

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE RESOLUTION****No. 146** Session of  
2021

INTRODUCED BY AUMENT AND MENSCH, JUNE 22, 2021

SENATOR BAKER, JUDICIARY, AS AMENDED, JUNE 24, 2021

## A RESOLUTION

1 Directing the Legislative Budget and Finance Committee to  
2 conduct a study of the current limitations on liability under  
3 42 Pa.C.S. ~~§ 8528~~ §§ 8528 AND 8553 and issue a report of its <--  
4 findings and recommendations to the Senate.

5 WHEREAS, In May 1978, the Joint State Government Commission  
6 issued a report of the recommendations of the Task Force on  
7 Sovereign Immunity in light of the Pennsylvania Supreme Court's  
8 holding in *Brown v. Commonwealth*, 453 Pa. 566 (1973), suggesting  
9 that the General Assembly provide for waiver of sovereign  
10 immunity; and

11 WHEREAS, The Task Force on Sovereign Immunity, upon  
12 completing its review, reaffirmed and resolved to retain the  
13 Commonwealth's sovereign immunity and to allow for specific  
14 limited waivers; and

15 WHEREAS, The Task Force on Sovereign Immunity recommended  
16 that the maximum recovery for any plaintiff ~~under the eight~~ <--  
17 ~~mentioned areas of liability~~ be limited to \$250,000 and  
18 that the maximum liability exposure for the Commonwealth be  
19 limited to \$1 million per event or occurrence and recommended

1 that recovery be limited to specific types of damages; and

2 WHEREAS, The Task Force on Sovereign Immunity found both  
3 constitutional authority and strong public policy in favor of  
4 the proposed limitations on liability; and

5 WHEREAS, Among other things, the Task Force on Sovereign  
6 Immunity stated that "in the case of a suit against an  
7 individual or a corporation, recovery in most instances is  
8 effectively limited by the insurance coverage of the defendant;  
9 where the ultimate recovery exceeds insurance coverage, a  
10 further practical limitation exists to the extent of any  
11 defendant's resources. In the case of a sovereign with public  
12 taxing powers, the absence of a statutory limitation on recovery  
13 would make the liability exposure in each individual case  
14 theoretically unlimited"; and

15 WHEREAS, On April 19, 1978, the Task Force on Sovereign  
16 Immunity's recommendations were introduced in the House of  
17 Representatives as House Bill No. 2437, Printer's No. 3135; and

18 WHEREAS, In 1978, the General Assembly enacted Act 330 of  
19 1978 waiving the Commonwealth's sovereign immunity in certain  
20 limited circumstances and limiting its liability under 42  
21 Pa.C.S. §§ 8522 and 8528; and

22 WHEREAS, IN 1980, THE GENERAL ASSEMBLY ENACTED ACT 142 OF <--  
23 1980, WHICH PLACED SIMILAR LIMITATIONS ON TORT LIABILITY FOR  
24 LOCAL GOVERNMENT ENTITIES BY LIMITING THE LIABILITY TO \$500,000  
25 PER EVENT OR OCCURRENCE AND LIMITING RECOVERY TO SPECIFIC TYPES  
26 OF DAMAGES UNDER 42 PA.C.S. §§ 8542 AND 8553; AND

27 WHEREAS, These limits have not been altered since 1978 and in  
28 a series of cases, including *Zauflik v. Pennsbury Sch. Dist.*,  
29 104 A.3d 1096, 1100 (2014) and *Grove v. Port Auth. of Allegheny*  
30 *County*, 218 A.3d 877 (Pa. 2019), the Pennsylvania Supreme Court

1 questioned whether the current statutory limitations on  
2 liability infringe on the constitutional right to a jury trial  
3 guaranteed by section 6 of Article I of the Constitution of  
4 Pennsylvania; and

5 WHEREAS, The Pennsylvania Supreme Court has also affirmed the  
6 greater capacity of the Legislature to evaluate complex  
7 questions of public policy to establish limits on the liability  
8 of local governments and the Commonwealth in negligence cases;  
9 and

10 WHEREAS, Section 11 of Article I of the Constitution of  
11 Pennsylvania vests the Legislature with the sole authority to  
12 waive the Commonwealth's sovereign immunity and with that the  
13 sole authority to determine the scope of any waiver; and

14 WHEREAS, The Senate believes that it is important, having  
15 agreed to waive the Commonwealth's liability in certain limited  
16 circumstances, to revisit and reexamine whether it is in the  
17 interests of this Commonwealth's residents for the limitations  
18 on liability originally enacted, and as amended, to remain in  
19 place or be again altered, taking into account the interests of  
20 litigants, the public and the impact that any change may have  
21 upon the Commonwealth's budget and the services, benefits and  
22 programs the Commonwealth offers and provides to its residents;  
23 therefore be it

24 ~~RESOLVED, That the Senate direct the Legislative Budget and <--~~  
25 ~~Finance Committee to conduct a study of the current limitations~~  
26 ~~on liability under 42 Pa.C.S. § 8528 and issue a report of its~~  
27 ~~findings and recommendations to the Senate; and be it further~~

28 ~~RESOLVED, That the Legislative Budget and Finance Committee's~~  
29 ~~study and report take into account the interests of litigants,~~  
30 ~~the public and the impact any changes may have upon the~~

1 ~~Commonwealth's budget and the services, benefits and programs it~~  
2 ~~offers and provides to its residents; and be it further~~

3 RESOLVED, THAT THE SENATE DIRECT THE LEGISLATIVE BUDGET AND <--  
4 FINANCE COMMITTEE TO CONDUCT A STUDY AND PREPARE A REPORT  
5 CONCERNING THE LIMITATIONS ON LIABILITY UNDER 42 PA.C.S. §§ 8528  
6 AND 8553; AND BE IT FURTHER

7 RESOLVED, THAT THE STUDY INCLUDE ALL OF THE FOLLOWING:

8 (1) AN EXAMINATION OF THE IMPACT ON LITIGANTS, INCLUDING  
9 INFLATION AND OTHER FACTORS AFFECTING THE APPROPRIATENESS OF  
10 THE CURRENT LIMITATIONS ON LIABILITY.

11 (2) AN EXAMINATION OF THE IMPACT OF CHANGING THE  
12 LIMITATIONS ON LIABILITY ON STATE AND LOCAL GOVERNMENT  
13 ENTITIES, INCLUDING THE ABILITY OF STATE AND LOCAL GOVERNMENT  
14 ENTITIES TO RAISE REVENUES AND PROVIDE SERVICES, BENEFITS AND  
15 PROGRAMS.

16 (3) A REVIEW OF THE FACTORS CONTAINED IN THE JOINT STATE  
17 GOVERNMENT COMMISSION'S 1978 REPORT ON THE RECOMMENDATIONS OF  
18 THE TASK FORCE ON SOVEREIGN IMMUNITY AS THEY RELATE  
19 SPECIFICALLY TO CAPS ON RECOVERY AND WAIVERS OF SOVEREIGN AND  
20 GOVERNMENTAL IMMUNITY.

21 (4) A CONSIDERATION OF ANY OTHER FACTORS THAT WILL ALLOW  
22 THE GENERAL ASSEMBLY TO EVALUATE AND DETERMINE WHETHER THE  
23 LIMITATIONS ON LIABILITY SHOULD BE INCREASED;

24 AND BE IT FURTHER

25 RESOLVED, That the Legislative Budget and Finance Committee  
26 report its findings to the General Assembly no later than ~~June~~ <--  
27 APRIL 30, 2022. <--