

STORAGE NAME: HCR 2047.cjc
DATE: April 18, 1997

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

BILL #: HCR 2047

RELATING TO: Concurrent resolution for claim bills

SPONSOR(S): The Committee on Civil Justice and Claims

STATUTE(S) AFFECTED: None

COMPANION BILL(S): None

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

(1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 7 NAYS 0

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I. SUMMARY:

The concurrent resolution would create Joint Rule Eight, establishing a unified system for processing claim bills. The resolution would also create the Joint Legislative Committee on Claims (JLCC). The JLCC would consist of four Senate members and four House members. The House Speaker and the Senate President would appoint 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 odd years. The concurrent resolution would direct the Legislature to appropriate funds for the operation of the JLCC.

Claim bills would require one sponsor from either house of the Legislature and companion bills would not be required. There would be no deadline for filing claim bills. All claim bills would be referred to the Joint Legislative Committee on Claims (JLCC).

The concurrent resolution would also allow claim bill sponsors to provide the JLCC with a draft of the bill prior to filing it. The JLCC would determine whether a Special Master should be appointed or whether the parties would bear the cost of hiring a Special Master.

The Special Master would have the authority to control all proceedings related to the special master hearing. The Special Master would submit a final report to the JLCC within 15 days after concluding all proceedings. The resolution would direct the JLCC or the Special Master to accept any underlying judgment, appellate order, or final administrative order related to excess judgment claims unless the opposing party can show cause as to why the judgment or order should be rejected. Negotiated or stipulated claim bills would not be reviewed by a Special Master.

The bill would have some fiscal impact associated with the creation of the Joint Legislative Committee on Claims.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida's sovereign immunity is based on English common law which held 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." 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. This legislation provides that where a private individual would be liable for a tortious act, the state is also 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 separate rules and procedures for Legislative claim bills. A claim bill has been described as:

[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 claims are claims filed to recover the difference between the statutory caps on liability and the full amount of the judgment against a governmental entity; and

(2) equitable claims are claims based on non-tort final judgments 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 a House and Senate sponsor for their claim bills. 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 information, the Special Master conducts an evidentiary hearing. These hearings are usually attended by the Special Masters from both houses of the Legislature to avoid duplicative efforts. The parties and the bill's sponsor are given two days prior notice of a scheduled evidentiary hearing. At the conclusion of all proceedings, the Special Master prepares a final report and submits it to the Committee

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.

on Claims. Both parties may present written objections to the final report to the Committee on Claims.

Parties may present summaries and arguments during the Committee hearing, but no additional testimony or evidence is accepted. Claimants who are represented by counsel must furnish the Committee with 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 undergoing review by the courts will be postponed until 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 and 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, the late filed claim bill or House companion bill 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 those claim bills which require de novo hearings. The Special Master gives reasonable notice of scheduled hearings to all interested parties and bill sponsors. The Special Master's responsibilities include swearing-in witnesses, allowing discovery and collecting evidence. The Special Master prepares and submits a signed final claim bill report by December 1. 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 being litigated will be postponed 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 the state, or a state agency or subdivision, while acting within the scope of their office or employment. However, sovereign immunity is waived only under circumstances where a private person would be liable. Claims against the state or a state agency must be filed within four years of the incident from which the claims arose. The state and its political subdivisions will pay judgments of 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. Persons filing local claim bills must follow the same procedure as those filing general claim bills. However, claimants filing local

claims bills must provide special notice. This is generally done by publishing an advertisement in a local newspaper.

B. EFFECT OF PROPOSED CHANGES:

The concurrent resolution would create Joint Rule Eight, establishing a unified system for processing claim bills. The resolution would also create the Joint Legislative Committee on Claims (JLCC). It would consist of four Senate members and four House members. The House Speaker and the Senate President would appointment at least one member from the minority party. Of the four appointed House members, two would also serve on the committee with jurisdiction over civil tort and the remaining two would also serve on a fiscal committee. Of the four appointed Senate members, two would also serve on the committee with jurisdiction over civil tort and the remaining two would also serve on a fiscal committee. 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 odd years.

The concurrent resolution would simplify the claims process by requiring just one sponsor from either house of the Legislature. This arrangement would eliminate the need to file companion bills. The concurrent resolution would not impose any deadline for filing claim bills.

All filed claim bills would be referred to the JLCC. To make the process more efficient, sponsors could provide the JLCC with a draft of the claim bill prior to its actual filing. The JLCC would determine whether a Special Master should be appointed. Claim bills would not be automatically assigned to a Special Master or referred by the Senate President. In addition, the JLCC could require the parties involved to obtain a private Special Master and bear all associated costs. If appointed, the Special Master would conduct the proceedings based on the draft legislation; however, the JLCC would not act upon the claim bill until filed and referred to the JLCC.

Claim bills reported favorably from the JLCC would be reported to the house in which they originated. Claim bills reported unfavorably would be treated in accordance with the rules of the house in which the bill was filed. Except as inconsistent with the joint rule, the rules of the house in which the claim bill was filed would govern all proceedings involving the claim bills.

The Legislature would appropriate funds for the operation of the JLCC. In addition, the JLCC would be allowed to utilize House and Senate staff.

The Special Master would have powers and duties similar to those currently provided. For example, the Special Master could conduct prehearing conferences and management conferences; allow discovery if deemed beneficial to the consideration of the claim bill; administer oaths to witnesses; admit or reject evidence; record, transcribe or video record the proceedings; accept tangible and documentary evidence; and issue subpoenas.

The resolution directs the JLCC or the Special Master to accept any underlying judgment, appellate order or final administrative order in excess judgment claims unless the opposing party shows cause as to why the judgment or order should be rejected. A

Special Master would not review negotiated or stipulated claim bills in which the amount of compensation is agreed upon by the parties involved.

The Special Master would be required to submit a final report to the JLCC within 15 days after concluding all proceedings. The final report would contain findings of fact, conclusions of law, collateral sources of recovery subrogation rights of any party or entity; proof of the exhaustion of all judicial and administrative remedies and any attorney's fees and costs, if appropriate.

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.

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

No. The duties and responsibilities stated in the concurrent resolution are already being performed by House and Senate staff. This resolution would make the claims bills process more efficient and simple.

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

No.

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

(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?

Yes. The State of Florida would be required to appropriate funds for the new JLCC.

4. Individual Freedom:

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

Yes. The simplified claim bills procedure would make the process more accessible for affected parties or organizations.

- 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?

NA.

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

NA.

- 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:

Joint Rule Eight. Section 8.1 - Filing Claim Bills

S. 8.1 (1) - Establishes the procedure for considering claim bills

S. 8.1 (2) - Claim bills shall require one sponsor from either house of the Legislature. Companion bills are not required.

S. 8.1 (3) - Claim bills originating in the Senate may be filed with the Secretary of the Senate and claim bills originating in the House may be filed with the Clerk of the House.

S. 8.1 (4) - There is no filing deadline for claim bills. Claim bills may be filed at any time during a regular or special session of the Legislature or during the interim.

S. 8.1 (5) - All filed claim bills are referred to the Joint Legislative Committee on Claims (JLCC) in accordance with the rules of the house in which the bill is filed.

S. 8.1 (6) - Claim bill sponsors may provide the Joint Legislative Committee on Claims (JLCC) with a draft of the claim bill prior to filing the bill. The JLCC shall determine whether a Special Master will be appointed to conduct further claim bill proceedings. If appointed, the Special Master may conduct the proceedings based on the draft legislation; however, the JLCC shall not act upon the claim until the bill is filed and referred to the JLCC.

S. 8.1 (7) - Claim bills reported favorably from the JLCC shall be reported to the house in which they originated.

S. 8.1 (8) - Claim bills reported unfavorably shall be treated in accordance with the rules of the house in which the claim bill was filed.

S. 8.1 (10) - Except as inconsistent with this joint rule, the rules of the house in which the claim bill is filed shall govern all proceedings involving the claim bills.

S. 8.2 - Appointment of members of the JLCC

S. 8.2 (1) - 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.

S. 8.2 (2) - Of the four appointed House members, two shall also serve on the committee with jurisdiction over civil tort and the remaining two shall also serve on a fiscal committee.

S. 8.2 (3) - Of the four appointed Senate members, two shall also serve on the committee with jurisdiction over civil tort and the remaining two shall also serve on a fiscal committee.

S. 8.2 (4) - The JLCC shall meet at times and places necessary to perform its given functions.

S. 8.2 (5) - Action by a majority vote of the membership of the joint committee shall control and be conclusive on any matter considered by the JLCC.

S. 8.2 (6) - The Senate President shall appoint the Chair in odd years and the vice chair in even years. The House Speaker shall appoint the Chair in even years and the vice chair in odd years.

S. 8.2 (7) - The Legislature shall appropriate funds to operate the JLCC. In addition, the JLCC may utilize the services of House and Senate staff.

S. 8.3 - Hearings

S. 8.3 (1) - The JLCC shall determine whether a Special Master shall be appointed to hear a bill based on the nature and complexity of the bill.

S. 8.3 (2) - Negotiated or stipulated claim bills in which the amount of compensation is agreed upon by the parties involved shall not be reviewed by a Special Master.

S. 8.3 (3) - The JLCC or the Special Master shall accept any underlying judgment, appellate order or a final administrative order for excess judgment claims unless the opposing party can show cause as to why the judgment or order should be rejected.

S. 8.3 (4) - The JLCC may require the parties involved to incur the cost of a Special Master.

S. 8.3 (5)(a-h) - The Special Master shall have the authority to control all proceedings before him including the authority to conduct prehearing conferences and management conferences; allow discovery if deemed beneficial to the consideration of the claim bill; administer oaths to witnesses; admit or reject evidence; record, transcribe or video record the proceedings; accept tangible and documentary evidence; issue subpoenas; and take other steps reasonably necessary to conduct a thorough and orderly investigation of the basis for the claim bill. The Florida Rules of Civil Procedure and the Florida Evidence Code shall be instructive in all proceedings before a Special Master. The Special Master shall provide at least 15 days prior notice of a scheduled hearing.

S. 8.3 (6) - The Special Master shall submit a final report to the JLCC. The final report shall contain findings of fact, conclusions of law, collateral sources of recovery subrogation rights of any party or entity; proof of the exhaustion of all

judicial and administrative remedies and any attorney's fees and costs, if appropriate.

S. 8.3 (7) - The claimant, if represented by counsel, shall furnish the JLCC or the Special Master with a verified statement of the attorney's fee arrangements including the actual costs of perfecting the claim.

S. 8.3 (8) - The Special Master shall submit a final report to the JLCC within 15 days after the conclusion of the proceedings before the Special Master. Interested parties shall also be provided a copy of the report. The Special Master shall be available to explain the report to the committee, the staff and interested parties.

S. 8.3 (9) - Interested parties may file written objections to the final report with the JLCC within 10 days of service of the final report.

S. 8.3 (10) - A Special Master shall not initiate or consider any ex parte communication relative to the merits of a claim by any party or person who would have a substantial interest in the decision of the Special Master.

S. 8.3 (11) - The JLCC shall hear arguments by interested parties at any scheduled hearing; however, not additional testimony or evidence shall be introduced.

S. 8.4 - Stipulations and Agreements. The Special Masters, House of Representatives, Senate or any members or committees are not bound by stipulations entered into by the parties.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

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

See fiscal comments.

D. FISCAL COMMENTS:

The Legislature would be required to appropriate funds for the Joint Legislative Committee on Claims. However, the House and Senate staff already performing these functions could continue to do so under the new committee. Overall, the state, local governments and the private sector would benefit from having a centralized claim bills procedure.

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 concurrent resolution eight, establishing Joint Rule Eight.

Will the State of Florida, local governments and the private sector derive increased benefits from a Joint Legislative Claim Bills process?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Civil Justice and Claims Committee adopted 10 amendments to the concurrent resolution at the April 4, 1997 committee meeting.

- ① The membership of the Joint Legislative Claims Committee (JLCC) was increased from eight Legislators to 10.
- ② The House Speaker and the Senate President shall appoint at least two persons from the minority party
- ③ Three House members of the JLCC shall also serve on a committee with jurisdiction over civil tort law and two members shall also serve on a fiscal committee. Three Senate members shall also serve on a committee with jurisdiction over civil tort law and two members shall also serve on a fiscal committee.
- ④ Interested parties shall be notified of the final report by certified mail, return receipt.
- ⑤ Attorneys fees shall be limited to 25% of a judgment or settlement pursuant to s. 768.28(8), F.S.
- ⑥ Language referring to stipulations concerning awards and attorneys fees was moved to a different section of the bill.
- ⑦ The section referenced above was amended to exclude attorneys fees from the stipulations which are not binding on the Special Master, House, Senate members, or committees.

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- ⑧ The language referring to stipulations concerning awards and attorneys fees was stricken.
- ⑨ The JLCC can permit additional testimony at committee hearings.
- ⑩ The JLCC or Special Master will accept any underlying judgment, appellate order or final administrative order in excess judgment claims unless the opposing party shows cause as to why the judgment or order should be rejected or modified.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

Richard Hixson