

STORAGE NAME: HB 2045a.cjc
DATE: April 23, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE AND CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 2045

RELATING TO: Joint Legislative Claims Committee

SPONSOR(S): Committee on Civil Justice and Claims and Rep. Warner

STATUTE(S) AFFECTED: s. 11.80, F.S.

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 8 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 2045 creates the Joint Legislative Claims Committee (JLCC) consisting of four members of the Senate and four members of the House of Representatives. The Senate President appoints the chair in odd years and the vice chair in even years. The House Speaker appoints the chair in even years and the vice chair in odd years.

The power, and oversight authority of the JLCC conform to existing House and Senate claim bill rules. HB 2945 provides the JLCC and the Special Master with authority to inspect books, records, papers, documents (including confidential information), data, operation and physical plant of any public agency of the state. The JLCC and the Special Master are vested with subpoena power for witnesses, letters or other documentary evidence, including confidential information. The JLCC members or the Special Master are authorized to administer oaths to witnesses summoned to testify.

HB 2045 provides that the Legislature is authorized to fine or imprison for the duration of the regular session any person not a member of the Legislature who is found guilty of disorderly or contemptuous conduct in the presence of the committee or Special Master or found guilty of a refusal to obey a lawful summons.

The Committee or Special Master is authorized to institute an action in circuit court against a subpoenaed witness who fails to testify or submit evidence before the committee or special master during the interim. Witnesses refusing to testify or submit evidence at the order of the circuit court are subject to contempt charges.

HB 2045 has minimal fiscal impact associated with the creation of the Joint Legislative Committee on Claims.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Prior to 1833, Florida's sovereign immunity was based on England's Common Law which stated that the king and his treasure were immune from suit by his subjects in his own courts. In other words, "the king could do no wrong." Then, in 1833, the Legislative Council of Florida enacted the first claim bill that specifically waived sovereign immunity. The Legislature has since created legislation waiving sovereign immunity under specific circumstances. Thus, in those circumstances, where a private individual would be liable for a tortious act, the state is also be liable.¹ Judgments for torts in excess of the statutory limit of \$100,000 per person \$200,000 per incident are processed through the Legislature according to the rules and regulations of the claim bills procedures.

In the past, both the House of Representatives and the Senate have maintained individual rules and procedures for Legislative claim bills. A claim bill, also known as a relief bill is

[a] legislative measure that directs the Comptroller of Florida, or, if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation. Such obligations usually arise from the negligence of officers or employees of a state or local governmental agency. The amount awarded is based on the Legislature's concept of fair treatment of a person who has suffered injury or damages, but who is without a judicial remedy or who is not otherwise legally compensable."²

Claim bills fall into two general categories, excess judgment tort claims or equitable claims.

(1) excess judgment tort claims are claims filed to recover the unsatisfied difference between the statutory dollar limits collectable and the full amount of the judgment against a governmental entity; and

(2) equitable claims are claims based on a non-tort final judgment or "moral" claims for which no legal cause of action exists.

House Procedures and Rules for Claim Bills. Claimants seeking to recover monetary damages through the Legislature must obtain both a House and Senate sponsor for their claim bills. Those bills originating in the House are referred to the Committee on Claims and assigned to a House Special Master. There is no deadline for filing claim bills. Upon receiving all relevant claim's information, the Special Master conducts an evidentiary hearing at which discovery may be permitted. These hearings are usually attended by the appointed Special Masters from the House and Senate so that one fact-finding hearing is adequate to serve the needs of both houses. All parties and the bill's sponsor are given two days prior notice of a scheduled evidentiary hearing. At the conclusion of

¹ Florida Const. Art. X, s. 13 (revised 1968). The Constitution of the State of Florida grants the Legislature the authority to make provisions ". . . by general law for bringing suit against the state as to all liabilities existing or hereafter originating."

² Kahn D. Stephen, Legislative Claims Bills A Practical Guide to a Potent(ial) Remedy, The Florida Bar Journal, April 1988.

all proceedings, the Special Master prepares a final report and submits it to the Committee on Claims. Written objections to the final report are presented to the Committee during a scheduled hearing.

Parties or their attorneys may present summaries and arguments during the Committee hearing, but no additional testimony or evidence is accepted. Claimants represented by counsel must furnish the Committee a copy of a verified statement of the fee arrangement including the actual cost of perfecting the claim. The Committee is not bound by any stipulations entered into by the parties. Before filing a claim bill with the Legislature, claimants must exhaust all legal remedies. Furthermore, any claim currently in litigation will be postponed for a hearing until all other legal remedies have been exhausted.

Senate Procedures and Rules for Claim Bills. All Claim bills must be filed with the Secretary of the Senate by August 1, to be considered for the next regular session. Claimants must obtain both a House sponsor and a Senate sponsor for a claim bill. A House companion bill to a Senate bill must also be filed by August 1. Late filed claim bills originating in the Senate or timely filed Senate bills with a late filed House companion bill are referred to the Committee on Rules and Calendar for an emergency hearing. Should the Committee determine that an emergency situation exists, late filed claim bills or House companion bills will be presented to the Senate for a vote. Claim bills receiving a two-thirds vote by the Senate members present will be considered in the next regular session.

The Senate President designates committees of reference and assigns a Special Master to hear claim bills requiring de novo hearings. The Special Master gives reasonable notice of scheduled hearings to all interested parties and bill sponsors. The Special Master's numerous responsibilities include swearing-in witnesses, allowing discovery and collecting evidence. The Special Master also prepares and submits a signed final claim bill report by December 1. Should questions arise from the final report, the Special Master is available to explain the report to the committees of reference and the Senate. The Special Master, the Senate, or its committees are not bound by stipulations entered into by the parties. Claimants must exhaust all legal remedies before filing a claim bill. Furthermore, any claim currently in litigation will be postponed for a hearing until all other legal remedies have been exhausted.

In addition to the rules of each house of the Legislature, the Florida Statutes also regulate recovery under claims bills.

Section 768.28, Florida Statutes (The Florida Tort Act of 1973). Section 768.28, F.S., waives sovereign immunity for torts committed by employees of a state agency or subdivision while acting within the scope of their office or employment. However, sovereign immunity is waived only under circumstances in which the state or any state agency or subdivision, if a private person, would be liable. State agencies or subdivisions include the Executive departments, the Legislature, and the Judicial branch (including state public defenders). Also included in the definition are independent establishments of the state, counties and municipalities, and corporations primarily acting as instrumentalities or agencies of the state, counties or municipalities (including the Spaceport Florida Authority).

Claims against the state or a state agency must be filed within four years of the liable incident. Moreover, the state and its political subdivisions will pay to claimants judgments up to \$100,000 per person or \$200,000 per incident. Any claimant wishing to recover monetary damages above the statutory limitations must petition the Legislature. If claimants are represented by counsel, those attorneys may not charge, demand, receive or collect fees in excess of 25 percent of any judgment or settlement.

Local Claim Bills. Local claim bills are those brought against counties, municipalities, sheriffs, school boards or local districts. Local claim bills follow the same procedure as general claim bills with one exception: claimants must provide special notice. At least 30 days prior to filing a local claim bill, a claimant must advertise in each affected county or counties his intent to seek relief through the Legislature. Claimants may advertise in local newspapers or post such notice in three public places if no local newspaper exists. Notice must include the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund. (Chapter 11, F.S.)

B. EFFECT OF PROPOSED CHANGES:

This proposed committee bill would create the Joint Legislative Claims Committee (JLCC). Establishing the Joint Legislative Claims Committee under Chapter 11, F.S., would maintain the precedent set by the Legislature when creating joint standing committees. Although the powers, regulations and oversight authority of the Committee is almost identical to existing House and Senate claim bills rules, the bill would provide the Committee and the Special Master with many of the same powers. This change would allow either the Committee or the Special Master to conduct evidentiary hearings.

The bill would create an eight member Joint Legislative Claims Committee. The committee would consist of four members from the Senate and four members from the House of Representatives. The Speaker of the House and the President of the Senate would appointment at least one member from the minority party. The Senate President would appoint the Chair in odd years and the vice chair in even years. The House Speaker would appoint the Chair in even years and the vice chair in the years.

The duties and powers of Special Masters provided by the bill overlap with the current duties and powers of Special Masters. However, the bill does provide additional powers and duties to the Joint Legislative Claims Committee. The JLCC or Special Master may inspect the books, records, papers, documents (including confidential information), data, operation and physical plant of any public agency located in the state.

The JLCC or the appointed Special master would have the authority to compel witnesses to be present at a hearing through subpoena or other necessary process. The JLCC or the Special Master could administer oaths and affirmations to witnesses testifying at the committee's or at a special master's request. In addition, the JLCC or the Special Master could subpoena duces tecum the production of any books, letters or other documentary evidence, including confidential information.

The Legislature would have the authority to fine or imprison any person not a member of the Legislature who is found guilty of disorderly or contemptuous conduct in the presence of the committee or Special Master or found guilty of a refusal to obey the

lawful summons. The imprisonment could not extend beyond the final adjournment of the session. This provision restates the Legislature's existing authority relating to its fine and imprisonment power.

The JLCC or Special Master could file a complaint with any circuit court against a subpoenaed witness failing to testify or submit evidence before the JLCC or special master during the interim. Witnesses refusing to testify or submit evidence at the order of the circuit court shall be held in contempt of court.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No. However, this bill would create a new system for processing claim bills and the Joint Legislative Claims Committee.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

NA.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

NA.

b. Does the bill require or authorize an increase in any fees?

NA.

c. Does the bill reduce total taxes, both rates and revenues?

NA.

d. Does the bill reduce total fees, both rates and revenues?

NA.

e. Does the bill authorize any fee or tax increase by any local government?

NA.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

No.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION RESEARCH:

Section 1. *Creating s. 11.80 (1), F.S.*, Joint Legislative Claims Committee (JLCC). An eight member Joint Legislative Claims Committee is created. The committee shall consist of four Senate members and four House members. The Speaker of the House and the President of the Senate shall appointment at least one member from the minority party. The Senate President shall appoint the Chair in the odd years and the vice chair in the even years. The House Speaker shall appoint the Chair in the even years and the vice chair in the odd years.

Creating s. 11.80 (2), F.S., Regulating the Joint Legislative Claims Committee. The JLCC shall be governed by the joint rules of the Senate and House of Representatives.

Section 2. *Creating s. 11.81, F.S.*, Powers of the Joint Legislative Claims Committee (JLCC).

Creating s. 11.81, F.S. The JLCC or the Special Master may invite public officials, employees and private individuals to submit information at scheduled hearings.

Creating s. 11.81(2), F.S. The JLCC or Special Master may inspect the books, records, papers, documents, data, operation and physical plant of any public agency located in the state. The JLCC or Special Master may also inspect any confidential information.

Creating s. 11.81 (3), F.S. The JLCC or the Special Master may compel witnesses to be present at a hearing through subpoena or other necessary process to compel a witnesses attendance. The JLCC or the Special Master shall administer oaths and affirmations to witnesses testifying at the JLCC or special master's request.

Creating s. 11.81 (3)(b), F.S. The JLCC or the Special Master may subpoena duces tecum the production of any books, letters or other documentary evidence, including confidential information.

Creating s. 11.81 (3)(c), F.S. The Legislature may fine or imprison any person not a member of the Legislature who is found guilty of disorderly or contemptuous conduct in the presence of the JLCC or Special Master or guilty of a refusal to obey the lawful summons. The imprisonment may not extend beyond the final adjournment of the session.

Creating s. 11.81 (3)(d), F.S. The sheriffs in the several counties or a duly constituted agent of the JLCC may make such service and execute all process or orders when required by the JLCC or Special Master.

Creating s. 11.81 (4)(a), F.S. Anyone wilfully affirming or swearing falsely before the JLCC or Special Master is guilty of false swearing, a second degree felony.

Creating s. 11.81 (4)(b), F.S. The JLCC or Special Master may file a complaint with any circuit court against a subpoenaed witnesses who fails to testify or submit evidence before the JLCC or special master during the interim. Witnesses refusing to testify or submit evidence at the order of the circuit court shall be held in contempt of court.

Creating s. 11.81 (5), F.S. Witnesses summoned to appear before the JLCC or Special Master may be reimbursed for travel expenses and per diem.

Section 3. Providing an effective date. The act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Information not readily available.

2. Recurring Effects:

Information not readily available.

3. Long Run Effects Other Than Normal Growth:

Information not readily available

4. Total Revenues and Expenditures:

Information not readily available

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None. Although, the proposed claim bills process would reduce the amount of information required by parties and their attorneys if so represented

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Joint Legislative Claims Committee would require staffing and start up costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

This section uses a question format to stimulate debate about the creation of a Joint Legislative Claims Committee.

Will the State of Florida derive increased benefits from a Joint Legislative Claim Bills process?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Civil Justice and Claims Committee adopted two amendments to HB 2045 in the April 4, 1997, committee meeting.

- ❶ The membership of the Joint Legislative Claims Committee (JLCC) would be increased from eight Legislators to 10.
- ❷ The House Speaker and the Senate President would appoint at least two members from the minority party

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

Bridget Edmond