

**Report  
Of The  
Senate and House Committees for Courts of Justice  
On Governmental Immunity  
To  
The Governor  
And  
The General Assembly of Virginia**



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Richmond, Virginia  
January, 1975**

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

And

The General Assembly of Virginia

I. Introduction

The doctrine of governmental immunity is firmly imbedded in the common law of the Commonwealth. While municipal corporations may, in cases involving their proprietary functions, be sued (if certain preliminary steps are taken), the Commonwealth, its agencies and political subdivisions are absolutely immune from suit, except for a few contractual situations. Recent court decisions have extended the doctrine in certain cases to individual State employees sued personally.

The majority of states have abolished the doctrine, either judicially or legislatively, as being outmoded and unfair. While the Supreme Court of Virginia has consistently upheld the doctrine, in some of the opinions it has strongly hinted that the General Assembly should exercise its prerogatives, and take a sharp, close look at the problem.

With this in mind, the 1974 Session of the General Assembly adopted House Joint Resolution No. 20, the text of which follows:

**HOUSE JOINT RESOLUTION NO. 20**

Authorizing the Committees for Courts of Justice to study the doctrine of sovereign immunity.

Whereas, the doctrine of sovereign immunity often results in uncompensated loss to individuals who can ill afford such loss and through no fault of their own; and

Whereas, the United States government has a federal tort claims act; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the House of Delegates and the Senate Committees for Courts of Justice are authorized to study the doctrine of sovereign immunity with a view to adoption of a State tort claims act.

The Committees shall complete their study and report to the Governor and the General Assembly no later than October one, nineteen hundred seventy-four.

In accordance with this directive, the Senate Committee for Courts of Justice appointed Senators Herbert H. Bateman, Frederick T. Gray, J. Harry Michael, Jr. and H. Selwyn Smith, and the House Committee for Courts of Justice appointed Delegates George E. Allen, Jr., Richard W. Elliott, Jr., J. Samuel Glasscock, Clinton Miller and Thomas W. Moss, as a Joint Subcommittee to study and report on the problem. The Honorable George E. Allen, Jr., was selected as Chairman of the Subcommittee.

The Subcommittee is indebted to C. F. Hicks, Esquire, Attorney-at-law and counsel for the Virginia Association of Counties, Howard W. Dobbins, Esquire, Attorney-at-law and counsel for the Virginia Municipal League, Stuart Dunn, Esquire of the Attorney General's office, William M. Wimbish, Esquire, Assistant City Attorney for the city of Richmond, James Eichner, Esquire, of the Richmond Bar, and Messrs. Julian Hirst and Richard Price of the Virginia Municipal League for the assistance and information they gave the Subcommittee. The Division of Legislative Services, represented by G. William White, Jr., and Howard P. Anderson, Jr., provided counsel and staff for the Subcommittee.

## RECOMMENDATIONS

-The Subcommittee is impressed with the argument that the doctrine of sovereign and governmental immunity is obsolete and unfair. The problem found, however, is the method by which it should be supplanted.

At present, any person aggrieved by the act or failure to act on the part of the Commonwealth may petition the General Assembly for relief. This system has, by the large, been satisfactory, however the average citizen, indeed probably the average otherwise competent lawyer, is unaware that the system exists, or how to go about obtaining relief. The system also imposes an extra burden on an already overburdened legislature, and the results of the legislation produced, while generally equitable, does not approach the impartiality that the regular system of justice provides.

While the Subcommittee received a great deal of assistance in the way of informational input from all persons and agencies appearing before it, it was felt that due to a lack of a specific legislative proposal, sufficient data pertaining to the cost of such a program was not available.

The Subcommittee then determined to draft a "model" bill,

made a part of this report, and to recommend circulation of the report and the bill to all localities and State agencies, with the hope that enough interest will be generated so that in the 1976-1977 sessions of the General Assembly, appropriate legislation may be put together that will be mutually beneficial to the Commonwealth and its citizens. It is to be emphasized that the Subcommittee *does not* recommend adoption of the bill attached hereto; in fact, it is further emphasized that any attempt at this time by an individual member of the General Assembly to introduce any such measure would be viewed with disfavor by the members of the Subcommittee. To do so at this time would be premature.

A synopsis of the bill, and the bill follow:

### **Synopsis**

1. Municipal corporations would be placed on an equal footing with the Commonwealth and its political subdivisions. The limitations as to what acts are actionable would apply to them and the notice provisions now provided by the law (§ 8-653) would be repealed.

2. Governmental immunity, as such, is preserved. The "model" bill would only waive immunity in certain cases. They are:

(a) Contractual obligations,

(b) Injury resulting from the negligent operation of a motor vehicle by an employee,

(c) Injuries caused by dangerous or defective conditions of public buildings, or the premises adjacent thereto which are open to the public,

(d) Negligence in performing services related to the supplying of water, electricity, gas, food, lodging, recreation, and the collection of sewerage, garbage, liquid and solid waste, or repairing or maintaining streets, highways, sidewalks, curbs or street gutters.

3. (a) Liability begins after the effective date of the enactment of the law.

(b) The Commonwealth, or a political subdivision would not be liable for interest, prior to judgment, nor in any event, for punitive damages.

(b) If liability insurance is in effect, liability is limited to the extent of the coverage, or to \$100,000.00, whichever is greater.

4. (a) State agency heads are authorized to compromise and settle any case where the total amount of the settlement is under \$1,000.00

(b) Governmental agencies and political subdivisions are

authorized to establish settlement procedures in cases involving adjustment of claims.

(c) Appropriate procedures for payment and reporting are made.

5. Jurisdiction of cases arising where suit is appropriate rests in the circuit or district court where the plaintiff resides or where the act or omission complained of occurred.

6. No suit may be brought until ninety days have elapsed after the Commonwealth or other political subdivision has been advised of the claim. This provides a vehicle by which suits may be avoided if a valid claim exists which may be settled. In addition, a plaintiff would be foreclosed in asking for more money than he claims when he goes to court, unless there is after discovered evidence or some undiscovered intervening fact relating to amount.

7. Individual employees may be sued jointly. There is no limitation as to amount which may be recovered from the individual employee.

8. The Attorney General, on behalf of the Commonwealth, or the chief legal office of the political subdivision are authorized to settle litigation at any stage of the proceeding.

9. The statute of limitations is two years.

10. The following acts or omissions are not actionable:

(a) Acts or omissions, where due care is exercised, in the execution of a statute or regulation, whether such statute or regulation be declared void or not, or whether or not discretion in administration is abused.

(b) Claims arising out of the assessment of a tax.

(c) Claims arising out of the imposition or establishment of a quarantine.

(d) Claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(e) Claims arising out of acts or omissions of the Virginia National Guard while on duty in case of emergency declared by executive order, or in case of riot, insurrection or civil strife.

(f) The granting or denial of a license, permit or privilege.

11. (a) Suits are to be brought in the same manner as other suits are brought; i.e. Notice of motion for judgment or civil warrant.

(b) In cases involving the Commonwealth, its agencies or governmental entities, the Attorney General is to defend the action. Other political subdivisions are to be defended by their civil

attorneys. In either case, outside counsel may be employed.

12. Liability insurance companies underwriting the State, or any entity covered by the act, would not be permitted to plead immunity, for itself, for the State or for the entity.

Respectfully submitted,

George E. Allen, Jr. Chairman

Herbert H. Bateman

Richard W. Elliott

J. Samuel Glasscock

Frederick T. Gray

J. Harry Michael, Jr.

Clinton Miller

Thomas W. Moss, Jr.

H. Selwyn Smith

A BILL relating to the immunity of the Commonwealth, its agencies and political subdivisions from actions at law; providing for exceptions thereto; providing procedures; exceptions; appropriating funds; and to repeal § 8-653, as amended, of the Code of Virginia, relating to notice to be given cities and towns of claims for damages for negligence.

Be it enacted by the General Assembly of Virginia:

1. § 1. As used in this act:

(1) The word "State" shall mean the Commonwealth of Virginia or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof;

(2) The words "Political Subdivision" shall mean any county, city, town, special improvement or taxing district, or any other political subdivision or public corporation;

(3) The words "Governmental Entity" shall mean and include the State and its political subdivisions as defined herein;

(4) The word "employee" shall mean and include any officer, employee or servant of a governmental entity;

(5) the word "Claim" shall mean any claim brought against a governmental entity or its employee as permitted by this act;

(6) The word "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

§ 2. Except as may be otherwise provided in this act, the State governmental entities and political subdivisions shall be immune from suit for any injury which may result from the activities of such entities.

§ 3. Nothing contained in this act, unless specifically provided, is to be construed as an admission or denial of liability or responsibility insofar as governmental entities are concerned. Wherein immunity from suit is waived by this act, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person.

§ 4. Immunity from suit of all governmental entities is waived as to any contractual obligation.

§ 5. Immunity from suit of the State, its governmental entities and political subdivisions is waived for injury resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of his employment.



§ 6. Immunity from suit of the State, its governmental entities and political subdivisions is waived for any injury alleged to have been caused from a dangerous or defective condition of any public building, or the premises immediately adjacent thereto which are open to the public.

§ 7. Immunity from suit of the State, its governmental entities and political subdivisions is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of his employment only if the employee is performing a service directly related to the supplying of water, electricity, gas, food, lodging, recreation, the collection of sewerage, garbage, liquid and solid waste, or repairing or maintenance of streets, highways, sidewalks, curbs and street gutters.

§ 8. Subject to the provisions of this act, the State, its governmental entities and political subdivisions shall be liable for claims for money only accruing on and after July one, nineteen hundred seventy-four, on account of damage to or loss of property, on account of personal injury or death caused by the negligent or wrongful act or omission of any State employee or employee of a governmental entity or political subdivision while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant for such damage, loss, injury or death except that the State shall not be liable for interest prior to judgment or for punitive damages. In the event valid liability insurance coverage is in effect as to the State, its governmental entities or political subdivision, liability shall be limited to the extent of such coverage, or the sum of one hundred thousand dollars, whichever is greater.

§ 9. A. Subject to the limitations of this act, authority is hereby conferred upon the head of each State agency, or his designated representative, for the purpose, acting on behalf of the State, to consider, ascertain, adjust and determine settlements against the State cognizable under this act, when the total amount of the settlement does not exceed one thousand dollars.

B. Subject to the provisions of this act, any such award or determination shall be final and conclusive on all officers of the State, its governmental entities and political subdivisions, except when procured by means of fraud, notwithstanding any other provision of law to the contrary.

C. The governing bodies of governmental agencies and political subdivisions are authorized and directed to establish administrative procedures in order that proper claims be disposed of, or in other cases, be denied, in order to carry out the purpose of this act.

D. Any award made to any claimant pursuant to this section, and any award, compromise, or settlement of any claim cognizable under this act made by the Attorney General or other officer pursuant to this act, shall be authorized to be paid by the head of the State agency or the chief financial officer of the governmental entity or political subdivision concerned out of appropriations that may be made therefor, which appropriations are hereby authorized

to be expended for such purposes; provided, that in the event any such award, compromise or settlement is made by any insurance company indemnifying the State, governmental entity or political subdivision against acts or omissions set out in this chapter, such award, compromise or settlement may be made in accordance with the procedures utilized by such company.

E. The acceptance by the claimant of any award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the State, its governmental entity or political subdivision and against the State employee or the employee of a governmental entity or political subdivision whose act or omission gave rise to the claim, by reason of the same subject matter.

F. The head of each State agency shall make a report to the Governor and General Assembly of all claims paid by such State agency under this section. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim. Governmental agencies and political subdivisions shall make such a report to the governing body of such agency or subdivision.

10. A. Notwithstanding the provisions of §§ 2.1-223.1, 2.1-113.3 or 8-752 the circuit court of the county or city wherein the plaintiff is resident or wherein the act or omission complained of occurred shall have exclusive original jurisdiction to hear, determine and render judgment on any claim against the State, its political subdivision or governmental entity cognizable under this act; provided, however, that any action under the provisions of this chapter may be commenced and determined in the district court of such county or city where the amount claimed is within the jurisdictional limits imposed on such court by law. Judgments in the district courts and in the circuit courts in cases under this act may be appealed as in other cases provided.

B. No suit shall be instituted pursuant to this section upon a claim presented to any State agency, its political subdivision or governmental entities unless it shall have made final disposition of the claim within ninety days upon receipt of such claims otherwise, the claim shall be deemed to be denied and thereafter the claimant may commence suit thereon pursuant to this section; provided further, that as to any claim in a definite amount no suit shall be instituted pursuant to this section for any sum in excess of the amount of the claim presented to the State agency, governmental agency or political subdivision, unless the increased amount of the claim is shown to be based upon newly discovered evidence not reasonably discoverable at the time of presentation of the claim to the State agency or upon evidence of intervening facts, relating to the amount of the claim. Denial of any claim made pursuant to this act shall not be competent evidence of liability or amount of damages in proceedings on such claim pursuant to this section.

C. The judgment in such an action shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the State employee or employee of the governmental

entity or political subdivisions whose act or omission gave rise to the claim, provided, however, that the State employee or employee of the governmental entity or political subdivision may be sued jointly with the State governmental entity or political subdivision and there shall be no limitation on the amount of such judgment as to such State employee or employee of the governmental entity or political subdivision, except as otherwise provided by law for such cases.

§ 11. With a view to doing substantial justice, the Attorney General, or the chief legal officer of the governmental entity or political subdivision is authorized to arbitrate, compromise, or settle any claim cognizable under this act, at any stage of the proceedings.

§ 12. Every claim against the State, its political subdivisions or any governmental entity cognizable under this act shall be forever barred, unless within two years after such claim accrues an action is begun pursuant to this act.

§ 13. The provisions of this act shall not apply to -

A. Any claim based upon an act or omission of a State employee or employee of a governmental entity or political subdivision exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance of the failure to exercise or perform a discretionary function or duty on the part of a State agency or a State employee, or employee of a governmental entity or political subdivision whether or not the discretion involved be abused.

B. Any claim arising in respect of the assessment or collection of any tax.

C. Any claim for damages caused by the imposition or establishment of a quarantine by the State.

Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

E. Any claim arising out of acts or omissions of the Virginia National Guard while on duty in case of an emergency declared by executive order, or in case of riot, insurrection or civil strife.

F. The granting or denial of a license, permit or privilege.

§ 14. The provisions of this act shall only apply to claims accruing after the effective date of this act.

§ 15. All such proceedings in the courts shall be initiated by service of the notice of motion or other like pleading or, where the case be commenced before a judge of a district court, a warrant, upon the head of the State agency, or the chief legal officer of the governmental entity or political subdivision out of whose appropriation the judgment, if awarded, would be paid. Any proceedings against the State or any government entity thereof shall be defended by the Attorney General or his designate. Any

proceedings against any other political subdivision shall be defended by the civil attorney for the political subdivision, if there be one, provided, that the governing body may employ counsel in its discretion.

§ 16. No liability insurance company insuring the State, its governmental entities or political subdivisions shall be permitted to plead governmental immunity in any action brought where coverage is applicable.

2. There is hereby appropriated a sum sufficient to carry out the provisions of this act including premiums for liability insurance indemnifying against acts or omissions covered by this chapter; payment shall be made by the treasurer on warrant of the Comptroller issued as follows: in the case of a settlement under this act, upon a voucher signed by the head of the State agency settling such claim; in the case of a settlement after suit is instituted under this act, on a voucher signed by the Attorney General; and in the case of a judgment rendered under this act upon a certified copy of such judgment; in case of payment of insurance premium, upon a voucher signed by the head of the State agency purchasing such insurance. In cases in which governmental entities or political subdivisions are involved, the governing bodies thereof shall promulgate procedures by which claims or judgments shall be paid.

3. All acts and parts of acts in conflict herewith and all acts substantially similar hereto are repealed.

4. That § 8-653, as amended, of the Code of Virginia is repealed.