

SENATE, No. 872

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator CARDINALE

1 AN ACT concerning civil actions against public entities and public
2 employees, amending parts of the statutory law and supplementing
3 Title 59 of the New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 11 of P.L.1989, c.300 (C.45:9-19.11) is amended to
9 read as follows:

10 11. A member of the State Board of Medical Examiners or the
11 Medical Practitioner Review Panel, the medical director to the State
12 Board of Medical Examiners, the Attorney General, any medical
13 consultant to the board or review panel and any employee of the
14 board, Attorney General or review panel shall not be liable in any
15 action for damages to any person for any action taken or
16 recommendation made by him within the scope of his function as a
17 member, consultant or employee, if the action or recommendation was
18 [taken or] made [without malice. The Attorney General shall defend
19 the person in any civil suit and the State shall provide indemnification
20 for any damages awarded] in good faith. This section is not intended
21 to and shall not be construed to immunize anyone for any acts which
22 constitute actual malice, actual fraud, the commission of a crime or
23 willful misconduct.

24 (cf: P.L.1989, c.300, s.11)

25

26 2. R.S.48:12-152 is amended to read as follows:

27 48:12-152. Trespassing on tracks prohibited; [contributory
28 negligence;]injury on tracks or moving car; crossings.

29 It shall not be lawful for any person other than those connected
30 with or employed upon the railroad to walk along the tracks of any
31 railroad except when the same shall be laid upon a public highway.

32 Any person injured [by an engine or car] while walking, standing or
33 playing on a railroad or by jumping on or off a car while in motion
34 shall [be deemed to have contributed to the injury sustained and shall]

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 not recover therefor any damages from the company owning or
2 operating the railroad. This section shall not apply to the crossing of
3 a railroad by a person at any lawful public or private crossing.

4 (cf: R.S.48:12-152)

5

6 3. N.J.S.59:1-3 is amended to read as follows:

7 59:1-3. Definitions.

8 As used in this subtitle:

9 "Employee" includes an officer, employee, or servant, whether or
10 not compensated or part-time, who is authorized to perform any act
11 or service; provided, however, that the term does not include an
12 independent contractor.

13 "Employment" includes office; position; employment; or service,
14 under the supervision of the Palisades Interstate Park Commission, in
15 a volunteer program in that part of the Palisades Interstate Park
16 located in New Jersey, or as an emergency management volunteer.

17 "Enactment" includes a constitutional provision, statute, executive
18 order, ordinance, resolution or regulation.

19 "Injury" means death, injury to a person, damage to or loss of
20 property or any other injury that a person may suffer that would be
21 actionable if inflicted by a private person.

22 "Law" includes enactments and also the decisional law applicable
23 within this State as determined and declared from time to time by the
24 courts of this State and of the United States.

25 "Public employee" means an employee of a public entity. The term
26 "public employee" includes any individual duly appointed by the Public
27 Defender to act as a Deputy Public Defender in designated cases, and
28 [includes] a person participating, under the supervision of the
29 Palisades Interstate Park Commission, in a volunteer program in that
30 part of the Palisades Interstate Park located in New Jersey and any
31 person retained by the public defender to serve as an arbitrator,
32 mediator, or in such similar capacity. "Public employee" does not
33 include any independent contractors or other individuals, agencies, or
34 entities not established in or employed by the Office of the Public
35 Defender designated to provide protection and advocacy services to
36 indigent mental hospital admittees or persons with a developmental
37 disability as the term is defined in section 3 of P.L.1977, c.82
38 (C.30:6D-3).

39 The term "public employee" does not exclude members of the New
40 Jersey National Guard or organized militia merely because they receive
41 their compensation from the United States of America. For the
42 purposes of the New Jersey Tort Claims Act, a public employee who
43 receives compensation for performing acts or services is, in connection
44 with those services, the employee only of the public entity which pays
45 the compensation to the employee and is not the employee of any
46 other public entity.

1 "Public entity" includes the State, [and] any county, municipality,
2 district, public authority, public agency, and any other political
3 subdivision or public body in the State. "Public entity" does not
4 include any independent contractors or other individuals, agencies, or
5 entities not established in or employed by the Office of the Public
6 Defender designated to provide protection and advocacy services to
7 indigent mental hospital admittees or persons with a developmental
8 disability as the term is defined in section 3 of P.L.1977, c.82
9 (C.30:6D-3).

10 "State" shall mean the State and any office, department, division,
11 bureau, board, commission or agency of the State, but shall not
12 include any such entity which is statutorily authorized to sue and be
13 sued. "State" also means the Palisades Interstate Park Commission,
14 but only with respect to employees, property and activities within the
15 State of New Jersey. For purposes of chapter 10 and chapter 10A of
16 Title 59, the term "State" shall also mean any member or employee of
17 the State Board of Medical Examiners, the Medical Practitioner
18 Review Panel, the Medical Director to the State Board of Medical
19 Examiners and any medical consultant to the board or review panel.

20 "Statute" means an act adopted by the Legislature of this State or
21 by the Congress of the United States.

22 (cf: P.L.1995, c.383, s.4)

23

24 4. N.J.S.59:1-7 is amended to read as follows:

25 59:1-7. Effect of assumption of liability by United States. a. Any
26 waiver of immunity and assumption of liability contained in this act
27 shall not apply in circumstances where liability or responsibility has
28 been or [is hereafter] can be assumed by the United States[, to the
29 extent of such assumption of liability].

30 b. Neither a public entity nor a public employee shall be liable on
31 any claim based on activities of the New Jersey National Guard when
32 in Federal status.

33 (cf: N.J.S.59:1-7)

34

35 5. N.J.S.59:2-2 is amended to read as follows:

36 59:2-2. Liability of public entity.

37 a. [A] Subject to all of the other provisions of this act, a public
38 entity is liable for injury proximately caused by an act or omission of
39 [a] its public employee within the scope of his employment in the same
40 manner and to the same extent as a private individual under like
41 circumstances.

42 b. A public entity is not liable for an injury resulting from an act or
43 omission of a public employee where the public employee is not liable.

44 c. A public entity shall not be held to a heightened duty of care in
45 connection with any activity related to the operation or provision of

1 public conveyances or other modes of mass transportation services.
2 (cf: N.J.S.59:2-2)

3

4 6. N.J.S.59:2-3 is amended to read as follows:

5 59:2-3. Discretionary activities.

6 a. A public entity is not liable for an injury resulting from the
7 exercise of judgment or discretion vested in the entity;

8 b. A public entity is not liable for legislative or judicial action or
9 inaction, or administrative action or inaction of a legislative or judicial
10 nature. For the purposes of this section, judicial action or inaction or
11 actions or inaction of a judicial nature shall be deemed to include the
12 provision of a criminal defense by a public employee acting as a public
13 defender;

14 c. A public entity is not liable for the exercise of discretion in
15 determining whether to seek or whether to provide the resources
16 necessary for the purchase of equipment, the construction or
17 maintenance of facilities, the hiring of personnel and, in general, the
18 provision of adequate governmental services;

19 d. A public entity is not liable for the exercise of discretion when,
20 in the face of competing demands, it determines whether and how to
21 utilize or apply existing resources, including those allocated for
22 equipment, facilities and personnel unless a court concludes that the
23 determination of the public entity was palpably unreasonable. Nothing
24 in this section shall exonerate a public entity for negligence arising out
25 of acts or omissions of its employees in carrying out their ministerial
26 functions.

27 (cf: N.J.S.59:2-3)

28

29 7. (New section) Neither a public entity nor a public employee
30 shall be liable for an injury arising from any personnel decision,
31 whether negligent or otherwise, relating to any employee, agent or
32 independent contractor. For the purposes of this section personnel
33 decisions include but are not limited to decisions to hire, to promote
34 or to determine work assignment.

35

36 8. N.J.S.59:3-1 is amended to read as follows:

37 59:3-1. Generally.

38 a. Except as otherwise provided by this act, a public employee is
39 liable for injury caused by his act or omission to the same extent as a
40 private person.

41 b. The liability of a public employee established by this act is
42 subject to any immunity of a public employee provided by law and is
43 subject to any defenses that would be available to the public employee
44 if he were a private person.

45 c. A public employee is not liable for an injury where a public
46 entity is immune from liability for that injury.

1 d. A public employee shall not be held to a heightened duty of care
2 in connection with any activity related to the operation or provision of
3 public conveyances or other modes of mass transportation services.

4 (cf: P.L.1994, c.49 s.1)

5
6 9. N.J.S 59:3-2 is amended to read as follows:

7 59:3-2. Discretionary activities.

8 a. A public employee is not liable for an injury resulting from the
9 exercise of judgment or discretion vested in him;

10 b. A public employee is not liable for legislative or judicial action
11 or inaction, or administrative action or inaction of a legislative or
12 judicial nature. For the purposes of this section, judicial action or
13 inaction or action or inaction of a judicial nature shall be deemed to
14 include the provision of a criminal defense by a public employee acting
15 as a public defender;

16 c. A public employee is not liable for the exercise of discretion in
17 determining whether to seek or whether to provide the resources
18 necessary for the purchase of equipment, the construction or
19 maintenance of facilities, the hiring of personnel and, in general, the
20 provision of adequate governmental services;

21 d. A public employee is not liable for the exercise of discretion
22 when, in the face of competing demands, he determines whether and
23 how to utilize or apply existing resources, including those allocated for
24 equipment, facilities and personnel unless a court concludes that the
25 determination of the public employee was palpably unreasonable.

26 Nothing in this section shall exonerate a public employee for
27 negligence arising out of his acts or omissions in carrying out his
28 ministerial functions.

29 (cf: N.J.S.59:3-2)

30
31 10. N.J.S.59:4-2 is amended to read as follows:

32 59:4-2. Liability generally.

33 a. [A] Neither a public entity nor a public employee [is] shall be
34 liable for injury caused by a condition of [its] that public entity's
35 property [if] unless the plaintiff establishes that the property was in
36 dangerous condition at the time of the injury, that the injury was
37 proximately caused by the dangerous condition, that the dangerous
38 condition created a reasonably foreseeable risk of the kind of injury
39 which was incurred, and that either:

40 [a.]1. a negligent or wrongful act or omission of an employee of
41 the public entity within the scope of his employment created the
42 dangerous condition; or

43 [b.]2. [a] the public entity or the public employee had actual or
44 constructive notice of the dangerous condition under section 59:4-3
45 a sufficient time prior to the injury to have taken measures to protect
46 against the dangerous condition.

1 b. All claims against a public entity or public employee alleging a
2 dangerous condition of public property or otherwise attributable to a
3 condition of public property shall be made exclusively in accordance
4 with the provisions of this section.

5 Nothing in this section shall be construed to impose liability upon
6 a public entity or a public employee for a dangerous condition of [its]
7 that public entity's property if the action the entity or employee took
8 to protect against the condition or the failure to take such action was
9 not palpably unreasonable.

10 (cf: N.J.S.59:4-2)

11

12 11. N.J.S.59:4-6 is amended to read as follows:

13 59:4-6. Plan or design immunity.

14 a. Neither the public entity nor a public employee is liable under
15 this chapter for an injury caused by the plan or design of public
16 property, [either in its original construction or any improvement
17 thereto,] whether such plan or design be for the original construction
18 of the public property, an improvement or alteration thereto, or the
19 betterment or maintenance thereof, where [such] the plan or design
20 has been approved in advance of the construction, [or] improvement,
21 alteration, betterment or maintenance by the Legislature or the
22 governing body of a public entity or some other body or a public
23 employee [exercising discretionary] acting within the scope of his
24 authority to give such approval or where such plan or design is
25 prepared in conformity with standards previously so approved.

26 b. Neither the public entity nor the public employee shall be liable
27 for the absence of any element or feature from a plan or design if the
28 plan or design has been approved in accordance with subsection a. of
29 this section.

30 c. Any delay in the implementation of a plan or design otherwise
31 immunized by subsection a. of this section cannot itself be the basis for
32 liability.

33 (cf: N.J.S. 9:4-6)

34

35 12. N.J.S.59:4-7 is amended to read as follows:

36 59:4-7. Weather conditions; effect on use of [streets and highways]
37 public property--immunity.

38 a. Neither a public entity nor a public employee is liable for an
39 injury caused [solely] by the effect of a weather condition on [the use
40 of] streets, [and] highways [of weather conditions] or any other public
41 property.

42 b. For purposes of this section, an injury is caused by the effect of
43 a weather condition where but for the weather condition the public

1 property would not be in a dangerous condition within the meaning of
2 N.J.S.59:4-1.

3 (cf: N.J.S.59:4-7)

4

5 13. N.J.S.59:4-8 is amended to read as follows:

6 59:4-8. Condition of unimproved public property--immunity.

7 Neither a public entity nor a public employee is liable for an injury
8 caused by a condition of any unimproved public property, including
9 but not limited to any natural condition of any lake, stream, bay, river
10 or beach or other land and any man-made conditions that serve to
11 enhance or preserve the natural characteristics of the property or that
12 function as an integral part of the property or enhance the use for
13 which the property has been designated by the governmental entity.

14 (cf: N.J.S.59:4-8)

15

16 14. (New section) Immunity for leased property, including
17 property involved in mass transit; jurisdictional agreements.

18 Neither a public entity nor a public employee shall be liable for
19 injury caused by a condition of property that is:

20 a. leased or loaned by the public entity to another person, company
21 or entity for use in the business or service of providing transportation
22 of persons or freight; or

23 b. the subject of a jurisdictional agreement whereby another public
24 entity agrees to maintain the property.

25

26 15. N.J.S.59:5-2 is amended to read as follows:

27 59:5-2. Parole or escape of prisoner; injuries between prisoners.

28 Neither a public entity nor a public employee is liable for:

29 a. An injury resulting from the parole or release of a prisoner or
30 from the terms and conditions of his parole or release or from the
31 revocation of his parole or release.

32 b. any injury caused by:

33 (1) an escaping or escaped prisoner;

34 (2) an escaping or escaped person; or

35 (3) a person resisting arrest; or

36 (4) a prisoner to self or any other prisoner.

37 (cf: N.J.S.59:5-2)

38

39 16. N.J.S.59:6-7 is amended to read as follows:

40 59:6-7. Escape of person confined; injuries between inmates.

41 Neither a public entity nor a public employee is liable for:

42 a. [an] any injury suffered by, or any injury to others caused by an
43 escaping or escaped person who has been confined for mental illness
44 or drug dependence;

45 b. [an] any injury to self or others so confined caused by any

1 person who has been confined for mental illness or drug dependence
2 [upon any other person so confined].

3 (cf: N.J.S.59:6-7)

4

5 17. N.J.S.59:8-7 is amended to read as follows:

6 59:8-7. Place for presentation of claim.

7 A claim for damage or injury arising under this act against the State
8 or any of its employees shall be filed either with (1) the Attorney
9 General or (2) the department or agency involved in the alleged
10 wrongful act or omission and if against a public employee shall also be
11 served upon the public employee. A claim for injury or damages
12 arising under this act against a local public entity or any of its
13 employees shall be filed with that entity and if against its employee
14 shall also be served upon that employee.

15 (cf: N.J.S.59:8-7)

16

17 18. N.J.S.59:8-8 is amended to read as follows:

18 59:8-8. Time for presentation of claims.

19 A claim relating to a cause of action for death or for injury or
20 damage to person or to property shall be presented as provided in this
21 chapter not later than the ninetieth day after accrual of the cause of
22 action. After the expiration of 6 months from the date notice of claim
23 is received, the claimant may file suit in an appropriate court of law.
24 The claimant shall be forever barred from recovering against a public
25 entity or public employee if:

26 a. He failed to file his claim with [the public entity] as required by
27 section 59:8-7 within 90 days of accrual of his claim except as
28 otherwise provided in section 59:8-9; or

29 b. Two years have elapsed since the accrual of the claim; or

30 c. The claimant or his authorized representative entered into a
31 settlement agreement with respect to the claim.

32 Nothing in this section shall prohibit an infant or incompetent
33 person from commencing an action under this act within the time
34 limitations contained herein, after his coming to or being of full age or
35 sane mind.

36 (cf: P.L.1994, c.49, s.4)

37

38 19. N.J.S 59:9-2 is amended to read as follows:

39 59:9-2. Interest and limitations on judgments.

40 a. No interest shall accrue prior to the entry of judgment against a
41 public entity or public employee.

42 b. No judgment shall be granted against a public entity or public
43 employee on the basis of strict liability, implied warranty or products
44 liability.

45 c. No punitive or exemplary damages shall be awarded against a
46 public entity.

1 d. No damages shall be awarded against a public entity or public
2 employee for [pain and suffering] non-economic losses resulting from
3 any injury; provided, however, that this limitation on the recovery of
4 damages for [pain and suffering] non-economic losses shall not apply
5 in cases of significant permanent loss of a bodily function, significant
6 permanent disfigurement or dismemberment where the medical
7 treatment expenses are in excess of[~~\$1,000.00~~] \$2,500.00. For
8 purposes of this section, medical treatment expenses are defined as the
9 reasonable value of services rendered for necessary surgical, medical
10 and dental treatment of the claimant for such injury, sickness or
11 disease, including prosthetic devices and ambulance, hospital or
12 professional nursing service and shall not include the imputed value of
13 services provided by family members.

14 e. If a claimant receives or is entitled to receive benefits for the
15 injuries allegedly incurred from a policy or policies of insurance or any
16 other source other than a joint tortfeasor, such benefits shall be
17 disclosed to the court and the amount thereof which duplicates any
18 benefit contained in the award shall be deducted from any net award
19 against a public entity or public employee recovered by such claimant;
20 provided, however, that nothing in this provision shall be construed to
21 limit the rights of a beneficiary under a life insurance policy. No
22 insurer or other person shall be entitled to bring an action under a
23 subrogation provision in an insurance contract against a public entity
24 or public employee.

25 f. (1) No judgment against one or more public entities or public
26 employees shall be entered, either jointly or severally, in favor of a
27 single claimant for a single occurrence for a total amount greater than
28 \$750,000.00, including attorney's fees, and where an award for
29 non-economic losses is permissible under subsection d. of this section,
30 no such judgment shall include an award for non-economic losses in
31 a total amount greater than \$300,000.00.

32 (2) For purposes of this section:

33 (a) "Non-economic loss" means any loss which has been or will be
34 incurred by the claimant, other than objectively determinable medical
35 treatment expenses as defined in subsection d. of this section, losses
36 of past, present or future wages, damage to property and attorney fees
37 which have been or will be incurred or recovered by the claimant or his
38 attorney;

39 (b) "Occurrence" means an event or accident or series of events or
40 accidents that are closely connected in time and location or in their
41 causation or happening or that arise from the same act or omission or
42 a series of related acts or omissions;

43 (c) "Single claimant" means the injured party and any person who
44 asserts a claim, derivative or otherwise, including but not limited to
45 parents, spouses or anyone who sustained a loss or asserts a claim as
46 a consequence of the injury or death of or damage to the property of

1 the person involved in the occurrence.

2 (3) If a public entity or public employee is covered, other than by
3 a policy of excess insurance, by liability insurance in excess of the
4 limits contained in this section, the limitation contained herein shall not
5 apply, but any judgment entered on a claim for which there is such
6 insurance coverage shall be reduced to the amount of available
7 insurance coverage. For purposes of this section, excess insurance is
8 defined as any policy of insurance which provides liability coverage
9 only after the insured public entity or public employee has incurred a
10 loss greater than \$750,000.00 per claimant per occurrence and only for
11 that part of the loss which exceeds that amount.

12 (4) If a judgment is entered against one or more public entities or
13 public employees which exceeds the limits set forth in subsection f. of
14 this section, the judgment shall be reduced to the appropriate limits.

15 g. The limitation on judgments against public entities or public
16 employees established herein shall be adjusted every five years,
17 beginning 5 years from the effective date of P.L. , c. (C.) (now
18 pending before the Legislature as this bill), in accordance and
19 consistent with the average annual change in the Consumer Price Index
20 for all urban consumers in the New York City and Philadelphia areas
21 as reported by the United States Department of Labor for the
22 preceeding five year period. The amount of the adjustment shall be
23 determined by the Treasurer of the State of New Jersey and shall be
24 certified by him to the Governor. The adjusted limitation shall apply
25 to causes of action accruing after the effective date of the adjustment
26 as determined by the Treasurer.

27 (cf: N.J.S.59:9-2)

28

29 20. N.J.S.59:10-1 is amended to read as follows:

30 59:10-1. Indemnification. [If pursuant to the provisions of
31 P.L.1972, c.48 (C.59:10A-1 et seq.) the Attorney General provides for
32 the defense of an employee or former employee,]Regardless of
33 whether the State has provided for the defense of a State employee,
34 the State [shall] may provide indemnification for the State employee
35 only if, in the opinion of the Attorney General, the acts or omissions
36 committed by the employee were committed within the scope of his
37 employment and did not constitute the commission of a crime, actual
38 fraud, actual malice, willful misconduct or an intentional wrong.

39 Nothing in this section requires the State to pay for punitive or
40 exemplary damages or damages resulting from the commission of a
41 crime. The State may, however, indemnify a State employee for
42 exemplary or punitive damages resulting from the employee's civil
43 violation of State or federal law if, in the opinion of the Attorney
44 General, the acts committed by the State employee upon which the
45 damages are based did not constitute actual fraud, actual malice,

1 willful misconduct, or an intentional wrong.
2 (cf: P.L.1987, c.340, s.1)

3

4 21. N.J.S.59:10-2 is amended to read as follows:

5 59:10-2. Refusal to defend--indemnification. If the Attorney
6 General refuses to provide for the defense or indemnification of a
7 State employee as required by the provisions of P.L.1972, c.48
8 (C.59:10A-1 et seq.), the employee or former employee of the State
9 shall be entitled to indemnification from the State for any bona fide
10 and reasonable settlement or judgment if [he establishes that] in the
11 opinion of the Attorney General the act or omission upon which the
12 claim or judgment was based occurred within the scope of his
13 employment as an employee of the State and [the State fails to
14 establish that he acted or failed] in the opinion of the Attorney General
15 he did not act or fail to act because of actual fraud, actual malice or
16 willful misconduct or did not commit an intentional wrong. A decision
17 of the Attorney General pursuant to this section shall be deemed a final
18 decision of a state officer, appealable as of right to the Appellate
19 Division in accordance with the Rules of Court and shall be reversed
20 only if that decision is arbitrary and capricious.

21 If the State employee establishes that he was entitled to a defense
22 under the provisions of this chapter, the State shall pay or reimburse
23 him [for any bona fide settlement agreements entered into by the
24 employee, and shall pay or reimburse him for any judgments entered
25 against the employee, and shall pay or reimburse him] for all costs of
26 defending the action, including reasonable counsel fees and expenses,
27 together with costs of appeal, if any.

28 Nothing in this section requires the State to pay for punitive or
29 exemplary damages or damages resulting from the commission of a
30 crime. The State may indemnify a State employee for exemplary or
31 punitive damages resulting from the employee's civil violation of State
32 or federal law if, in the opinion of the Attorney General, the acts
33 [committed by the State employee upon which the damages are based]
34 did not constitute actual fraud, actual malice, willful misconduct, or an
35 intentional wrong.

36 (cf: P.L.1987, c.340, s.2)

37

38 22. Section 1 of P.L.1989, c.77 (C.59:10-2.1) is amended to read
39 as follows:

40 1. State officers; reimbursement of costs of defending criminal
41 action related to lawful exercise of official duties on disposition in
42 favor of officer.

43 If any criminal action is instituted against any State officer based
44 upon an act or omission of that officer arising out of and directly
45 related to the [lawful] exercise of his official duties or under color of
46 his authority, and that action is dismissed or results in a final

1 disposition in favor of that officer, the State shall reimburse the officer
2 for the cost of defending the action, including reasonable attorney's
3 fees and costs of trial and appeals, only if, in the opinion of the
4 Attorney General, the conduct was in furtherance of the officer's
5 lawful performance of his duties or the lawful exercise of his authority.
6 A decision of the Attorney General pursuant to this section shall be
7 deemed a final decision of a state officer, appealable as of right to the
8 Appellate Division in accordance with the Rules of Court, and shall be
9 reversed only if the decision is arbitrary or capricious.

10 (cf: P.L.1989, c.77, s.1)

11
12 23. Section 2 of P.L.1989, c.77 (C.59:10-2.2) is amended to read
13 as follows:

14 2. A claim for reimbursement shall be filed within the time and in
15 the manner provided for claims for damage or injury under chapter 8
16 of Title 59 of the New Jersey Statutes, except where the procedure
17 prescribed in that chapter is inconsistent with the nature of a claim
18 resulting from a criminal action. No claim for reimbursement shall be
19 paid unless the claimant first establishes that he complied with the
20 requirements of N.J.S.59:10-3 and allowed the Attorney General the
21 opportunity to arrange for representation at the expense of the State.
22 Furthermore, no claim for reimbursement shall be paid where the
23 Attorney General establishes that representation was offered to the
24 claimant that was not accepted or that the claimant failed to cooperate
25 fully with the Attorney General's defense.

26 (cf: P.L.1989, c.77, s.2)

27
28 24. N.J.S.59:10-4 is amended to read as follows:

29 59:10-4. [Local public entities--authority to indemnify. Local
30 public entities are hereby empowered to indemnify local public
31 employees consistent with the provisions of this act. A local public
32 entity may indemnify an employee of the local public entity for
33 exemplary or punitive damages resulting from the employee's civil
34 violation of State or federal law if, in the opinion of the governing
35 body of the local public entity, the acts committed by the employee
36 upon which the damages are based did not constitute actual fraud,
37 actual malice, willful misconduct or an intentional wrong.] Every
38 public entity other than the State shall provide for the defense and
39 indemnification of its employees for claims arising from acts or
40 omissions of its employees within the scope of the performance of
41 their duties as employees. A public employee seeking a defense or
42 indemnification pursuant to this section shall be subject to the same
43 terms and conditions applicable to State employees except that the
44 governing body of the public entity shall act in the stead of the
45 Attorney General.

46 (cf: P.L.1987, c.340, s.3)

1 25. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill proposes various amendments to clarify the Torts Claims
7 Act and related statutes concerning actions against public employees
8 and public entities. The amendments are designed to strike a more
9 appropriate balance between the interests of persons injured as a result
10 of the negligence of public entities or public employees, the interest of
11 public employees in indemnification for and defense against claims
12 arising from acts or omissions within the scope of their duties, and the
13 general public interest in reasonable and responsible allocation of
14 limited public resources.

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19 Revises the Tort Claims Act and related statutes.