

REPORT HIGHLIGHTS

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

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The Senate of Pennsylvania adopted Senate Resolution 2021-146 directing the Legislative Budget and Finance Committee (LBFC) to conduct a study and prepare a report concerning the limitations on Commonwealth and local government liability established in Act 1978-152 and Act 1978-330, respectively. Highlights of our report include the following:

- ❖ **Although the damage caps have not been changed since 1978, the current \$250,000 (\$1,000,000 aggregate) liability cap sufficiently provides relief for over 99 percent of claims against the Commonwealth.** We reviewed data for over 360,000 claims made against the Commonwealth from 1970 through 2021. Of those, 69.3 percent resulted in no payment to the claimant. Only 0.27 percent (981 claims) resulted in a payment greater than or equal to \$200,000.

For the most recent 10-year period (2010 through 2020), only 0.2 percent of all claims resulted in a payment greater than or equal to \$200,000.

- ❖ **Although the Commonwealth damage caps are sufficient for 99 percent of claims, the existing General Fund Restricted Receipt Appropriations may not be adequate for the future, regardless of any change to the existing liability cap.** Under its self-insurance program, arguably the Commonwealth does not appropriate enough funds within the current account (\$9.5 million between auto, employee, and general tort). All additional costs are covered by individual agencies.

- ❖ **The current \$500,000 liability cap is sufficient for over 99 percent of claims against local government entities we reviewed.** The local government entity data we reviewed indicates less than one percent of all claims resulted in payouts from \$250,000 to the cap of \$500,000.

- ❖ **For plaintiffs who have been catastrophically injured by governmental entities subject to the caps, the caps are inadequate and have devastating health and financial consequences.** For example, Ms. Hayley Freilich was hit by a SEPTA bus, running over her left foot, crushing and de-gloving it. Based on the facts of the case, all parties agreed the injury resulted in \$7 million in damages. Ms. Freilich received only \$250,000 because of the caps.

- ❖ **The damage caps set in 1978 (\$250,000, \$500,000, and \$1,000,000) would equal \$1,046,000, \$2,092,000, and \$4,185,000 respectively in 2022.** Put another way, it would cost roughly \$1.04 million in 2022 to purchase the same goods and services bought in 1978 for \$250,000.

- ❖ **North Dakota, Maryland, and Colorado have recently enacted varied approaches to their sovereign immunity laws and damage caps.** These include occurrence

caps, damage caps adjusted for inflation, and other annual provisions.

- ❖ **The City of New York produces a web-based annual claims report used to identify areas with high claims costs and manage risk.** Pennsylvania does not have a reporting requirement for local government entities.

- ❖ **Our Report contains seven recommendations:**

1. The General Assembly should consider:
 - Developing new liability caps for economic damages to cover catastrophic claims. The caps should reflect the same purchasing power as the 1978 caps in today's dollars and should be adjusted for inflation going forward.
 - Maintaining the current caps for non-catastrophic claims.
 - Increasing the medical expenses threshold for non-economic damages by the same percentage increase as the increases for economic damages in catastrophic claims.
 - Reviewing other states' most recent changes to their sovereign immunity statutes and damage caps 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. If the General Assembly raises the Commonwealth's liability cap, they 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.

For a full copy of the report, email us at lbfcinfo@palbfc.us or download a copy at <http://lbfc.legis.state.pa.us/>.

