

Legislative Budget and Finance Committee

A Report on the Limitations on Liability Under Pennsylvania's Sovereign and Governmental Immunity Laws

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Mr. Chairman and Members of the Committee, good morning. Senate Resolution 2021-146 directs the Legislative Budget and Finance Committee to conduct a study regarding the limitations on liability under Pennsylvania's sovereign and governmental immunity laws and report our findings and recommendations to the Senate. I am here today to present the results of our study.

By way of background, sovereign immunity can be traced to the British common law doctrine based on the idea that the King could do no wrong. In the modern context, it refers to the idea that a government (the sovereign) cannot be sued without its consent. Similarly, governmental immunity provides immunity for local government entities within the state, such as cities, townships, and authorities.

The objectives for this study were:

1. To examine the impact on plaintiffs of the current limitations on liability.
2. To examine the impact of changing the limitations on liability on state and local government entities, including the ability of state and local government entities to raise revenues and provide services, benefits, and programs.
3. To review the factors contained in the Joint State Government Commission's 1978 report on the recommendations of the task force on sovereign immunity

as they relate specifically to caps on recovery and waivers of sovereign and governmental immunity.

4. To consider any other factors that will allow the General Assembly to evaluate and determine whether the limitations on liability should be increased.

To accomplish these objectives, we did the following:

To assess the potential impact on state government, we interviewed staff in the Department of General Services and Office of Attorney General to get an understanding of the Commonwealth's self-insurance program and the process for resolving claims against the Commonwealth. We also obtained data for claims against the Commonwealth from 1970 to 2021 to provide an historical context of the existing liability cap.

To determine the impact of changing the liability limitation on local government entities, LBFC staff interviewed various local government associations, local government entities, and municipal risk pools. To review as much data as possible through the duration of the current \$500,000 cap on liability, we obtained claims data from the sources we interviewed from 1978 to 2021. We also reviewed current limitations on local government entities on their ability to raise revenue, issue debt, and file for bankruptcy. We also spoke to associations that represent school districts, municipal authorities, local governments, and transit authorities. We spoke with representatives of risk pools, an association that represents the commercial insurance industry, a risk-pool reinsurer, a regional transportation authority, and a First-class city. Further, we developed a local government entities survey that used a structure that included qualitative and quantitative questions.

To assess other factors for the General Assembly to consider, we reviewed other states' most recent changes to respective sovereign immunity laws, damage cap structures, and transparency and reporting structures.

To examine the impact on plaintiffs of the current limitations on liability, LBFC staff interviewed individuals involved in three tort claims against an entity created by the Commonwealth, the Commonwealth, and citizens of Philadelphia brought by the City of Philadelphia (to reduce the initial award). For example, in one case, a woman was hit by a SEPTA bus and required a partial foot amputation. SEPTA agreed to the facts of the case and a verdict of \$7 million. The verdict was reduced to \$250,000 based on the limits set in the Sovereign Immunity Act. In another case, 85 households suffered property damage because of a water main break in Philadelphia. Because of the \$500,000 cap, claimants only received 60 percent of their City approved claim.

Based on our extensive research and data collection, we found:

1. The current \$250,000 (\$1,000,000 aggregate) liability cap sufficiently provides relief for over 99 percent of claims against the Commonwealth.
2. The existing General Fund Restricted Receipt Appropriation to the Department of General Services may not be adequate for the future, regardless of any change to the existing liability cap.
3. The current \$500,000 liability cap is sufficient for over 99 percent of claims against the local government entities we reviewed.
4. Local government entities are limited by state law in their ability to generate revenue, issue debt, and file for bankruptcy.
5. The ability of local government entities to adjust revenues and/or services provided if liability caps were to be eliminated or increased, varies greatly based on

many different factors, such as state law, current revenue sources, tax base, fiscal health, and local priorities.

6. As shown in Sections II and III of our report, the statutory caps play no significant role for the vast majority of plaintiffs. However, for those few who have been catastrophically injured by governmental entities subject to the caps, the limitations on liability have devastating health and financial consequences.
7. For the local government entities responding to our survey:
 - a. Over 50 percent have property and liability (insurance) coverage through a commercial insurer.
 - b. Over 90 percent agree or strongly agree that insurance coverage will become prohibitively expensive in Pennsylvania if all damage caps are eliminated or increased based on inflation.
 - c. If all damage caps were eliminated or increased based on inflation, over 80 percent of local government entities agree or strongly agree that it is likely there will be a negative impact on services provided to the community.
 - d. If all damage caps were eliminated or increased based on inflation, local government entities indicated that general government, highways and streets, and culture and recreation as the three budget areas that would be most affected.
 - e. If all damages caps were eliminated or increased based on inflation, over 75 percent of local government entities agree or strongly agree their municipality will likely have to increase taxes/fees.
 - f. The survey response rate was approximately 5.4 percent, which is similar to other recent surveys of local governments conducted during the pandemic.
8. North Dakota is phasing a new cap that will increase from \$250,000 per person and \$1,000,000 for any number of claims arising from any single occurrence to \$500,000 per person and \$2,000,000 for all claims from an occurrence. In 2015,

Maryland increased their cap to \$400,000 to a single claimant for injuries from a single incident or occurrence for the state and its units. Colorado increased their caps and added annual inflation adjustment. Thirteen states have no cap for claims against the state and 11 have no cap for claims against local governments.

9. Pennsylvania does not have a reporting requirement for local government entities' liability claims data and, therefore, there is a lack of transparency in the methods local government entities use to insure against liability.
10. The City of New York produces a web-based annual claims report, which is used to identify areas with high claims costs to reduce those costs and work closely with city agencies to manage risk.
11. The damage caps set in 1978 (\$250,000, \$500,000, and \$1,000,000) would be equal to \$1.04 million, \$2.09 million, and \$4.18 million in today's dollars.

Based on our findings, we recommend the following:

1. The General Assembly should consider:
 - Developing new liability caps for economic damages to cover catastrophic claims. This cap should reflect the same purchasing power as the 1978 caps in today's dollars and should be adjusted for inflation going forward.
 - Maintaining the \$250,000 (\$1 million aggregate) caps for Commonwealth agencies/entities and \$500,000 for local government entities for non-catastrophic claims.
 - Increasing the medical expenses threshold for non-economic damages (pain and suffering) by the same percentage increase as the increases for economic damages in catastrophic cases.

- Reviewing other states' most recent changes to their sovereign immunity statutes and damage cap structures.
 - Requiring local government entities to report their insurance carrier for property and liability (insurance) coverage. We suggest using DCED's municipal statistics database, which currently captures statistics through a required e-filing form.
2. Should the General Assembly raise the Commonwealth's liability cap, the General Assembly should consult with the Department of General Services' Bureau of Finance and Risk Management to determine the appropriate General Fund Restricted Receipt Appropriation level for the applicable scenario to best protect Commonwealth agencies/entities.
 3. The General Assembly should direct appropriate resources to the Department of Community and Economic Development (DCED) to establish and maintain a statewide reporting system for claims made against local governments.

In closing, I would like to acknowledge the cooperation we received from the staff of the Department of General Services and the Office of Attorney General in completing the section of this study on the Commonwealth.

Additionally, we appreciate the cooperation of the various municipal risk pools, local government entities, and the following associations: County Commissioners Association of Pennsylvania, Pennsylvania School Boards Association, State Association of Boroughs, Pennsylvania Municipal League, Municipal Authorities Association, Pennsylvania State Association of Township Supervisors, and the Insurance Federation of Pennsylvania in completing the section of this study on local governments. We acknowledge and appreciate the cooperation we received from the staff of the Department of Community and Economic Development in the section of this study on local government and

reporting. We also thank the counties, municipal governments, special district governments, school districts, and public transportation agencies that participated in the Local Government Entities survey.

Additionally, we appreciate the participation of Ms. Hayley Freilich, Mrs. Maria Mollura, Mr. Jim McLaughlin, Ms. Marla Rosenberg, and Ms. Kathy Pernini in providing their personal accounts and related documents for the case studies in this report.

Finally, this report would not be possible without the hard work of Ms. Stevi Sprenkle, Ms. Shanika Mitchell-Saint Jean, and Mr. Rebanta Mukherjee.

With that, I'm happy to answer any questions the committee may have.

