

STORAGE NAME: HB 2119b.cjc
DATE: October 30, 1997

****CARRIED OVER****
****SEE FINAL ACTION STATUS SECTION****

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

BILL #: HB 2119
RELATING TO: Waiver of Sovereign Immunity in Tort Actions
SPONSOR(S): Committee on Civil Justice and Claims
STATUTE(S) AFFECTED: s. 768.28, F.S.
COMPANION BILL(S): None

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

- (1) CIVIL JUSTICE & CLAIMS YEAS 7 NAYS 1
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 2119 was carried over to the 1998 session pursuant to House Rule 96.

II. SUMMARY:

HB 2119 would amend the claim bill provisions of s. 768.28, F.S. The bill would authorize local government entities to settle certain claims. It would permit local governments to agree to settlements which exceed insurance coverage and statutory caps on liability. However, this power to settle would only apply to claims based on judgments or jury verdicts. Furthermore, it would be limited by the amount of the judgment or verdict. Local government units that agree to such settlements would not be deemed to have established any binding precedent, to have increased their liability, or to have waived any defense or immunity.

HB 2119 should not have a fiscal impact. The bill would reduce the number of claim bills submitted to the Legislature.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. **Sovereign Immunity** - Sovereign immunity is a doctrine which prohibits suits against the government without the government's consent. The Florida Constitution addresses sovereign immunity at Article X, Section 13. This provision allows the state to waive its immunity through an enactment of general law. Sovereign immunity extends to all subdivisions of the state, including counties and school boards. Municipalities, while not considered subdivisions of the state, have been granted limited immunity by the courts.
2. **Section 768.28, Florida Statutes** - In 1973, the Legislature enacted s. 768.28, F.S. This section allows individuals to sue state government, subdivisions of the state, and municipalities. According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of th[e] state" Notwithstanding the enactment of s. 768.28, F.S., certain remnants of sovereign immunity remain in effect:
 - a. **Monetary Limits on Recovery** - Section 768.28, F.S., imposes a \$100,000 limit on the government's liability to a single person and a \$200,000 limit on all claims arising out of a single incident.
 - (1) **No Limit on Judgements** - The recovery caps contained in s. 768.28, F.S., do not preclude plaintiffs from obtaining judgments which exceed the recovery caps. However, plaintiffs cannot force government entities to pay damages which exceed the recovery cap.
 - (2) **Inflationary Pressures** - The current \$100,000/\$200,000 limits on liability have been in effect since 1981, when the Legislature raised the original \$50,000/ \$100,000 limits on liability. Since then, inflation has significantly eroded the value of a \$100,000 claim. The value of a \$100,000 claim, in 1973 dollars, has been discounted to about \$27,550, in 1996 dollars.
 - b. **Exceptions to the State's Immunity Waiver** - The courts have recognized two exceptions to the state's waiver of sovereign immunity: First, where the state is involved in a discretionary or planning-level function, courts have refused to find liability. *Department of Health and Rehabilitative Services v. Yamuni*, 529 So.2d 258 (Fla. 1988). Discretionary functions include areas such as licensing, legislating, judicial decisionmaking, permitting, inspecting, designing public improvements, and other types of high-level planning. Second, where the government owes a general duty to all citizens, but no particular duty to the injured party, sovereign immunity remains in effect. This second exception to waiver is known as the "public duty doctrine."
 - c. **Time Restriction** - Section 11.065, F.S., provides a time limit for the filing of claims bills. Such bills must be filed within 4 years "after the cause for relief accrued."

2. **The Claims Process** - Claim bills provide compensation for people injured by governmental acts or omissions. They direct the government to pay funds to satisfy legal or moral obligations. The claims process provides a remedy for people whose claims are limited by the monetary caps present within s. 768.28, F.S. The claims process also provides some recourse for persons whose claims are beyond judicial remedy.
 - a. **Claims Statistics** - Approximately 27 claim bills are filed each year. Approximately half of these are brought against local government units. Between 1990 and 1996, half of all claims bills brought against local government units were for \$500,000 or less. Historically, the Florida Legislature has enacted about 25 percent of all claim bills brought against state and local government entities.
 - b. **Types of Claims Bills** - Most claim bills fall within two broad categories:
 - (1) **Excess Judgement Claims** - Courts sometimes enter judgment against a government entity for an amount exceeding the \$100,000/\$200,000 limits imposed by s. 768.28, F.S. To recover damages which exceed the cap, individuals must seek redress with the Legislature. Most claim bills fall within this category.
 - (2) **Equitable Claims** - Equitable claims are claims which relate to the moral obligations of the state, where no remedy exists at law.

B. EFFECT OF PROPOSED CHANGES:

1. **Would Permit Local Governments to Settle** - HB 2119 would give local government units the ability to settle claims which exceed both the statutory caps on liability and insurance coverage. Currently, local government units only have the authority to settle claims up to the limits of insurance coverage. Settlements which exceed insurance coverage must be dealt with through the claims process. The settlement power conferred by HB 2119 would only apply to claims based on judgments or jury verdicts. It would also be limited by the amount of the judgment or verdict.
 - a. **Enhanced Local Autonomy** - The state constitution, at Article VIII, Sections 1(g), 1(f), and 2(b), accords broad home rule power to local governments. HB 2119 would enhance this power by allowing local governments to settle certain claims without legislative intervention. HB 2119 would move some decisionmaking from the state to the local level.
 - b. **Speeded Recovery of Damages** - HB 2119 could enable persons, who are injured through the acts or omissions of local governments, to recover damages in a more expeditious manner. The claims process sometimes takes several years, during which the injured party may go uncompensated.
2. **Would Not Increase Liability** - HB 2119 provides that local government units would not be deemed to have established any binding precedent, to have increased their liability limits, or to have waived any defense or immunity, by agreeing to settle above the statutory caps and in amounts which exceed insurance coverage.

3. **Could Reduce the Number of Claim Bills** - Because HB 2119 would allow local governments to settle, it could decrease the number of claim bills brought before the Legislature. A reduction in the number of claim bills would allow the Legislature to devote more time to issues affecting the state as a whole.

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?

Yes. HB 2119 would provide local governments with increased ability to settle claims.

- (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:

- (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?

No.

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

No.

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

No.

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

No.

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

No.

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?

NA.

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?

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:

Section 1: Amends s. 768.28, F.S.; provides that local government units may settle certain claims; establishes that local government units shall not establish precedent, increase liability, or waive any defense or immunity, by agreeing to settle certain claims.

Section 2: Provides an effective date.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

HB 2119 could reduce the number of claims bills brought before the Legislature. The bill would eliminate the need to file a claims bill in those cases where the settlement is based upon a jury verdict or judgment and where the local government entity agrees to the claim.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Because HB 2119 would not require local governments to settle any claims, it would not produce a direct fiscal impact.

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:

HB 2119 would enable certain claimants to recover damages without resorting to the claims process.

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

None.

D. FISCAL COMMENTS:

None.

V. 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 authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill would 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.

VI. COMMENTS:

1. **Key Issues** - This subsection uses a question format to stimulate debate about the bill under review.

a. **Question Presented** - *Should the State of Florida give local government units greater discretion to settle claims?*

b. Other Policy Considerations:

1. How does HB 2119 correlate with the principles of home rule and local autonomy?
2. Is Legislative action necessary in cases where both the local government entity and the claimant have agreed to settle? Should settlement decisions be made at the state or local level?
3. Should any limits be placed on the ability local governments to settle claims based upon jury verdicts or judgments? Could an unlimited ability to settle expose public funds to unwarranted infringement?

2. Policy Considerations Affecting Sovereign Immunity:

a. Some Rationales Supporting Sovereign Immunity:

- (1) **Protects Public Funds** - Sovereign immunity embraces the principle that state revenues should be screened from excessive or precipitous encroachments.
- (2) **Enhances Separation of Powers** - Sovereign immunity insulates the Legislature, the body with primary authority over the state's budget, from judicial directives to disburse funds.
- (3) **Preserves Official Discretion** - Sovereign immunity allows government officials to engage in flexible decisionmaking without risking liability.
- (4) **Ensures Efficient Administration** - The daily workings of government could be disrupted if the government were forced to operate under the constant threat of suit.

b. Some Criticisms of Sovereign Immunity:

- (1) **Eliminates Individual Remedies** - Sovereign immunity leaves those who have been injured by government misconduct without a viable remedy.
- (2) **Fails to Deter Wrongful Conduct** - The threat of suit may discourage wrongful conduct by government officials and public employees.
- (3) **Limits Public Knowledge of Government Improprieties** - Because sovereign immunity prevents courts from hearing certain grievances, the public may not learn about some government errors. Thus, sovereign immunity may enable some public officials to avoid accountability for their actions.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the April 10, 1997 meeting of the Committee on Civil Justice and Claims, the committee adopted two amendments to HB 2119.. The first removes the original bill's definition of "local government units." The second amendment accords settlement authority to "subdivisions," other than "state, state agencies, and corporations primarily acting as instrumentalities or agencies of the state, including the Spaceport Florida Authority."

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VIII. SIGNATURES:

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