relations**

**January 1999**

**State of Tennessee**

# Tennessee Advisory Commission on Intergovernmental Relations

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January 1999

The Honorable Don Sundquist
Governor of Tennessee

The Honorable John S. Wilder
Speaker of the Senate

The Honorable Jimmy Naifeh
Speaker, House of Representatives

Members of the General Assembly

State Capitol
Nashville, TN 37243

Ladies and Gentlemen:

We are transmitting herewith a study of local government tort liability issues in Tennessee. The Tennessee Advisory Commission on Intergovernmental Relations was directed to conduct this study in Item 238, Section 12, of the FY 1999 Appropriations Act (Public Chapter 1135).

The report is the culmination of public hearings, testimony, staff analysis, study by the Tort Liability Study Committee of the Commission, and deliberations by the Commission.

The report announces the recommendations of the Commission to the Governor and the General Assembly and chronicles the study and deliberation that preceded the adoption of recommendations.

Sincerely,

Senator Robert Rochelle
Chairman

Harry A. Green, Ph.D.
Executive Director and
Research Director

# Acknowledgments and Contributors to the Local Government Tort Liability Study Project


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**Majority Leader, Senate**

**Sharon Goldsworthy**
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**Representative Jere Hargrove**
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**Bob Wormsley, Executive Director, Tennessee County Services Association**

## Special Thanks

**Dennis Huffer, Director of Legal Services, Tennessee Municipal League Risk Management Pool. Mr. Huffer's insight into other states' tort liability laws contributed to the quality of this report.**

**Frith Sellers, Executive Director, Tennessee Emergency Communications Board. Ms. Sellers, formerly a TACIR researcher, performed much of the background research and conducted interviews that are included in this report.**

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## I. STUDY DIRECTIVE

**In the wake of heightened public awareness of local government tort liability issues, increased legislative attention was directed to tort liability law in 1997 and 1998. Fourteen bills were introduced during the 100th General Assembly affecting local government tort liability. A broad array of policy concerns were addressed by these bills, including jurisdictional issues, defense of tort claims, medical cost liability, and other specific issues. Overall, tort liability limits were the subject of more tort-related legislation than any other single topic.**

**The bills that sought to amend or abolish local government tort limits all fell on the same side of the spectrum. That is, not a single bill sought to decrease tort limits from their current levels. The most far-reaching of the bills would have abolished tort liability limits altogether. Short of tort limit abolition, other bills sought to effectuate a one-time increase, a steady increase with eventual tort limit phase-out, or periodic adjustments for inflation.**

**Of the two Governmental Tort Liability Act-related bills that became law during the 100th General Assembly, neither amended local government tort liability limits.[1] However, Item 138, Section 12, of the FY 1999 Appropriations Act (Public Chapter 1135) provided that:**

> ***"The Tennessee Advisory Commission on Intergovernmental Relations is directed to conduct a study on limits of liability in effect for local governments and make recommendations to the Governor and the General Assembly on whether or not such limits should be increased. If such commission recommends an increase in such limits, such commission shall propose the amount at which such limits should be established."***

**It is in response to this legislative directive that the TACIR engaged in a study of the Governmental Tort Liability Act and its liability limits. The following report documents the work of the Commission and reports its recommendations pursuant to legislative directive.**

[1] **See Section V of this report, "Legislation of the 100th General Assembly."**

## II. RECOMMENDATIONS

**During the December 1, 1998, meeting of the Tennessee Advisory Commission on Intergovernmental Relations (TACIR), the Commission received a report from the Tort Liability Study Committee of the Commission on its recommendations for changes to the Governmental Tort Liability Act. The recommendations of the Study Committee, which was formed for the sole purpose of studying local government tort liability, were the product of months of study and deliberation.**

**Members of the Tort Liability Study Committee were TACIR Commissioners:**

- **Truman Clark, Carter County Executive (Study Committee Chair);**
- **Senator Ward Crutchfield;**
- **Representative Jere Hargrove;**
- **Sharon Goldsworthy, Mayor of Germantown; and**
- **Maynard Pate, Greater Nashville Regional Council.**

**After extensive deliberation and several refinements to the wording proposed by the Study Committee, the Commission adopted the following two recommendations to the General Assembly.[2]**

### TACIR Recommendations to the General Assembly on Local Government Tort Liability

1. ***The current tort limits in effect for local governmental entities should be adjusted for inflation, using the US Consumer Price Index (CPI).*** **These limits should be effective July 1, 2000, to allow time for local governments to budget for increased premiums and estimated damages.**

   **Adjustment of the limits by the CPI would result in the following changes:**

| Type | Current Limit | Adjusted Limit (US CPI) |
|---|---|---|
| Per Person | $130,000 | $185,000 |
| Per Occurrence | $350,000 | $500,000 |
| Property | $50,000 | $70,000 |

[2] **A detailed account of the deliberations and vote will be found in the "Minutes of the 74th Meeting of the TACIR," available upon request.**

**Future adjustments should be considered every five years, based on either the US CPI or the implicit Gross Domestic Product (GDP) deflator, as determined by the General Assembly. Such adjustments should be conditional on establishment of a catastrophic events fund.**

**2.** ***A practical solution should be obtained in 1999 to address catastrophic events. TACIR should be a supportive agency in arriving at such a solution. The TACIR study should include, but not be limited to, actuarial studies, analyses, and estimates.***

**Such a solution should explore the following issues:**

- **Creation of a separate fund, perhaps called the Local Governmental Catastrophic Injury Fund. This fund would pay damages associated with catastrophic damages that exceed the current tort limits.**

- **Mandatory participation in the fund by every local governmental entity covered by the Governmental Tort Liability Act (T.C.A., Title 29, Chapter 20).**
  - **If participation is voluntary, there is a potential for large and low-risk entities to purchase catastrophic insurance elsewhere, leaving only small, high-risk entities in the pool, which would be cost-prohibitive to such entities.**
  - **Mandatory participation would pool funds and distribute risks across the approximately 1,600 local government entities covered by the Governmental Tort Liability Act. This would keep the average risk premium at a manageable level that would not overly burden local governments.**

- **Determination by an actuary of funding requirements and individual entity premiums. The exact basis of premiums should not be provided for in the statutes, to provide flexibility.**

- **Provision for pre-judgment interest to increase the financial incentives to settle instead of litigate claims.**

- **Definition of catastrophic events or claims.**

- **Resolution of catastrophic tort claims through a process similar to that currently used by the State of Tennessee for state tort claims.**

## III. THE GOVERNMENTAL TORT LIABILITY ACT-- BACKGROUND

**Tennessee's Governmental Tort Liability Act (GTLA) became law on January 1, 1974 (codified as T.C.A. § 29-20-101, *et seq.*), though by no means was the Act the first word on local government tort liability. Prior to passage of the Act, the longstanding common law "doctrine of sovereign immunity" was the law of the land. As was true in most other states, over time the doctrine of sovereign immunity became less and less satisfying to the Judiciary and the Legislature.**

### TORTS AND SOVEREIGN IMMUNITY

***Tennessee Code Annotated*, Title 29, Chapter 20 establishes state policy on local government tort liability, though this Chapter does not extend to tort actions against state government.[3] While the GTLA does not define "tort," common usage of the term refers to "…a wrongful act, damage, or injury done willfully, negligently, or in circumstances involving strict liability, but not involving breach of contract, for which a civil suit may be brought…"[4] Yet in some instances, the term "tort" has been defined to include actions for bad faith breach of contract.[5]**

**In the context of Tennessee's GTLA, the Tennessee Court of Appeals has held that the Act applies to injuries in tort, but does not extend to actions in contract.[6] Specifically, the injuries in tort covered by the act include death, injury to a person, damage to or loss of property, or any other injury that one may suffer to one's person, or estate.[7]**

**The common law doctrine of sovereign immunity has its roots in the aristocratic concept that "the King can do no wrong."[8] As such, a preclusion exists from bringing suit against a government without its consent. The Tennessee Supreme Court found that "the doctrine has been a part of the common law of Tennessee for more than a century and provides that suit may not be brought against a governmental entity unless that governmental entity has consented to be sued."[9] In *Hawks v. City of Westmoreland*, the Tennessee Supreme Court pointed out that "the longstanding rule of sovereign immunity is recognized by the Tennessee**

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[3] ***Tennessee Dep't of Mental Health & Mental Retardation v. Hughes*, 531 S.W.2d 299 (Tenn. 1975).**
[4] **Webster's Dictionary, 1993.**
[5] **Black's Law Dictionary, 6th Edition, page 1489, 1990.**
[6] ***Simpson v. Sumner County*, 669 S.W.2d 657 (Tenn. Ct. App. 1983).**
[7] **T.C.A. § 29-20-102(4).**
[8] **Black's Law Dictionary, 6th Edition, page 1396.**
[9] **See *Lucius v. City of Memphis*, 925 S.W.2d 522, 525 (Tenn. 1996), and *Cruse v. City of Columbia*, 922 S.W.2d 492, 495 (Tenn. 1996).**

**Constitution which provides, 'suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.'"[10]**

## JUDICIAL VERSUS LEGISLATIVE ABROGATION OF SOVEREIGN IMMUNITY

**There are two primary ways in which sovereign immunity has been abrogated over the years. In some states, judicial decisions have resulted in partial or complete revocation of tort limits for state government, local government, or both. In other states, legislative actions have abrogated or curtailed sovereign immunity, and in some cases, these legislative actions have been undertaken without significant judicial pressure to act. Though not nearly as common as judicial and legislative action on governmental tort liability, constitutional amendments have also been used to establish policy on governmental tort liability, be it for the state or its subordinate governments.**

**Tennessee is not unique in its partial abandonment of the doctrine of sovereign immunity. By 1998, only three states have retained sovereign immunity for torts against the state government,[11] and in no states are local governments completely immune from tort liability. In 25 states, the sovereign immunity of local governments has been abolished by judicial decisions. Legislative action has revoked local governmental immunity in 21 states and the District of Columbia, and in four states local government immunity has been revoked by constitutional amendment.[12]**

**The National Conference of State Legislatures categorizes Tennessee's abrogation of sovereign immunity as being legislative. Yet legislation does not occur in a vacuum. Years of judicial wrangling with governmental tort liability have helped shape legislative and public opinion on the application of centuries-old common law to modern day local governments. Indeed, the impetus for the establishment of Tennessee's governmental tort liability policies is neither singularly legislative nor exclusively judicial.**

**One author writing about the GTLA declared that the courts have placed the retention of sovereign immunity squarely in the realm of the legislature.[13] Indeed, not long before the passage of the GTLA, the Tennessee Supreme Court let stand**

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**[10] Art. I, § 17, Tennessee Constitution, and *Hawks v. City of Westmoreland,* 960 S.W.2d 10 (Tenn. 1997).**

**[11] Alabama, Arkansas, and West Virginia. Source: NCSL.**

**[12] Source: National Conference of State Legislatures (1998). *Summary of State Tort Liability Statutes*.**

**[13] J.C. Cook *Sovereign Immunity and the Tennessee Governmental Tort Liability Act*. 41 Tenn. Law Rev. 885 (1974).**

**the doctrine of sovereign immunity, citing the threat to local government resources as justification for the continued application of sovereign immunity.[14]**

**Yet another author cited instances where the Tennessee Supreme Court expressed dissatisfaction with the doctrine of sovereign immunity and demonstrated how the courts had worked to carve out exceptions to immunity.[15] By 1975, the Supreme Court's view of the doctrine had changed; it declared the doctrine to be an "anachronism."[16]**

**In states with legislative enactments abrogating local government tort liability, two different approaches have been employed. One approach is to grant blanket tort immunity to local governments, and then carve out exceptions for which immunity is removed. The alternative approach is to legislatively revoke general immunity, but establish specific exceptions for which a local government is not liable. Tennessee relies upon the former model, in which local governments possess immunity, subject to certain exceptions.[17]**

### GOVERNMENTAL VERSUS PROPRIETARY FUNCTIONS

**While the GTLA expanded local governments' exposure to tort liability generally, it simultaneously extended limited immunity to the exercise of proprietary functions, for which immunity did not previously exist.[18] Historically, immunity only applied to the exercise of governmental functions, or the exercise of any function by an entity that was created for purposes of performing sovereign functions,[19] though the body of case law distinguishing governmental functions from proprietary functions was, at best, murky. In this way, governmental entities were immune as a matter of policy, regardless of the nature of the function performed. Municipalities, which share both corporate and governmental characteristics, enjoyed the protective cover of sovereign immunity only insofar as they were deemed to be performing governmental functions.**

**Further complicating the matter, the determination of governmental or non-governmental status was complicated by the fact that under some sections of the**

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[14] ***Coffman v. City of Pulaski,*** **422 S.W. 2d 429 (Tenn. 1967).**

[15] **J.K. Harber (1983).** ***The Tennessee Governmental Tort Liability Act.***

[16] **From remarks made on August 13, 1998, by Ogden Stokes, former Interim Executive Director, Tennessee Municipal League in the public hearing of the Tort Liability Study Committee of the Commission. Mr. Stokes' comments refer to a ruling in** ***Johnson v. Oman Construction Co.,*** **519 S.W. 2d 782. (Tenn. 1975).**

[17] **J.K. Harber (1983).** ***The Tennessee Governmental Tort Liability Act.***

[18] ***Crowe v. John M. Harton Memorial Hospital,*** **579 S.W.2d 888 (Ct. App. 1979).**

[19] **J.C. Cook** ***Sovereign Immunity and the Tennessee Governmental Tort Liability Act.*** **41 Tenn. Law Rev. 885 (1974).**

**Tennessee code, a single entity may be defined as a municipality in certain instances, but not in others.**

**The GTLA cleared up this source of considerable confusion by specifying that "except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, *governmental* or *proprietary*."[20]**

**MINISTERIAL AND DISCRETIONARY ACTIONS— THE PLANNING-OPERATIONAL TEST**

**The governmental entities for which the GTLA applies are now relatively well defined, both legislatively and through subsequent case law. Yet perhaps one of the most complex questions that still remains in determining if an actionable tort has been committed is the ministerial/discretionary distinction. T.C.A. § 29-20-205 enumerates exceptions to the removal of tort liability; that is, instances in which immunity exists. While all eight exceptions contained in this section are important, the first exception is sufficiently general in nature that it holds relevance in virtually any tort action against a local government.**

**T.C.A. § 29-20-205(1) provides that immunity exists when an injury "arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused" [emphasis added]. The general legal meaning of a discretionary act is one for which there is no hard and fast rule as to course of conduct, thus requiring the exercise of judgement and choice.[21]**

**A discretionary act contrasts with a ministerial act, which refers to an act that involves obedience to instructions without demanding special discretion, judgement, or skill.[22] In *Bowers v. City of Chattanooga*, the Tennessee Supreme Court adopted the planning-operational test to determine which governmental acts are entitled to the protection of immunity under T.C.A. § 29-20-205(1).[23] Under the planning-operational test, which is derived from a voluminous collection of case law,[24] decisions that rise to the level of planning or policy-making are considered discretionary acts. In *Bowers*, the Court recognized that all acts involve some discretion, but suggested that an examination of the decision-making process often reveals whether a decision involves planning.**

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[20] **T.C.A. § 29-20-201(a), emphasis added.**
[21] **Summarized from Black's Law Dictionary, 6th Edition, page 467.**
[22] **Summarized from Black's Law Dictionary, 6th Edition, page 996.**
[23] ***Bowers ex rel. Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992).**
[24] **Ibid.**

# IV. THE GOVERNMENTAL TORT LIABILITY ACT--OVERVIEW

***Tennessee Code Annotated*, Title 29, Chapter 20 establishes state policy on local governmental tort liability. The Governmental Tort Liability Act (GTLA) essentially provides blanket immunity to local governments, then provides specific instances where immunity is removed (i.e., the local government is liable). The GTLA is divided into four parts:**

- **General Provisions**
- **Removal from Immunity**
- **Claims Procedure**
- **Funding and Insurance.**

**GENERAL PROVISIONS**

**The Governmental Tort Liability Act (GTLA) removes common-law governmental immunity for specific situations that are enumerated in its provisions.[25] The Act applies to all local governmental entities, which are defined by T.C.A. § 29-20-102(3) to include any:**

- **Municipality;**
- **Metropolitan Government;**
- **County;**
- **Utility District;**
- **School District;**
- **Nonprofit Volunteer Fire Department receiving funds from a county or city;**
- **Human Resource Agency; and**
- **Development District.**

**T.C.A. § 29-20-102(2) defines an employee as any official (whether elected or appointed), officer, employee or servant, or any member of any board, agency, or commission of a governmental entity. A Sheriff and his or her employees, and members of voluntary or auxiliary firefighting, police, or emergency assistance organizations are also included in that definition.**

**T.C.A. § 29-20-107 provides a definition of a government employee for tort liability purposes only. All of the following five elements must exist for an individual to be considered an employee:**

[25] ***Mabray v. Velsicol Chem. Corp.*, 480 F. Supp. 1240 (W.D. Tenn 1979).**

1. **The governmental entity itself selected and engaged the person to perform services;**
2. **The governmental entity itself is liable for compensating the person, and that such person receives all compensation directly from the payroll department of such entity;**
3. **The person receives the same benefits as all other employees of the entity including retirement benefits and eligibility to participate in insurance programs;**
4. **The person acts under the control and direction of the governmental entity; and**
5. **The person is entitled to the same job protection system and rules as are other employees of the governmental entity.**

**Exempted from the above conditions are regular members of a voluntary or auxiliary firefighting, police, or emergency assistance unit. Part-time employees are immune, as long as they receive the same benefits, etc., as other part-time employees.**

**Local Governments are specifically prohibited from extending immunity provisions to independent contractors or other persons by contract, agreement, or any other means.[26]**

**IMMUNITY**

**As evidenced by T.C.A. § 29-20-201, the General Assembly's clear intent is to provide immunity to governmental entities, and to provide personal immunity for those who serve local governmental entities. With respect to local governmental entities, T.C.A. § 29-20-201(a) provides that all local governmental entities are immune from suit for any injury resulting from the exercise or discharge of any of their functions, whether governmental or proprietary.**

**On the question of personal immunity of governmental employees and other officials, the General Assembly found that:**

> ***"…the services of governmental entity boards, commissions, authorities and other governing agencies are critical to the efficient conduct and management of the public affairs of the citizens of this state. Complete and absolute immunity is required for the free exercise and discharge of the duties of such boards, commissions, authorities and other governing agencies.***

**[26] T.C.A. § 29-20-107(c).**

***Members…must be permitted to operate without concern for the possibility of litigation arising from the faithful discharge of their duties….”***[27]

**INSTANCES WHERE IMMUNITY IS REMOVED**

**T.C.A. §§ 29-20-202, -203, and -204 all provide instances where immunity from suit is removed. That is, local governments are liable for:**

- **Injuries resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of employment;**[28]
- **Injuries caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk, or highway (including traffic control devices) owned and controlled by the local government;**[29] **and**
- **Injuries caused by the dangerous and defective condition of any public building, structure, dam, reservoir, or other public improvement owned and controlled by the local government.**[30]

**Immunity from suit is also removed (i.e. the local government is liable) for injuries caused by an employee's negligent act or omission.** [31] **T.C.A. § 29-20-205 establishes eight exceptions to the removal of immunity. That is, if any of the following conditions are met, the local government is immune, if the injury arises out of:**

- **the exercise or the failure to perform a discretionary function, whether or not the discretion is abused;**
- **false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, infliction of mental anguish, or invasion of privacy;**
- **issuance, denial, suspension, or revocation of, or the failure to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;**

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[27] **See T.C.A. § 29-20-201(b). Subdivision (2) of Subsection (b) provides that while governmental agents are immune from personal liability, such immunity is removed when conduct amounts to willful, wanton, or gross negligence.**

[28] **T.C.A. § 29-20-202. At the same time, the immunities provided in T.C.A. §§ 55-8-101, -108, and –132 are expressly continued. These sections refer to emergency vehicles and law enforcement vehicles in hot pursuit, for example.**

[29] **T.C.A. § 29-20-203. This section further requires that constructive and/or actual notice of such condition be alleged and proved.**

[30] **T.C.A. § 29-20-204. This section further provides that immunity is not removed for latent defective conditions, and that constructive and/or actual notice of such condition must be alleged and proved.**

[31] **T.C.A. § 29-20-205 addresses negligent acts and omissions, though other types of actions may give rise to liability; for example civil rights violations and interference with contracts.**

- **failure to inspect, or inadequately inspecting property;**
- **institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;**
- **misrepresentation by an employee, even if such action is negligent or intentional;**
- **riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances; and**
- **the assessment, levy, or collection of taxes.**

**CLAIMS PROCEDURE**

**Under the GTLA, a local government has 60 days to answer or respond to any suit. If the government fails to approve or deny the claim within that time period, the claim is deemed to have been denied.[32]**

**If the claim is denied, a claimant (i.e., plaintiff) may institute legal action in the Circuit Court only in those instances where immunity has been removed (i.e., the local government is liable) as provided under the GTLA. Such action must be commenced within 12 months after the cause of action arises.[33] Suits may be brought in the county where the local government is located, or in the county where the incident occurred.[34]**

**Except for Shelby County, the Circuit Courts have exclusive original jurisdiction. In Shelby County, the general sessions court has concurrent original jurisdiction.[35]**

**T.C.A. § 29-20-310 specifies the determinations to be made by the Court. Before the Court can hold a local government liable for damages, the Court must first determine that**

1. **The employee's or employees' act or acts were negligent and the cause of the plaintiff's injury;**
2. **The employee or employees acted within the scope of their employment; and**
3. **None of the eight exceptions listed in § 29-20-205 are applicable.**

**No claim can be brought against an employee, or a judgment entered against an employee if the local government itself is liable for damages, unless the claim is for**

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[32] **T.C.A. § 29-20-304.**
[33] **T.C.A. § 29-20-305.**
[34] **T.C.A. § 29-20-308.**
[35] **T.C.A. § 29-20-307.**

**medical malpractice brought against a health care practitioner. If the local government is liable, no claim for damages or judgment against a health care practitioner can be brought, unless the damages sought are greater than the minimum limits established in § 29-20-403.**

**Under T.C.A. § 29-20-310, local governments are authorized to elect to insure or indemnify their employees for claims for which the local government is immune. Such indemnification cannot exceed the liability limits established in Part Four of the GTLA. Local governments may do the same for volunteers, although volunteers are liable for any amount in excess of such limits.**

**T.C.A. § 29-20-311 states that a judgment or award against a local government cannot exceed the minimum amounts of insurance coverage for death, bodily injury, and property damage liability specified in § 29-20-403.[36]**

**T.C.A. § 29-20-312 provides that any claim paid by a local government may be paid in a maximum of 10 equal annual installments, and shall bear annual interest of six percent (6%) on the unpaid balance. The court of original jurisdiction may order a lump sum payment, and all judgments less than $5,000 must be paid in one payment.**

**FUNDING AND INSURANCE**

**Part Four of the GTLA allows local governments to create and maintain a reserve or special fund to pay tort claims, or to purchase liability insurance.[37] This Part also authorizes two or more local governments to pool their financial and administrative resources for liability or insurability purposes. This authority includes the power to establish a separate legal or administrative entity. If any special fund is created, there must be an adequate reserve as determined by the Department of Commerce and Insurance (DCI). The DCI is allowed to charge reasonable fees to cover expenses associated with investigations and audits.**

**T.C.A. § 29-20-402 authorizes local governments (that have the power to tax) to levy an annual property tax that will cover expenses associated with tort liability.**

**T.C.A. § 29-20-403 authorizes local governments to purchase insurance to cover their liability under the GTLA. The GTLA requires that effective July 1, 1987, every such policy shall provide:**

- **Minimum limits of $130,000 for bodily injury or death of one person in an accident, occurrence, or act;**

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**[36] See *Coburn v. City of Dyersburg*, 774 S.W. 2d 610 (Tenn. Ct. App. 1989).**

**[37] T.C.A. § 29-20-401(a).**

- **Minimum limits of $350,000 for bodily injury or death of all persons in an accident, occurrence, or act; and**
- **Minimum limits of $50,000 for injury to or destruction of property in any one accident.**

## V. HISTORICAL TORT LIMITS

**The first tort limits were established in 1973, when people were first able to sue governments. In that year, the General Assembly placed limits, or caps, on what individuals (plaintiffs) could collect.[38] Tort limits were increased in 1982, and again in 1987, as shown in Table 1.[39] In 1987, the first two tort limits were increased, but not the one for property damage. In 1992, the property damage limit was increased.[40] The tort limits have not changed since then.**

**Table 1**
**Historical Tort Limits**

| Year | Bodily Injury or Death of 1 Person, any one accident | Bodily Injury or Death of All Persons, any one accident | Injury to/Destruction of Property, any one accident |
|---|---|---|---|
| 1973 | $20,000 | $40,000 | $10,000 |
| 1982 | $40,000 | $80,000 | $20,000 |
| 1987 | $130,000 | $350,000 | $20,000 |
| 1992 | $130,000 | $350,000 | $50,000 |

### INFLATIONARY ADJUSTMENTS TO TORT LIMITS

**Since tort limits have not been changed since 1987 (1992 for property damages), obviously some value has been lost to inflation. TACIR staff adjusted the three limits by the annual Consumer Price Index (CPI).[41]**

## VI. PERSPECTIVES AND ISSUES

**In the course of studying local government tort liability, widely divergent perspectives and issues were solicited by the Commission, and in particular by the Tort Liability Study Committee of the Commission. Perspectives and issues were derived from three primary sources: 1) previously introduced legislation, 2) selected other states, and 3) policy stakeholders and experts. While repeated contacts occurred with policy stakeholders and experts, the bulk of the material gathered**

[38] Interview with Lee Holland, President of the TML Risk Management Pool.
[39] Tennessee Public Acts 1982, Chapter 950, §§ 1, 2; 1987, Chapter 405, §§ 5, 6.
[40] Tennessee Public Acts 1992, Chapter 821, § 1.
[41] See Appendices F-H for tables showing inflation adjusted tort limits.

**from these sources was obtained during the quarterly meetings of the Commission, and at a public hearing of the Tort Liability Study Committee of the Commission.**

### LEGISLATION OF THE 100TH GENERAL ASSEMBLY

**TACIR staff conducted a search on the General Assembly's web page on legislation introduced in 1997 and 1998 that affected local government tort liability. That search indicated that 14 such bills were introduced. Appendix C provides a breakdown of legislation introduced in the 100th General Assembly that would have amended the Governmental Tort Liability Act (GTLA).**

***Senate Bill 3226/House Bill 3254.*** **Among the tort bills introduced in the 100th General Assembly, the Kyle/Ulysses Jones bill held particular relevance for the work of the Commission, as it speaks directly to the issue of tort limits. However, the limits proposed in the original Kyle/U. Jones bill exceed by a considerable margin the limits that would be established if adjusted for inflation.**

**Table 2**
**Proposed Changes to Tort Limits**

| | (SB 3226/HB 3254) | | | |
|---|---|---|---|---|
| | Current Statutory Limits | Proposed Limits in Original Bill | Amended Proposed Limits | TACIR Proposed Limit |
| Bodily Injury or Death of 1 Person, any one accident | $130,000 | $390,000 | $180,000 | $185,000 |
| Bodily Injury or Death of All Persons, any one accident | $350,000 | $1,000,000 | $500,000 | $500,000 |
| Injury to/Destruction of Property. | $50,000 | $150,000 | $75,000 | $70,000 |

***Fiscal Note on Original Bill.*** **The Fiscal Review Committee estimated that under the original bill (unamended), there would be an increase in local government expenditures exceeding $5 million. In the Fiscal Note, the Fiscal Review Committee noted that Article II, Section 24 of *The Tennessee Constitution* provides that "…no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost…." In other words, some might argue that the General Assembly would be required to provide a funding mechanism for such bills.**

**However, it is important to point out that Tennessee courts have not held that increases in tort liability limits require the provision of additional funds. In *Swafford v. City of Chattanooga*, the Court of Appeals found that the General Assembly's having raised the liability limits indicates a legislative intent to provide a greater remedy to the citizens of this State and others who are injured at the hands of negligent local governments. Further, the Court found that this "…is not**

**an 'increased expenditure requirement' imposed on the cities or counties of this State. The only 'expenditure requirements' would be those that result solely from the negligent acts or omissions of a city or county itself; the Act does not require cities and counties to commit those negligent acts or omissions."[42]**

## OTHER STATES

**TACIR staff collected and reviewed material regarding governmental tort liability limits in selected other states. While the basic principles of limited sovereign immunity and tort liability vary little from state to state, there is considerable variation in the amounts for which a local government may be liable.**

**At one end of the spectrum is Arkansas, a state in which local governments are only liable for tort actions involving automobiles. The statutory maximum tort liability per accident in Arkansas is $50,000. Arkansas' surprisingly limited exposure to tort claims, both in amount and nature, contrasts vividly with states like Kentucky. In Kentucky, the State Constitution has been interpreted to prohibit the imposition of a statutory cap on local government tort liability.[43]**

**Table 3**
**Tort Liability Limits in Other States[44]**

| State | Dollar Limits |
|---|---|
| **Alabama[45]**<br>• Limits in effect for at least nine years | $100,000 per person<br>$300,000 per accident[46]<br>$100,000 property |
| **Arkansas**<br>• Full tort immunity except for automobiles. | Limits for Auto Liability:<br>$25,000 per person<br>$50,000 per accident<br>$15,000 property |
| **Florida**<br>• These limits in effect since 1976.<br>• Attempts to increase limits three years ago failed. | $100,000 per person<br>$200,000 per accident<br>No separate property limit |
| **Georgia**<br>• Liability limits determined by amount of insurance. Local governments have immunity for damages over coverage amount. | |
| **Kentucky**<br>• No limits—prohibited by Constitution<br>• Claims cannot exceed total damages | |
| **Louisiana**<br>• Constitution amended in 1995 to specifically cap liability damages because of abuses.<br>• No limit on medical damages. Medical damages may be placed in a reversionary trust and paid as costs are incurred. | $500,000 per claimant for general damages. |

[42] *Swafford v. City of Chattanooga*, 743 S.W.2d 174 (Ct. App. 1987)
[43] See Page 21 of this report for a review of Kentucky tort liability law.
[44] Source: Tennessee Municipal League, Telephone Survey, August 27, 1998.
[45] Source: TML.
[46] J.C. Pine, *Tort Liability Today*, Public Risk Management Association, 1998, p. 9.

| | |
|---|---|
| **Maryland** | **$200,000 per person**<br>**$500,000 per accident** |
| **Mississippi** | **From 7/1/97 through 6/30/2001:**<br>**$250,000 per accident**<br>**After 7/1/2001:**<br>**$500,000 per accident** |
| **Missouri**<br>• **Limits in effect since 1978.**<br>• **Attempts have been made to allow unlimited medical damages, but have failed.** | **$100,000 per person**<br>**$1,000,000 per accident** |
| **New Mexico**[47]<br>• **Caps provide for separate medical payments.**<br>• **No punitive damages.**<br>• **No interest prior to judgment.**<br>• **Risk management division created; insurance fund created. Claims in excess of $5,000 must be approved by director of risk management.** | **$100,000 for damage to or destruction of property arising out of a single occurrence;**<br>**$300,000 for all past and future medical and medically related expenses arising out of a single occurrence;**<br>**$400,000 to any person for any number of claims arising out of a single occurrence for all damages other than property damage and medical;**<br>**$750,000 for all claims other than medical or medically related expenses arising out of a single occurrence.** |
| **North Carolina**<br>• **Liability limits determined by amount of insurance.**<br>• **Local governments have immunity for damages over coverage amount.** | |
| **Oklahoma**<br>• **Limits in effect since 1985.** | **$100,000 per person**<br>**$1,000,000 per accident**<br>**$25,000 property** |
| **South Carolina**<br>• **Limits in effect since 7/1/1998.** | **$300,000 per person**<br>**$600,000 per accident** |
| **Texas**<br>• **Limits in effect since 1987.**<br>• **The different caps on cities and counties resulted from a compromise in which more municipal functions were defined statutorily as governmental rather than proprietary.** | **For municipalities: $250,000 per person**<br>**$500,00 per accident**<br>**For counties: $100,000 per person**<br>**$300,000 per accident** |
| **Virginia**<br>• **No limits.**<br>• **Immunity (no liability) for governmental actions.**<br>• **Unlimited liability for proprietary actions.**<br>• **Situation appears to be how Tennessee handled tort liability before passage of the Tort Act.** | |
| **West Virginia** | **Economic Loss: No limits**<br>**Non-economic loss: $500,000 per person** |

**The Tort Liability Study Committee of the Commission, as well the House and Senate Judiciary Committees, expressed particular interest in the systems of tort liability in two of Tennessee's neighboring states, Kentucky and North Carolina. Because of this interest, more detailed information was gathered for these two states.**

[47] **Ibid., p. 51.**

**Table 4**
**Tennessee, Kentucky, and North Carolina Compared**

| | | Tennessee | Kentucky | North Carolina |
|---|---|---|---|---|
| **Municipalities** | *Immunity* | Immune with certain statutory exceptions. | Immune with certain statutory exceptions. | Immunity waived only through purchase of liability insurance. |
| | *Limits* | 130,000 person/ 350,000 event | No statutory limits on liability. | Recoveries capped at indemnification levels. |
| **Counties** | *Immunity* | Immune with certain statutory exceptions. | Courts held counties immune as if they were the Commonwealth. | Immunity waived only through purchase of liability insurance. |
| | *Limits* | 130,000 person/ 350,000 event | Immune-see "state" section below. | Recoveries capped at indemnification levels. |
| **State** | *Immunity* | Immune with certain statutory exceptions.<br>Board of Claims is exclusive venue. | Immune with certain statutory exceptions.<br>Board of Claims is exclusive venue. | Immune with certain exceptions-<br>Industrial Board is exclusive venue. |
| | *Limits* | 300,000 person/ 1,000,000 event | 100,000 person/ 250,000 event | 150,000 person/ 150,000 event |

***Kentucky.***[48] **Kentucky and Tennessee share remarkably similar statutes on local government tort liability. Both states have, by statute, established general immunity for local governments, subject to certain "carve-outs," or areas in which immunity is revoked.**[49] **The specific instances in which immunity exists are also very similar. Central to both states' statutes is the discretionary versus ministerial distinction. In both states, immunity is granted for discretionary decisions, but not for those decisions or actions considered ministerial.**[50]

**Most aspects of Kentucky's statute closely mirror that of Tennessee, with two striking exceptions. First, in Kentucky there are no dollar limits established for tort claims against local governments, apart from a limitation that claims cannot**

[48] **Kentucky's local government tort liability statute is attached as Appendix D.**
[49] **See T.C.A. § 29-20-101 *et seq.* and KRS §§ 65.2000 through 65.2006.**
[50] **Compare T.C.A. § 29-20-205(1) with KRS § 65.2003(1).**

**exceed total damages.[51] The "total damages" clause prevents the imposition of punitive damages. The Kentucky Constitution has been interpreted to prevent the establishment of tort liability limits for local governments.[52] Section 54 of the Kentucky Constitution specifies that "the General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property."**

**While this Constitutional provision would appear to end all debate with respect to governmental tort liability, a conflicting provision of the Constitution complicates the story. Section 231 of the Kentucky Constitution provides that "The General Assembly may, by law, direct in what manner and in what courts suits may be brought against the Commonwealth." So while Section 54 limits the General Assembly's ability to impose limits generally, Section 231 gives back to the General Assembly the authority to impose limits on tort claims against the Commonwealth. It is because of these conflicting sections that Kentucky's local governments do not have benefit of tort liability limits, while the state does enjoy the benefits of such limits ($100,000 person/$250,000 per act of negligence).[53]**

**However, it is important to note that the Commonwealth has retained blanket sovereign immunity except as waived by the General Assembly. Through the provisions of Title VI, Chapter 44, of the Kentucky Revised Statutes (KRS), the General Assembly has only waived sovereign immunity for claims against the Commonwealth that result from acts of negligence. The exclusive venue for the hearing of such claims is the Board of Claims, established pursuant to Chapter 44 of KRS.**

**The second striking difference between Tennessee and Kentucky is the distinction drawn in Kentucky between counties and municipalities. While Kentucky's equivalent of Tennessee's Governmental Tort Liability Act applies to counties and cities,[54] what has been described as a "curious provision" appears to mitigate the application of the law to county governments.[55] KRS § 65.2001 provides that "no provision of KRS 65.2002 to 65.2006 shall in any way be construed to expand the existing common law concerning the municipal tort liability"… "nor eliminate the defense of governmental immunity for county governments" [emphasis added]. According to recent case law, it has been clear under Kentucky law since 1792 that counties enjoy sovereign immunity from ordinary tort liability, the same as the Commonwealth itself.[56]**

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**[51] KRS § 65.2002.**

**[52] See, for example, *Bolden v. City of Covington*, 805 S.W. 2d 577 (Ky. 1991).**

**[53] KRS § 44.070(5).**

**[54] KRS § 65.200(3).**

**[55] Correspondence from Dennis Huffer, Director of Legal Services, Tennessee Municipal League Risk Management Pool, December 29, 1998.**

**[56] *Kenton Co. Public Parks Corp. v. Modlin*, 901 S.W. 2d 876 (Ky. Ct. App. 1995).**

**In 1997, the Kentucky Supreme Court upheld the doctrine of sovereign immunity for counties.[57] This somewhat contrived collection of common law, Constitutional law, statutes, and case-made law provides for Kentucky Counties a defense of sovereign immunity that is not made available to municipalities.**

***North Carolina.*[58] North Carolina's local government tort liability laws differ rather markedly from those of Tennessee and Kentucky. In both Tennessee and Kentucky, legislative action has partially abrogated the doctrine of sovereign immunity by declaring that local governments are immune from tort liability, with certain delineated exceptions. The retained immunities and statutorily defined exceptions to immunity are applied to each municipal government in Kentucky, and each local government in Tennessee.[59] In contrast, North Carolina has a general statute regarding local tort liability, but the statute is permissive. That is, local governments in North Carolina are given the option of waiving sovereign immunity through the purchase of liability insurance, and no act other than the purchase of insurance is deemed to waive liability.**

**For those local governments that waive sovereign immunity through the purchase of insurance, total liability is capped at the amount for which a local government is insured. While local governments may purchase such insurance from private sources, there is a general statute allowing for the creation of one or more local government risk pools.[60]**

**The protection of sovereign immunity and the waiver of immunity through the purchase of liability insurance is the clear law of the land in North Carolina. Though not of immediate relevance to Tennessee's tort issues, it is worth noting that several recent cases complicate local government tort liability in North Carolina immensely.**

**In North Carolina, the Tort Claims Act provides a remedy for torts committed by the state or agents of the state, and designates the Industrial Commission as the exclusive venue for actions brought under the Act. Through a complicated history of case law, counties and their employees are, in some circumstances, considered to be acting as agents of the state, thus triggering the provisions of the Tort Claims Act.[61] In these actions heard before the Industrial Commission, the state, as principle, but**

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[57] ***Franklin County v. Malone*** **957 S.W. 2d 195 (Ky. 1997).**

[58] **North Carolina's local government tort liability statute is attached as Appendix E.**

[59] **For less than a year after the enactment of Tennessee's Governmental Tort Liability Act, there was a provision allowing local governments to exempt themselves from its provisions. However, legislative pressure resulted in the rapid closure of this provision in the statute. See J.K. Harber (1983).** ***The Tennessee Governmental Tort Liability Act Since 1974*****.**

[60] **See Chapter 58, Article 23 of the North Carolina General Statutes.**

[61] **N.C. Gen. Stat. § 143-291,** ***et seq*****.**

**not the county, may be held liable for the actions of a local government and its employees. A recent article in the *Institute of Government Bulletin* provides a thorough analysis of recent developments in North Carolina tort liability.[62]**

**POLICY STAKEHOLDERS**

**In the course of this research project, TACIR staff consulted with many policymakers, stakeholders, and other experts.**

**In addition to interviews, the Tort Liability Study Committee of the Commission conducted a public hearing and received formal testimony on August 13, 1998. The minutes of the public hearing are contained in Appendix A. Appendix B contains a list of policy stakeholders consulted during the course of this study.**

## VII. DISCUSSION AND ANALYSIS

**By reviewing previous legislation, other states' laws, and receiving stakeholder and expert perspectives, the Tort Liability Study Committee identified a number of potential policy concerns. What follows is a synopsis of:**

1. **issues the Study Committee deemed worthy of examination; and**
2. **the study committee's conclusion or resolution of the issues, where applicable.**

**Before dealing with the individual issues, it is important to note that in the meetings of the Commission and the Tort Liability Study Committee of the Commission, there was, from the outset, a mutually agreeable overriding theme. There was general recognition that the fundamental issue in governmental tort liability involves the delicate balancing act between fairness to injured parties, and the need to protect the integrity and smooth operation of critical governmental services.**

**Some might be quick to claim that governmental entities are simply trying to shield their pocketbooks. While it is generally beneficial to limit exposure to any form of liability, this may be an oversimplification of the issue. Cook, a legal scholar writing on this topic, argued that the fundamental issue underlying liability limits is the enabling effect of such limits with respect to the provision of services. Bolstered by the weight of an 1879 ruling of the Tennessee Supreme Court,[63] Cook**

[62] A.R. Brown-Graham and P. Meyer, "Resolving the Uncertainty: Meyer v. Wall," *Institute of Government Bulletin,* University of North Carolina at Chapel Hill, Number 88, July 1998.
[63] 71 Tenn. 42 (1879).

**also argued that the hazard of pecuniary loss might prevent a governmental entity from assuming duties that largely serve the public interest.[64]**

**Cook also pointed out that widely available liability insurance limits the viability of sovereign immunity in a modern context. In any event, Cook argues, it is far more equitable for all citizens to bear the cost of government negligence, rather than the injured party bearing the entire burden of a negligent act.[65]**

**These arguments illustrate the tremendously difficult task faced by Tort Liability Study Committee, and by the full Commission. While the issues in question are not necessarily overly complex, there are, nevertheless, valid arguments underlying each side of the liability limit issue.**

**The issues deemed worthy of examination by the Tort Liability Study Committee of the Commission fell into three major categories, as follows.**

**I. General Governmental Tort Liability Issues**
**II. Judicial Processes for Tort Claims**
**III. Tort Liability Limits**

**GENERAL GOVERNMENTAL TORT LIABILITY ISSUES**

**From the combination of Study Committee member initiative, expert testimony, and other stakeholder positions, three general governmental tort liability issues were identified, as follows.**

**A. Public versus private: equity of governmental tort limits**
**B. Large versus small governments: differential benefits of tort limits**
**C. Cost-shifting to the injured party**

***Public versus Private: Equity of Governmental Tort Limits.*** **As is true of many of the enumerated issues pursued by the Tort Liability Study Committee, equity issues between the private sector and public sector was raised by Professor Robert Bohm, Professor of Economics at the University of Tennessee-Knoxville, in his presentation to the Study Committee.**

**According to Professor Bohm, in those endeavors in which local governments compete with private sector service providers, local governments enjoy a competitive advantage insofar as their exposure to liability is limited by the Governmental Tort Liability Act. Professor Bohm pointed out that an increase in**

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[64] **J.C. Cook *Sovereign Immunity and the Tennessee Governmental Tort Liability Act*. 41 Tenn. Law Rev. 885 (1974).**
[65] **J.C. Cook, Ibid.**

**(or outright abolition of) tort liability limits would level the playing field between the public and private sector.**

**So why should the public sector have benefit of reduced exposure to liability when the private sector does not? When a governmental entity performs proprietary functions, there may not be a fully adequate justification for such limits. However, the inherent difficulties in differentiating between governmental and proprietary functions have been reviewed previously in this report. The designation of a function as "proprietary" is automatically mitigated to some degree when performed by a unit of government, be it a municipality, county, or other local entity.**

**In virtually all proprietary functions performed by local governments, there is some governmental aspect that has brought the local entity into the role of service provider. In some cases it is the inherently monopolistic nature of the function that brings governmental involvement. In other cases, a function may be performed by a governmental entity as a result of a market failure. That is, for some combination of reasons, the private market fails to adequately provide a service or function that is, nevertheless, a desirable product or service generally benefiting some portion of the public.**

**In addition to the difficulties inherent in defining governmental versus proprietary functions, the current tort liability issues receiving public scrutiny and criticism do not center around the comparative equity of public versus private tort liability. Rather, the public attention is focused more directly on equity issues for the injured party.**

**The Commission did not adopt a recommendation specifically addressing this issue.**

***Large versus Small Governments: Differential Benefits of Tort Limits.*** **When presenting arguments for and against tort liability limits, Professor Bohm also pointed out a potential equity problem related to the size of the governmental entity. Specifically, Professor Bohm stated that tort liability limits are much more beneficial to large governments, as compared to the benefits enjoyed by smaller governments.**

**Among those who gave testimony and advice to the Study Committee, there was not unanimity on this point. Several experts and stakeholders pointed out the importance of the limits to small local governments, because a single large claim (or the premiums required in the absence of limits) could have a devastating impact on the resource base currently used for general government and service provision. So while smaller governments may have fewer resources with which to respond to claims, larger and wealthier governments that are better able to absorb large claims enjoy the protective cover so important to smaller governments.**

**The contrary perspective is that larger governments, despite their greater resources, are exposed to relatively greater risk, as they perform functions and services in far greater quantities than smaller governments. In this way, larger governments may be just as much in need of the protective cover of liability limits.**

**Portions of Commission recommendation number 2 address this issue. Specifically, the recommendation calls for the study of a catastrophic events fund that would explore mandatory participation in the fund by every local governmental entity covered by the Governmental Tort Liability Act, and determination by an actuary of funding requirements and individual entity premiums.**

***Cost-shifting to the Injured Party.*** **A great deal of attention was given to the issue of cost-shifting to the injured party. Most of the testimony received at the public hearing recognized the inequity of forcing a party injured as a result of local government torts to bear the financial burden, rather than distributing the burden across the citizenry in general.**

**Both Commission recommendations directly address this concern. Through increased tort liability limits, fewer claimants will incur burdens exceeding that which is recoverable under the Governmental Tort Liability Act.**

**Additionally, the creation of a catastrophic events fund would provide a safety net for those extraordinarily devastating injuries that result in major costs to the injured party and their insurers.**

### JUDICIAL PROCESSES FOR TORT CLAIMS

**The Study Committee identified one issue relating to judicial processes for local government torts. Under current law, there is no provision for pre-judgment interest in tort claims against made under the Governmental Tort Liability Act, though pre-judgment interest is available in comparable actions arising from private sector torts.**

**Some members of the Commission and policy stakeholders expressed concern that the lack of pre-judgment interest provides an incentive for local governments to delay the final resolution of claims. In the absence of pre-judgment interest, some argued that there are no added costs when claims are carried to appeal, apart from legal and administrative expenses on behalf of the local government. Also, a delayed final settlement may have a reduced real value due to inflation.**

**In recommendation number 2, the Commission included a provision specifying that the proposed study of a catastrophic events fund should include an exploration of the imposition of pre-judgement interest.**

**TORT LIABILITY LIMITS**

**The majority of issues studied by the Study Committee and the Commission relate to currently defined statutory limits for local government torts. Four categories of limit-related issues emerged, as follows.**

**A. Unintended Consequences**
**B. Costs Associated with Tort Liability Limit Increases**
**C. Frequency and Method of Tort Limit Changes**
**D. Medical Claims Issues**

***Unintended Consequences.*** **The testimony and deliberations of the Study Committee revealed two major concerns about the potential for unintended consequences relating to tort liability limits. First, Professor Bohm identified the possibility that tort limits, if set too low, create the potential for a "moral hazard." As discussed by Professor Bohm, a moral hazard would exist if current tort limits are low enough that local governments are lax in their risk management practices. If it is more costly to properly maintain equipment and train workers, for example, than it is to pay tort claims resulting from the failure to properly maintain and train, there is little incentive for the creation of an environment of safety and responsibility.**

**Though no evidence was presented supporting the possibility that Tennessee's local governments are subject to this moral hazard, the issue was explored and debated, and the potential for the hazard was duly noted by the Study Committee in its deliberations.**

**Both Commission recommendations, one for increased limits, and one for the study of the creation of a catastrophic events fund, would mitigate the potential for moral hazard if such hazard does exist at current tort liability limits.**

***Costs Associated with Tort Liability Limit Increases.*** **Extensive deliberation and testimony surrounded the potential cost of an increase in local government tort liability limits, as well as the potential cost of the creation of a catastrophic event fund.**

**While the Study Committee received data regarding tort claims and payments from Nashville Electric Service, Tennessee Municipal League, Tennessee County Services Association, and others, the nature of the data prevented the development of a reasonably reliable estimate of increased costs at any specified amount of change in limits.**

**The Study Committee and the Commission recognized the need for the development of such projections, and included in recommendation number 2 a provision calling**

**for an actuarial study of the tort liability limit changes. By directive of the Commission, TACIR staff are currently making arrangements for a study to be performed by actuaries operating under contract with the Tennessee Treasury Department based upon criteria defined by TACIR staff.**

***Frequency and Method of Tort Limit Changes.*** **The increased tort limits recommended by the Commission are based upon inflationary adjustments by the Consumer Price Index (CPI). The Study Committee deliberated at length on the proper method and frequency of future adjustments to the limits. Alternatives considered included automatic annual adjustments based upon one of several measures of inflation, less frequent automatic adjustments, and the recommendation that future adjustments be made by statute only.**

**Ultimately, the Commission recommended that the General Assembly perform a review of tort limits every five years. Adjustments to the limits should be based upon either the Consumer Price Index or the implicit Gross Domestic Product deflator, at the discretion of the General Assembly; such adjustments should also be conditioned upon the creation of a catastrophic events fund.**

***Medical Claims Issues.*** **During the course of the study, the Study Committee identified three major questions related to the claims filed that involve medical expenses as at least one component of the total claim.**

- **Should medical awards or limits be separated from regular tort limits?**
- **Should medical payments have separate tort limits?**
- **Should local governmental entities be required to provide for long-term reasonable and necessary medical expenses?**

**Though the costs of associated with medical procedures were a source of major interest by the Study Committee, the prevailing opinion was in favor of the establishment of tort limits that are sufficient to adequately cover costs associated with a claim, whether those claims are due to medical expenses, lost earnings, property loss, or any other form of economic damages. As such, the Commission did not recommend a separate medical claims limit, but instead focused attention on higher general limits and the creation of a catastrophic events fund.**

# Appendices

# Appendix A
# Minutes of the Public Hearing on Government Tort Liability

**AUGUST 13, 1998**

**PUBLIC HEARING CALLED TO ORDER**

**The Tennessee Advisory Commission on Intergovernmental Relations Study Committee on Local Governmental Tort Liability conducted a Public Hearing on Local Governmental Tort Liability, and met in Room 30, Legislative Plaza in Nashville, Tennessee at 9:00 a.m.**

**Present 5 Absent 0**

**Truman Clark, Chairman**
**Senator Ward Crutchfield**
**Representative Jere Hargrove**
**Mayor Sharon Goldsworthy**
**Mr. Maynard Pate**

**Chairman CLARK called the meeting to order at 9:00 a.m. He introduced the Study Committee members, and called on TACIR Senior Research Associate Ms. Frith SELLERS to provide background on the study.**

**Ms. SELLERS reported that in the FY 1998-99 Appropriations Bill, the General Assembly directed TACIR to conduct a study on the tort limits for local governments in the state and to recommend to the Governor and General Assembly on whether those limits should be increased, and if so, what those limits should be. At the August 1998 TACIR meeting, Chairman Rochelle appointed a Study Committee on Tort Liability. As part of its methodology, the Study Committee was conducting a Public Hearing.**

**I. Testimony from Ogden Stokes, Interim Executive Director of Tennessee Municipal League**

**Chairman CLARK introduced the first speaker, Mr. Ogden STOKES, Interim Executive Director of the Tennessee Municipal League (TML). Mr. STOKES provided Study Committee members with a written copy of his testimony. Following is a brief summary of those comments.**

**Mr. STOKES provided the committee with some historical information on sovereign immunity, which started with the common law of England. When the U.S. gained**

**its independence, it adopted into its laws the doctrine of sovereign immunity. Tennessee's first constitution adopted the common law of England as it existed in North Carolina in 1796.**

**In 1967, the Tennessee Supreme Court upheld the sovereign immunity doctrine, citing situations that could lead to burdensome litigation against counties and cities. Because the decision was unanimous, attempts to modify or abolish sovereign immunity shifted to the General Assembly. Starting in 1969, both TML and Tennessee County Services Association (TCSA) fought off legislative attempts to abolish the doctrine completely.**

**In 1973, the General Assembly passed the Governmental Tort Liability Act, fashioned mostly by TML and TCSA. This Act granted blanket immunity for all government operations, and then removed this immunity in four instances. Mr. STOKES stated that a significant feature of the 1973 Act was tort liability limits. According to Mr. STOKES, in establishing tort limits, the General Assembly recognized that local governments' financial resources are limited, and that local governments do not have the flexibility of private businesses simply to raise prices or eliminate services when their costs increase.**

**Mr. STOKES told the Study Committee that local governments will have to raise taxes if tort limits are increased. He stated that tripling the present tort limits would result in increased premiums and would cost local governments $34 million.**

**Mr. STOKES closed his presentation by stating the following points:**

- **The present tort limits provide adequate compensation to injured parties in the vast majority of cases.**
- **Tort limits save taxpayers money.**
- **Any increase in tort limits will cost taxpayers money.**
- **Tort limits have helped shield local governments from some of the outrageous claims that have plagued private businesses.**
- **Tort limits are a recognition that local governments do not have the financial or product flexibility that private businesses have.**
- **Tort limits should be preserved at a level that do not overly burden taxpayers or the provision of local government services.**

## II. Testimony from Bob Wormsley, Executive Director of Tennessee County Services Association

**Chairman CLARK recognized Mr. Bob WORMSLEY, Executive Director of Tennessee County Services Association (TCSA). Mr. WORMSLEY provided the Study Committee with written copies of his testimony. Following is a summary of his remarks.**

**Mr. WORMSLEY said he hoped the Study Committee and TACIR would give due weight and consideration to the fact that increasing the tort limits will have a negative fiscal impact on local governments. Mr. WORMSLEY stated that raising the limits is an unfunded mandate on local governments. Mr. WORMSLEY told the Study Committee that counties have a very narrow tax base from which they can raise new revenues, and in a majority of counties, the property tax is the only revenue source available to fund increased costs.**

**Mr. WORMSLEY stated that local governments are sensitive to individuals who incur large medical expenses as a result of local government negligence, and injured parties should be fairly compensated. The public good needs to be balanced against the public pocketbook, and public policy on tort limits should not jeopardize local governments' fiscal integrity.**

**Mr. WORMSLEY suggested to the Study Committee that if the primary reason for increasing the tort limits is to ensure adequate compensation, then it might be appropriate to separate medical and compensatory damages and to limit attorney fees. He stated that such an approach might mitigate the fiscal impact of increased tort limits.**

**Mr. WORMSLEY also suggested that the General Assembly could identify a funding mechanism to establish a catastrophic injury fund. Mr. WORMSLEY stated that under such an approach, the current tort limits would perhaps be adequate.**

**Mr. WORMSLEY closed his presentation to the Study Committee by stating that good public policy concerning tort limits must balance the public good against the public pocketbook.**

**Representative Jere HARGROVE asked Mr. WORMSLEY about his statement that increasing tort limits represents an unfunded mandate. Representative HARGROVE said his understanding of an unfunded mandate is one where the state requires local governments to do a specific project without providing any funding. With tort limits, all the state is saying is that local governments have to be responsible for their mistakes and negligence. Mr. WORMSLEY replied that tripling the tort limits would result in an increased cost to local governments of $34 million. Mr. WORMSLEY said that when such legislation has a negative fiscal impact on local governments, and the General Assembly is not providing any funding, it is an unfunded mandate.**

**Mr. WORMSLEY said that local governments carry out many essential functions such as law enforcement, which in some instances results in injury. To that extent, it is incumbent upon local governments to have tort liability insurance, and if the**

**limits increase, and it costs local governments money and no one is sending money down the pipeline, then local governments and their taxpayers pick up the tab.**

**Representative HARGROVE then asked Mr. WORMSLEY to clarify his statement concerning separation between medical and compensatory damages. Representative HARGROVE asked what the factors would be to determine such a separation.**

**Mr. WORMSLEY replied that it seems that the thrust behind raising the limits is a few horrible cases, such as the NES transformer case in Nashville. Mr. WORMSLEY said that if the intent is to compensate victims for their injuries, then the system needs to be structured so those payments are directed at compensating those victims.**

### III. Testimony from Phillip White, Director of Risk Management for Tennessee School Boards Association

**Chairman CLARK recognized Mr. Phillip WHITE, Director of Risk Management for Tennessee School Boards Association (TSBA). Mr. WHITE provided written copies of his testimony to Study Committee members. Following is a summary of that testimony.**

**Mr. WHITE stated that TSBA is the official representative of the 138 local school boards, and provides liability insurance (self-insured pool) and workers compensation insurance for 75 school systems. TSBA has been providing such insurance for 11 years.**

**Mr. WHITE stated that TSBA believes that reasonable limits must be adopted to protect the government from outlandish claims and settlements. He told Committee members that there have been only two claims in its 11 years that exceeded the $130,000 limit. Mr. WHITE went on to say that school board members are sympathetic to individuals who have suffered damages that exceed the current limits, although the law allows entities to waive those limits. He noted that two systems have elected to waive such limits.**

**Mr. WHITE stated that TSBA would support legislation that increased the limits to $500,000/ $1,000,000 for direct medical costs, with the stipulation that that such an increase is not subject to attorney fees. TSBA's position is that attorney fees should be based on the current limits.**

**Mr. WHITE told Committee members that if attorney fees are capped, there would not be a significant increase in rates. However, if the limit is raised without controlling attorney fees, TSBA is projecting a 20 percent increase in liability premiums for its school systems.**

**Mr. WHITE closed his testimony by stressing the need for continued immunity for school employees and volunteers.**

**Senator CRUTCHFIELD asked Mr. WHITE if his main objection to raising the tort limits is the amount of money attorneys get. Mr. WHITE answered affirmatively, and reiterated his statement on fiscal impact to schools.**

**Senator CRUTCHFIELD then asked Mr. WHITE if TSBA objected to tort limits being raised for innocent people, or just the lawyers. Mr. WHITE replied that the limits probably need to be raised in certain instances. However, TSBA would be opposed to an increase in the limits if legal fees are not capped.**

**Senator CRUTCHFIELD then asked Mr. WHITE what would be a fair cap on tort limits, given that many times, people will not get an adequate award without skilled representation. Mr. WHITE disagreed with Senator CRUTCHFIELD's statement. Mr. WHITE said that without legal caps, TSBA would be opposed to any increases whatsoever.**

## IV. Testimony from Professor Robert Bohm, University of Tennessee-Knoxville

**Chairman Clark then recognized Professor Robert BOHM, Professor of Economics at the University of Tennessee-Knoxville. Professor BOHM provided Study Committee members with an outline of his presentation.**

**PROFESSOR BOHM pointed out that currently, there is no pre-judgment interest. That is, if a local government loses on appeal, it has no liability for pre-judgement interest, which creates an incentive to appeal decisions, and not settle, because doing so postpones payment.**

**PROFESSOR BOHM referred to an analysis in his handout, where he adjusted the current limits to inflation, using differing inflation indices. In Case A, the current non-property limits were adjusted to 1998 values using the 1987-98 rate of wage inflation in Tennessee. In this scenario, the adjusted limits would be $193,000 and $520,000, respectively. In Case B, current limits were adjusted based on the 1987-97 rate of increase in medical costs in the US. The limits would be $249,000 and $670,000, respectively. In Case C, current limits were adjusted based on 1973-87 rate of increase in tort limits in Tennessee, which reflects the behavior of the state over the last 15 years (1973-1987). Here, limits would be $561,000 and $1.9 million, respectively.**

**Professor BOHM stated that the first thing that struck him about the current limits was whether he would be comfortable with these limits for personal insurance; his answer was "No." Professor BOHM stated that if the General Assembly is going to**

**change these limits, it might be preferable to build in some sort of cost-of-living adjustment factor that would change the limits periodically, as opposed to going through these periodic changes (lump-sum adjustments) that are difficult on local governments.**

**Professor BOHM then discussed the typical damages that are covered. There are non-property compensatory damages for wrongful death or injury cases. Professor BOHM stated that he is called on to testify in court cases and compute these damages, especially economic damages, which include lost earnings capacity and value of household services. There are also incurred expenses, such as medical and burial, as well as future medical expenses, which can be quite large in a large accident, or where long-term permanent care is needed, such as a nursing home (life care plans). There are also payments for pain and suffering and loss of consortium. Other states provide damages for loss of enjoyment of life, which is not provided for in Tennessee. He referred to an illustration of the value of economic damages, which he has done for both the plaintiff and defense in court cases.**

**Professor BOHM posed a question of whether the state should be pursuing low limits as a means of protecting local government treasuries. He also asked if these low limits are an unfair exploitation of people who are unfortunate enough to get into an accident involving a local government.**

**Professor BOHM reviewed what he termed the case for tort limits. There are four reasons:**

- **They reduce local governments' exposure to risk from lawsuits and paying damages.**
- **They postpone payment, which is what the no-interest payment does. This is good cash management, because if the local government loses the case, it can appeal, and there is no penalty in terms of interest if the local government continues to lose.**
- **Low tort limits probably result in fewer lawsuits, because the money is not there. There is no point in going through the whole process if there is no money in it.**
- **Low tort limits result in lower taxes or lower charges for local governments that would have to pay higher premiums if limits were higher.**

**Professor BOHM then reviewed the case against tort limits. He stated there are four factors to consider.**

- **The public sector vs. private sector equity issue: why is the public sector getting such a deal?**
- **Shifting cost to the injured party, which is a fairness issue. When the General Assembly sets low tort limits, it is not eliminating costs, but is**

**rather merely shifting costs from the public sector to the injured party. When someone is injured in an accident, that cost does not go away just because there is a tort limit. If damages are $600,000, and the limit is only $130,000, that cost does not go away—local governments are shifting it to the injured party, which may or may not be fair.**

- **These limits are much more beneficial to large governments than they are to smaller governments, so costs are shifted to smaller governments.**
- **The so-called moral hazard effect. With low tort limits, it is possible that it is cheaper to pay damages rather than maintain equipment or encourage safety standards. Thus, an incentive is created because it is cheaper for a local government to pay the lawsuit than maintain its equipment.**

**Professor BOHM then reviewed the type of information needed to determine if Tennessee should retain tort limits. Following are his suggestions:**

- **Check to see what other states are doing.**
- **Analyze and determine the average level of exposure and the variation in exposure per case.**
- **What are the typical number of cases, the average value, and the range per year.**
- **What is the low, the high, what are they typically for?**

**Professor BOHM stated that he would expect to find that most cases would fall at a fairly low level of damage, with a few that had extremely high damages. He said this type of risk pattern could be managed at a fairly reasonable cost, and that it is important to level the playing field between the public and private sectors. He suggested establishing a two-tiered risk management system. The first tier would cover basic liability, similar to what is currently in place, with adjustments for cost of living, or even differentials for large and small cities. This first tier would cover basic liability. The second tier would be a high-risk pool to cover extraordinary damages, which could be covered through private insurance programs.**

**Professor BOHM stated that Tennessee already uses a risk pool for debt, so this concept could be extended to tort liability. Some cities may want to "gamble," and be self-insured for the second tier. This risk pool could either be managed by a statewide entity or by a private insurance company, with premiums based on the record of risk. He said this is also what occurs with the state health insurance plan. One way to hold down costs is to have a major catastrophic category that covers extraordinary expenses.**

**Professor BOHM told Study Committee members that there should be a serious penalty for frivolous lawsuits. He said that if limits are raised, there might be an increase in the number of lawsuits, given that the current limits are artificially**

**depressed now. While the courts should be left to determine if a case is frivolous, there should be a penalty, which would discourage such filings.**

**Mr. Maynard PATE asked Professor BOHM if he had an explanation for why the historic rate of increase in tort limits exceeds the cost of living and medical expenses increases. Professor BOHM replied that it could be that because they were so low to begin with, the increases in 1987 were an attempt to catch up. Professor BOHM also said that the limits could have been set based on anecdotal evidence, which is usually catastrophic in nature.**

**Chairman CLARK asked how to address the situation where a small county or city could get wiped out financially from just one lawsuit. He said that in and of itself should justify some sort of limits. Professor BOHM replied that a two-tiered system of damages would address his concerns. The actual limit in the first tier would be relatively low. Local governments could then join a statewide risk pool for the higher limit. He continued that if local governments would pool their risks, which means distribute the risk across all cities and counties, the additional premium for the second tier would actually be quite small.**

**Chairman CLARK asked if it was fair to distribute the risk across the state, when it may be happening in one locale relatively frequently. Professor BOHM replied that local governments cannot have it both ways. The whole concept of insurance is to pool risk and distribute it across all policyholders, which is how costs are kept down. In that situation, every local government would have the same chance of being the subject of such a lawsuit.**

**Mayor GOLDSWORTHY asked Professor BOHM to expand his discussion on small vs. large local governments. Professor BOHM said that, on average, there is going to be more tort cases in larger cities than smaller ones, just because there are more people, more local government employees, and more trucks, for example. Therefore, the larger local government is going to benefit more from having low limits and escaping damages than a small community.**

**Mayor GOLDSWORTHY then asked Professor BOHM about the moral hazard situation. She said that it was not her experience that decision makers base their decisions of whether to do something on low tort limits, and that local governments do not hide behind low tort limits. Professor BOHM said that as an economist, he was pointing out that the current low tort limits created that incentive. He said that it is possible that no local government takes intentional advantage of it, but the incentive is there.**

## V. Testimony from William Hubbard, representing the Tennessee Hospital Association

**Chairman Clark recognized Mr. William HUBBARD, representing the Tennessee Hospital Association (THA), an association of hospitals and health systems. Written copies of Mr. HUBBARD's testimony were received after the Public Hearing.**

**Mr. HUBBARD told the Committee that there are 29 governmental hospitals in Tennessee covered under the Act, most of them composed of rural community hospitals. As a group, these hospitals provide a disproportionate share of uncompensated, charity care for indigent Tennesseans. In general, these hospitals operate at a loss or with very small profit margins.**

**Mr. HUBBARD asked Committee members to not consider changing liability limits in a vacuum. Hospitals are facing Medicare cuts, TennCare payments that do not cover costs, and increased costs for providing charity care for the increasing number of Tennesseans not covered by TennCare or other insurance.**

**Mr. HUBBARD stated that if liability limits are increased, public hospitals will be forced to either increase reserve funds to cover liability costs or purchase private liability insurance. He said that raising the liability limits will increase these hospitals' operating costs. There will also be increased costs associated with more litigation spurred on by the reality of a deeper pocket. Using the limited resources of these hospitals for additional claims processing, insurance premiums, and attorney fees does nothing to improve healthcare for Tennesseans.**

**Mr. HUBBARD concluded his testimony by telling the Study Committee members that government hospitals exist for the good of the public by providing access to healthcare to every individual in the state, regardless of their ability to pay. THA respectfully requests that the Commission recommend that the liability limits of the Act not be changed.**

**There were no questions from the Study Committee members.**

## VI. Testimony from John Summers, Executive Director of Tennessee Trial Lawyers

**Senator CRUTCHFIELD, substituting for Chairman CLARK, recognized Mr. John SUMMERS, Executive Director of the Tennessee Trial Lawyers Association. Mr. SUMMERS handed out folders with newspaper articles about various accidents involving local governments. Following is a summary of his statements to the Study Committee.**

**Mr. SUMMERS said that there is no justification for any tort limits. He asked why local governments and public hospitals should not be held accountable for their conduct, when average citizens and private companies are. He asked why local governments should receive special treatment. Mr. SUMMERS said that there should not be special treatment. He continued that if a local government or hospital harms someone because of their negligent conduct (meaning that conduct is unreasonable and has fallen below a reasonable standard for acceptable behavior), then that local government should be required to compensate someone for causing harm.**

**Mr. SUMMERS explained that in the civil justice system, society has no way to give someone back their life or take away their pain. The only thing available is to compensate someone financially. Mr. SUMMERS asked if someone is any less dead or harmed through a local government than someone in the private sector. Mr. SUMMERS went on to say that people and entities, including local governments, should be held accountable for the harm they do to others. Injured parties should be compensated for whatever injuries or damages are incurred, not some arbitrary limit.**

**Mr. SUMMERS contended that raising the limits would not increase the number of tort actions brought against local governments. He said that a case is only brought against a local government if it is valid, and not because of the money involved. He said the litigation is already there, it is just that people are not being compensated for the harm done to them. He said that a case now being adjudicated for $25,000 is still going to be a $25,000 case even if the limits are removed entirely.**

**Mr. SUMMERS challenged the study committee to ask for information from local governments on tort cases. He said that there is already a solution to covering catastrophic events, which is the TML Risk Management Pool and the TCSA Risk Pool. Mr. SUMMERS agreed with other presenters that most of the cases are very small, and not near the limits. He said that there are very few catastrophic events. However, when these events occur, it is unjust and unfair for local government to avoid their responsibility and transfer that burden onto the individuals harmed.**

**Mr. SUMMERS contended that there is nothing right now to stop local governments from totally compensating harmed parties. Because local governments will not do this, it shows they hide behind tort limits. He referred to a few court cases where governments had paid for insurance at a higher level, but then used tort limits to refuse to make payment. He offered to provide TACIR staff with documentation. He said that taxpayers are paying for that insurance in terms of tax bills and higher premiums, but then when another citizen is injured, the government refuses to pay the injured party what taxpayers have paid in terms of insurance premiums.**

**Mr. SUMMERS went on to say that every city or county cannot be judged by the conduct of a few, but there is clear evidence that when given the opportunity to hide behind low tort limits, local governments will use those limits, even when it has been determined that the injured parties are entitled to such compensation. Mr. SUMMERS argued that while it is important to look at increased costs associated with raising the limits, it is also important to look at the expenditure for insurance in terms of the whole budget. He contended that public hospitals are not going to stop providing health care just because limits are raised. He also contended that the greatest liability for most cities is police actions, which are governed by federal law, and do not have limits. Because cities are already paying out cases without limits, their arguments against raising the limits are self-protection. He further contended that if an employee can drive down the highway at 90 mph with immunity, there is no reason for the employee to not do so. He said limits should be used to help discourage behavior that is unreasonable.**

**Chairman CLARK commented on insurance and re-insurance. He said that insurance companies will increase premiums if limits are raised or if there is a pool for catastrophic injuries. Mr. SUMMERS disagreed with Chairman CLARK, and said that with re-insurance, rates would not increase. He said that re-insurance is a very effective way to deal with the risks associated with catastrophic events.**

**Representative HARGROVE questioned Mr. SUMMERS on his statements about not needing limits. Representative HARGROVE said that most people recognize that there are some functions and activities that governments must perform. A private individual usually only has, for example, one truck to drive and worry about liability. However, governments have, say 1,000 trucks. Society has recognized that given the multiplicity of these occurrences, there has to be some kind of cap, because of the exposure to unlimited amounts of revenue because of the thousands of employees and trucks. He asked Mr. SUMMERS for his opinion.**

**Mr. SUMMERS replied that he disagreed with Representative HARGROVE. He said limits are fine as long as there is a limit on the amount of harm that can happen. Mr. SUMMERS contended that arbitrary limits, especially when there is more than one victim, implicitly say that each additional person harmed is worth less than if just one person were injured.**

**Representative HARGROVE asked Mr. SUMMERS about capping attorney fees, given the argument on compensating victims. Mr. SUMMERS replied that it was really a "bait and switch" argument. He said the money paid to attorneys comes out of the individual's pocket, not the local government's. In a situation where an entity offers an injured party some amount of damages, that person will not contact an attorney unless they believe they are entitled to more. If a person does contact an attorney, then it is obvious that they were willing to pay an attorney, and were paid more than the entity's original offer. Mr. SUMMERS asked, in those instances, why**

**the local government did not offer that amount to begin with. He said if local governments really wanted to eliminate lawyers, then they should pay people the actual damages, and not hide behind low tort limits.**

**Mr. SUMMERS continued that many individuals do not know their legal rights, or even the value of their life, and cannot make these decisions on their own. Mr. SUMMERS said that if that logic were extended, then perhaps salaries of risk managers and government officials and employees should be capped as well.**

**VII. Additional Discussion**

**Senator CRUTCHFIELD requested that the entities at the Public Hearing provide the information cited by Professor BOHM and Mr. SUMMERS. Representative HARGROVE asked the different entities if providing this information was something they could provide, in relatively short fashion. He asked if it was safe to assume that their silence was acquiescence.**

**Chairman CLARK asked Mr. WORMSLEY about providing the information. Mr. WORMSLEY replied that while TCSA only has about 30 counties in its risk pool, the information is available. He questioned whether and how TACIR staff could get such information from the 65 or so counties that are not in the risk pool—he did not have the staff to contact every county to get the information. Chairman CLARK answered that he doubted staff could get useful or relevant information from such a survey. He asked Mr. WORMSLEY to please provide TACIR staff with information for those 30 counties, and Mr. WORMSLEY agreed.**

**Chairman CLARK asked if the TML Risk Management Pool would or could get information to staff. Dennis Huffer, Legal Counsel for the TML Risk Pool, stated they had a lot of statistics that would be useful to the study committee.**

**Representative HARGROVE stated if staff were provided with that sort of information, the study committee could hopefully answer the questions posed by PROFESSOR BOHM. Representative HARGROVE also asked about the time frame for this study. He asked about a December deadline to the full Commission.**

**Dr. Harry GREEN, TACIR Executive Director and Research Director, stated that no dates are specified at all for this report. He said staff could go into January with the tort liability report, and try to get the report released at the end of the month. Dr. GREEN reminded Representative HARGROVE that it is very hard to get the full Commission to meet in January, but that, nonetheless, releasing the report at the end of January was still an option.**

**Chairman CLARK asked about future meetings, not just of the commission, but the study committee as well. He asked Dr. GREEN about proposed meeting dates. Dr.**

**GREEN replied that the study committee could meet in November at the full TACIR meeting. Chairman CLARK replied that even meeting in November might not give the study committee enough time to formulate recommendations, which meant that the study committee would have to meet before the January deadline.**

**Chairman CLARK reiterated the need for study committee members to attend the TACIR meeting in November. He said the tort limit issue needs to be discussed and deliberated thoroughly. He expressed his concern that if the issue is not studied properly and a proper recommendation is not made to the legislature, then the report and its recommendations will be forgotten. He stated that tort liability limits is a very serious issue, and there are two sides, equally relevant.**

**Mayor GOLDSWORTHY agreed with Chairman CLARK and asked about having enough time to debate this issue and to make a formal recommendation to the full Commission. She asked about meeting before the November meeting. Chairman CLARK reminded study committee members that there was also a December meeting, and that he would like to have a formal recommendation to the full Commission in December. He also asked if only one meeting would give the study committee enough time and information to debate the issue.**

**Senator CRUTCHFIELD stated that one option would be to meet the afternoon and morning before the TACIR meeting. He stated that this was the only way to get a meaningful discussion. Chairman CLARK agreed.**

**Representative HARGROVE suggested that the study committee meet in October. He expressed concern that the study committee would not have enough information to make a complete and reasonable recommendation to the full Commission. Chairman CLARK agreed, and reminded the study committee to give staff enough time to gather and analyze information.**

**Dr. GREEN told Study Committee members that staff would be working on this issue, and as the study progressed, staff would share the information with study committee members. He told study committee members that it is not planned for this issue to be discussed at the November meeting. Senator CRUTCHFIELD reiterated that the study committee needed to meet the day before the TACIR meeting. Representative HARGROVE suggested leaving it to staff to get the information and then see what they had and what they could do with it.**

## VIII. Adjourn

**There being no further business, Chairman CLARK adjourned the Public Hearing at 10:45 a.m.**

# Appendix B
# Policy Experts and Stakeholders Consulted During TACIR's Tort Study

- **Andy Bennett, Chief Deputy Attorney General**
- **Jacquelin M. Bland, Law Division, City of Memphis**
- **Professor Robert Bohm, Department of Economics, University of Tennessee-Knoxville**
- **L. Michelle Bradley, Vice-President, Willis Corroon Advanced Risk Management Services**
- **Representative Frank Buck, House Judiciary Chairman**
- **Ed Davenport, Managing Director, Willis Corroon Advanced Risk Management Services**
- **Edna Holland, Tennessee Municipal League**
- **Lee Holland, President, TML Risk Management Pool**
- **William Hubbard, Tennessee Hospital Association**
- **Abigail Hudgens, Risk / Benefits Manager, City of Knoxville**
- **L. Kenneth McCown, Jr., Deputy City Attorney, City of Memphis**
- **John Morgan, former Executive Assistant to the Comptroller, current Comptroller of the Treasury.**
- **Jim Murphy, Director of Law, Metropolitan Nashville-Davidson County**
- **Michael Murphy, Tennessee Trial Lawyers Association**
- **Dale Sims, Executive Assistant to the Treasurer**
- **Ogden Stokes, Interim Executive Director, Tennessee Municipal League**
- **John Summers, Tennessee Trial Lawyers Association**
- **Tom Varlan, TACIR Commissioner and Municipal Attorney**
- **Bob Wormsley, Executive Director TCSA**
- **Phillip White, Director of Risk Management, Tennessee School Board Association**
- **Randy Williams, Associate Director, Tennessee Municipal League**

# Appendix C
# Tort Liability Legislation of the 100th General Assembly

| Tort Liability Legislation Introduced in the 100th General Assembly | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Senate Bill #** | **Senate Sponsor** | **House Bill #** | **House Sponsor** | **Summary/Caption** | **Last Senate Action** | **Last House Action** | **Fiscal Note** |
| 294 | Haun | 1065 | Kent, Cole (Carter), Walley | Amends T.C.A. §29-13-104 and 55-8-108. Prohibits cause of action against local government where DUI suspect or suspected felon is pursued. | 1/20/98: Assigned to gen sub of S&L. | 5/6/97: Action deferred in Civil Practice s/c of Jud. | Increase State Exp. less than $100,000; decrease local govt. exp. less than $100,000. |
| 314 | Herron | 1279 | S. Jones, Kent | Amends T.C.A. Title 29, Section 20, Part 2. Requires city or county attorney to represent and defend employees for tort actions. | 4/15/97: Assigned to gen sub of S&L | 4/8/97: Taken off notice in Civil Practice s/c of Jud. | Increase local govt. exp. over $100,000 over time. |
| 418 | Dixon | 1383 | Odom | Amends T.C.A. §38-8-112 and 55-8-108. Holds harmless police officer in pursuit that results in injury to third party. | 5/14/97: Assigned to gen sub of Jud. | 5/7/97: Deferred in Jud. | No significant increase in local govt. exp. |
| 419 | Dixon | 1468 | U. Jones, Miller, Pleasant , Brooks | Amends T.C.A. §29-20-307. Confers upon Circuit Court original jurisdiction in tort liability. | 5/14/97: Assigned to gen sub of Jud. | 5/6/97: Taken off notice in Civil Practice s/c of Jud. | Increase local govt. exp. over $100,000 |
| PC 500 (SB 473) | Haynes, Kurita | PC 500 (HB 1593) | McMillan, Fowlkes, Givens, et al. | Amends T.C.A. §37-1-131(a)(7). Grants immunity to local governments using juvenile offenders for community service work for injury, death, if due care used in supervision. | Passed 5/28/97 | Passed 5/30/97 | Minimal fiscal impact. |

| Senate Bill # | Senate Sponsor | House Bill # | House Sponsor | Summary/Caption | Last Senate Action | Last House Action | Fiscal Note |
|---|---|---|---|---|---|---|---|
| 1495 | Crutchfield | 1386 | S. Jones | Amends T.C.A. §20-5-113. Allows person entitled to recover damages in wrongful death action to recover medical and funeral expenses, and damages for loss of past and future earnings capacity. | 2/10/97: Referred to Jud. | 4/22/97: Taken off notice in Civil Practice s/c of Jud. | No significant decrease in state and local govt. exp. |
| 1522 | Crutchfield | 1466 | U. Jones, Miller, Pleasant, Brooks | Amends T.C. A. §29-20-403(b). Increases tort limits from 7/1/97 through 6/30/99: $300,000 for one person in one accident; $600,000 for two persons in one accident; and $100,000 for property losses. From 7/1/99: $500,000 for injury of one person in one accident; $1 million for two persons in one accident; and $150,000 for property losses. After July 1, 2001, no limits. | 2/10/97: Referred to Jud. | 5/6/97: Taken off notice in Civil Practice s/c of Jud. | Increases local govt. exp. over $4,000,000 the first 2 years; $6,000,000 the following two years; and $7,000,000 thereafter. |
| 2067 | Cooper | None | None | Amends T.C.A. §29-20-403. Removes tort limits for municipal electric plants. | 1/21/98: Withdrawn | None | Increase local govt. exp. more than $1,000,000. |
| PC# 937 (SB 2329) | Atchley | PC# 937 (HB 2343) | Burchett | Amends T.C.A. §29-20-102. Adds public building authorities to the GTLA. | Passed 2/26/98. | Passed 4/29/98. | Cost avoidance for local governments exceeding $100,000. |
| 2436 | Crutchfield | 2767 | Odom | Amends T.C.A. §29-20-403(b). Abolishes tort limits. | 4/28/98: Assigned to gen sub of C,L&A. | 4/28/98: Taken off notice in Budget s/c | Increase local gov't exp in excess of $5,000,000. |

| Senate Bill # | Senate Sponsor | House Bill # | House Sponsor | Summary/Caption | Last Senate Action | Last House Action | Fiscal Note |
|---|---|---|---|---|---|---|---|
| 2438 | Crutchfield | 2257 | Buck | Amends T.C.A. §29-34-201. Prohibits misdemeanors involving force or violence from recovering damages. | 4/14/98: Taken off notice in Jud. | 1/22/98: Caption Bill; held on desk. | Assumes no fiscal impact to state or local govts. |
| 2470 | Harper | 2382 | Bowers, Armstrong, Miller, U. Jones | Amends T.C.A. Title 29. Enacts "Uncompensated Care Liability Act." Physicians providing such care are exempt from tort liability. | 4/14/98: Taken off notice in Jud. | 3/10/98: Taken off notice in Civil Practice s/c of Jud. | Minimal fiscal impact. |
| 3226 | Kyle | 3254 | U. Jones | Amends T.C.A. §29-20-403. Increases tort limits of local governments to $390,000 (amended to $180,000) for one person in one accident; $1 million (amended to $500,000) for two or more in one accident; and $150,000 (amended to $75,000) for property loss. | 4/29/98: Assigned to gen sub of FWM. | 4/28/98: Action deferred in Budget s/c to 01/01/99. | Increase local government exp. more than $5,000,000. |
| 3263 | Kyle | 3277 | Mike Williams | Amends T.C.A. Title 29, Section 20. Increases governmental tort liability limit for electric utilities to $500,000, plus annual CPI adjustments. | 2/5/98: Referred to S&L. | 2/10/98: Assigned to Civil Practice s/c of Jud. | None. |

# Appendix D
# Kentucky Local Government Tort Liability Statute

**65.200 Definitions for KRS 65.2001 to 65.2006.**

**As used in KRS 65.2001 to 65.2006, unless the context otherwise requires:**

**(1) "Action in tort" means any claim for money damages based upon negligence, medical malpractice, intentional tort, nuisance, products liability and strict liability, and also includes any wrongful death or survival-type action.**

**(2) "Employee" means any elected or appointed officer of a local government, or any paid or unpaid employee or agent of a local government, provided that no independent contractor nor employee nor agent of an independent contractor shall be deemed to be an employee of a local government.**

**(3) "Local government" means any city incorporated under the law of this Commonwealth, the offices and agencies thereof, any county government or fiscal court, any special district or special taxing district created or controlled by a local government.**

**Effective: July 15, 1988**
**History: Created 1988 Ky. Acts ch. 224, sec. 15, effective July 15, 1988.**

**65.2001 Application and construction of KRS 65.2002 to 65.2006.**

**(1) Every action in tort against any local government in this Commonwealth for death, personal injury or property damages proximately caused by:**
  **(a) Any defect or hazardous condition in public lands, buildings or other public property, including personalty;**
  **(b) Any act or omission of any employee, while acting within the scope of his employment or duties; or**
  **(c) Any act or omission of a person other than an employee for which the local government is or may be liable shall be subject to the provisions of KRS 65.2002 to 65.2006.**

**(2) Except as otherwise specifically provided in KRS 65.2002 to 65.2006, all enacted and case-made law, substantive or procedural, concerning actions in tort against local governments shall continue in force. No provision of KRS 65.2002 to 65.2006 shall in any way be construed to expand the existing common law concerning municipal tort liability as of July 15, 1988, nor eliminate or abrogate the defense of governmental immunity for county governments.**

**Effective: July 15, 1988**
**History: Created 1988 Ky. Acts ch. 224, sec. 16, effective July 15, 1988.**

**65.2002 Amount of damages recoverable against local governments.**

**The amount of damages recoverable against a local government for death, personal injury or property damages arising out of a single accident or occurrence, or sequence of accidents or occurrences, shall not exceed the total damages suffered by plaintiff, reduced by the percentage of fault including contributory fault, attributed by the trier of fact to other parties, if any.**

**Effective: July 15, 1988**
**History: Created 1988 Ky. Acts ch. 224, sec. 17, effective July 15, 1988.**

**65.2003 Claims disallowed.**
**Notwithstanding KRS 65.2001, a local government shall not be liable for injuries or losses resulting from:**

**(1) Any claim by an employee of the local government which is covered by the Kentucky workers' compensation law;**
**(2) Any claim in connection with the assessment or collection of taxes;**
**(3) Any claim arising from the exercise of judicial, quasi-judicial, legislative or quasi-legislative authority or others, exercise of judgment or discretion vested in the local government, which shall include by example, but not be limited to:**
  **(a) The adoption or failure to adopt any ordinance, resolution, order, regulation, or rule;**
  **(b) The failure to enforce any law;**
  **(c) The issuance, denial, suspension, revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;**
  **(d) The exercise of discretion when in the face of competing demands, the local government determines whether and how to utilize or apply existing resources; or**
  **(e) Failure to make an inspection.**
  **(4) Nothing contained in this subsection shall be construed to exempt a local government from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial duties.**

**Effective: July 15, 1988**
**History: Created 1988 Ky. Acts ch. 224, sec. 18, effective July 15, 1988.**

**65.2004 Periodic payment of damages.**

**(1) Upon motion of a local government against which final judgment has been rendered for a claim within the scope of KRS 65.200 to 65.2006, the court, in accordance with subsection (2) of this section, may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over a period of time not exceeding ten (10) years. Any periodic payment, upon becoming due under the terms of the judgment, shall constitute a separate judgment. Any judgment ordering any such payments shall specify the total amount awarded, the amount of each**

**payment, the interval between payments and the number of payments to be paid under the judgment. Judgments paid pursuant to this section shall bear interest accruing from the date final judgment is entered, at the interest rate as specified in KRS 360.040. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event and periodic payments shall not be ordered paid over a period in excess of ten (10) years.**

**(2) A court may order periodic payment only upon finding that:**

**(a) Payment of the judgment is not totally covered by insurance; and**

**(b) Funds for the current budget year and other funds of the local government which lawfully may be utilized to pay judgments are insufficient to finance both the adopted budget of expenditures for the year and the payment of that portion of the judgment not covered by insurance.**

**Effective: July 15, 1988**

**History: Created 1988 Ky. Acts ch. 224, sec. 19, effective July 15, 1988.**

**65.2005 Defense of employee by local government -- Liability of employee.**

**(1) A local government shall provide for the defense of any employee by an attorney chosen by the local government in any action in tort arising out of an act or omission occurring within the scope of his employment of which it has been given notice pursuant to subsection (2) of this section. The local government shall pay any judgment based thereon or any compromise or settlement of the action except as provided in subsection (3) of this section and except that a local government's responsibility under this section to indemnify an employee shall be subject to the limitations contained in KRS 65.2002.**

**(2) Upon receiving service of a summons and complaint in any action in tort brought against him, an employee shall, within ten (10) days of receipt of service, give written notice of such action in tort to the executive authority of the local government.**

**(3) A local government may refuse to pay a judgment or settlement in any action against an employee, or if a local government pays any claim or judgment against any employee pursuant to subsection (1) of this section, it may recover from such employee the amount of such payment and the costs to defend if:**

**(a) The employee acted or failed to act because of fraud, malice, or corruption;**

**(b) The action was outside the actual or apparent scope of his employment;**

**(c) The employee willfully failed or refused to assist the defense of the cause of action, including the failure to give notice to the executive authority of the local government pursuant to subsection (2) of this section;**

**(d) The employee compromised or settled the claim without the approval of the governing body of the local government; or**

**(e) The employee obtained private counsel without the consent of the local government, in which case, the local government may also refuse to pay any legal fees incurred by the employee.**

**Effective: July 15, 1994**
**History: Amended 1994 Ky. Acts ch. 233, sec. 1, effective July 15, 1994. -- Created 1988 Ky. Acts ch. 224, sec. 20, effective July 15, 1988.**

**65.2006 Judgments affected.**
**KRS 65.200 to 65.2006 shall apply to all actions in tort in which money damages have not been adjudged as of July 15, 1988.**

**Effective: July 13, 1988**
**History: Created 1988 Ky. Acts ch. 224, sec. 21, effective July 15, 1988.**

# Appendix E
# North Carolina Local Government Tort Liability Statutes

## COUNTIES

**§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.**

**(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.**

**Purchase of insurance pursuant to this subsection waives the county's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.**

**(b) If a county has waived its governmental immunity pursuant to subsection (a) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the county or any of its officers, agents, or employees, occurring in the exercise of a governmental function, may sue the county for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (a) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the county has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.**

**Despite the purchase of insurance as authorized by subsection (a) of this section, the liability of a county for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them. (1955, c. 911, s. 1; 1973, c. 822, s. 1; 1985 (Reg. Sess., 1986), c. 1027, s. 27.)**

**§ 160A-485. Waiver of immunity through insurance purchase.**

**(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance.**

**(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.**

**(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.**

**(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury, and may request a jury trial on these issues.**

**(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State.(1951, c. 1015, ss. 1-5; 1971, c. 698, s. 1; 1975, c. 723; 1985 (Reg. Sess., 1986), c. 1027, s. 27.)**

# Appendix F
# Inflation-Adjusted Tort Limits: One Person, One Accident

| Inflation-Adjusted Tort Limits: One Person, One Accident | | | | | |
|---|---|---|---|---|---|
| | | Tort Limit | CPI-Adjusted Limit, Based on $20,000 Limit | CPI-Adjusted Limit, Based on $40,000 Limit | CPI-Adjusted Limit, Based on $130,000 Limit |
| 1st limit | 1973 | $ 20,000 | | | |
| | 1974 | | $ 22,207 | | |
| | 1975 | | $ 24,234 | | |
| | 1976 | | $ 25,631 | | |
| | 1977 | | $ 27,297 | | |
| | 1978 | | $ 29,369 | | |
| | 1979 | | $ 32,703 | | |
| | 1980 | | $ 37,117 | | |
| | 1981 | | $ 40,946 | | |
| Limit Changed | 1982 | $ 40,000 | $ 43,468 | | |
| | 1983 | | $ 44,865 | $ 41,285 | |
| | 1984 | | $ 46,802 | $ 43,067 | |
| | 1985 | | $ 48,468 | $ 44,601 | |
| | 1986 | | $ 49,369 | $ 45,430 | |
| Limit Changed | 1987 | $ 130,000 | $ 51,171 | $ 47,088 | |
| | 1988 | | $ 53,288 | $ 49,036 | $ 135,379 |
| | 1989 | | $ 55,856 | $ 51,399 | $ 141,901 |
| | 1990 | | $ 58,874 | $ 54,176 | $ 149,569 |
| | 1991 | | $ 61,351 | $ 56,456 | $ 155,863 |
| | 1992 | | $ 63,198 | $ 58,155 | $ 160,555 |
| | 1993 | | $ 65,090 | $ 59,896 | $ 165,361 |
| | 1994 | | $ 66,757 | $ 61,430 | $ 169,595 |
| | 1995 | | $ 68,649 | $ 63,171 | $ 174,401 |
| | 1996 | | $ 70,676 | $ 65,036 | $ 179,551 |
| | 1997 | | $ 72,297 | $ 66,528 | $ 183,671 |
| | 1998 YTD | | $ 73,108 | $ 67,275 | $ 185,731 |

# Appendix G
# Inflation-Adjusted Tort Limits: All Persons, Any One Accident

| Inflation-Adjusted Tort Limits: All Persons, Any One Accident | | | | | |
|---|---|---|---|---|---|
| | | Tort Limit | CPI-Adjusted Limit, Based on $40,000 Limit | CPI-Adjusted Limit, Based on $80,000 Limit | CPI-Adjusted Limit, Based on $350,000 Limit |
| 1st limit | 1973 | $ 40,000 | | | |
| | 1974 | | $ 44,414 | | |
| | 1975 | | $ 48,468 | | |
| | 1976 | | $ 51,261 | | |
| | 1977 | | $ 54,595 | | |
| | 1978 | | $ 58,739 | | |
| | 1979 | | $ 65,405 | | |
| | 1980 | | $ 74,234 | | |
| | 1981 | | $ 81,892 | | |
| Limit Changed | 1982 | $ 80,000 | $ 86,937 | | |
| | 1983 | | $ 89,730 | $ 82,570 | |
| | 1984 | | $ 93,604 | $ 86,135 | |
| | 1985 | | $ 96,937 | $ 89,202 | |
| | 1986 | | $ 98,739 | $ 90,860 | |
| Limit Changed | 1987 | $ 350,000 | $ 102,342 | $ 94,176 | |
| | 1988 | | $ 106,577 | $ 98,073 | $ 364,481 |
| | 1989 | | $ 111,712 | $ 102,798 | $ 382,042 |
| | 1990 | | $ 117,748 | $ 108,352 | $ 402,685 |
| | 1991 | | $ 122,703 | $ 112,912 | $ 419,630 |
| | 1992 | | $ 126,396 | $ 116,311 | $ 432,262 |
| | 1993 | | $ 130,180 | $ 119,793 | $ 445,202 |
| | 1994 | | $ 133,514 | $ 122,860 | $ 456,602 |
| | 1995 | | $ 137,297 | $ 126,342 | $ 469,542 |
| | 1996 | | $ 141,351 | $ 130,073 | $ 483,407 |
| | 1997 | | $ 144,595 | $ 133,057 | $ 494,498 |
| | 1998 YTD | | $ 146,216 | $ 134,549 | $ 500,044 |

# Appendix H
# Inflation-Adjusted Tort Limits: Damage or Destruction of Property

| Inflation-Adjusted Tort Limits: Damage or Destruction of Property | | | | | |
|---|---|---|---|---|---|
| | | Tort Limit | CPI-Adjusted Limit, Based on $10,000 Limit | CPI-Adjusted Limit, Based on $20,000 Limit | CPI-Adjusted Limit, Based on $50,000 Limit |
| 1st limit | 1973 | $ 10,000 | | | |
| | 1974 | | $ 11,104 | | |
| | 1975 | | $ 12,117 | | |
| | 1976 | | $ 12,815 | | |
| | 1977 | | $ 13,649 | | |
| | 1978 | | $ 14,685 | | |
| | 1979 | | $ 16,351 | | |
| | 1980 | | $ 18,559 | | |
| | 1981 | | $ 20,473 | | |
| Limit changed | 1982 | $ 20,000 | $ 21,734 | | |
| | 1983 | | $ 22,432 | $ 20,642 | |
| | 1984 | | $ 23,401 | $ 21,534 | |
| | 1985 | | $ 24,234 | $ 22,301 | |
| | 1986 | | $ 24,685 | $ 22,715 | |
| | 1987 | | $ 25,586 | $ 23,544 | |
| | 1988 | | $ 26,644 | $ 24,518 | |
| | 1989 | | $ 27,928 | $ 25,699 | |
| | 1990 | | $ 29,437 | $ 27,088 | |
| | 1991 | | $ 30,676 | $ 28,228 | |
| Limit Changed | 1992 | $ 50,000 | $ 31,599 | $ 29,078 | |
| | 1993 | | $ 32,545 | $ 29,948 | $ 51,497 |
| | 1994 | | $ 33,378 | $ 30,715 | $ 52,815 |
| | 1995 | | $ 34,324 | $ 31,585 | $ 54,312 |
| | 1996 | | $ 35,338 | $ 32,518 | $ 55,916 |
| | 1997 | | $ 36,149 | $ 33,264 | $ 57,199 |
| | 1998 YTD | | $ 36,554 | $ 33,637 | $ 57,840 |