

By Representative Posey

1 A bill to be entitled
 2 An act relating to administrative procedure;
 3 creating s. 120.572, F.S., the "Agency
 4 Accountability Act"; providing for court orders
 5 imposing personal liability upon a state agency
 6 employee, as defined, who, by act or omission
 7 has made a determination affecting the
 8 substantial interests of a party based upon a
 9 grossly negligent assessment of material fact
 10 or an erroneous interpretation, under specified
 11 circumstances; prescribing conditions and
 12 guidelines relating to liability of the agency
 13 employee; providing for waiver of sovereign
 14 immunity; specifying applicability; providing
 15 an effective date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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 19 Section 1. Section 120.572, Florida Statutes, is
 20 created to read:

21 120.572 Employee liability for grossly negligent
 22 assessment of material facts; waiver of sovereign immunity.--

23 (1) This section shall be known and may be cited as
 24 the "Agency Accountability Act."

25 (2) DEFINITION.--For the purpose of this section, the
 26 term "agency employee" or "employee" means a person employed
 27 by an "agency" as defined in s. 120.52.

28 (3) APPLICATION TO ADMINISTRATIVE PROCEEDINGS.--The
 29 provisions of this section apply in all proceedings in which
 30 the substantial interests of a party have been determined by
 31 final agency action.

1 (4) PERSONAL LIABILITY OF AGENCY
2 EMPLOYEE.--Notwithstanding s. 120.68 or any other provision of
3 law to the contrary, the court reviewing the final agency
4 action shall enter an order finding the agency employee
5 personally liable for any actual damages and attorney's fees
6 incurred by a party suffering financial harm due to the agency
7 action when the following circumstances exist:
8 (a) The agency employee, by act or omission arising
9 out of and in the scope of the agency employment or function:
10 1. Has made a grossly negligent factual assessment in
11 determining a material fact within the exercise of the
12 agency's discretion; or
13 2. Has, as a result of willfully disregarding a clear
14 expression of legislative intent codified for the applicable
15 law, made an erroneous ruling on a disputed issue of agency
16 procedure or policy or on a disputed interpretation of law
17 within the exercise of the agency's discretion; and
18 (b) The act or omission by the agency employee in
19 making the grossly negligent factual assessment or erroneous
20 ruling has proximately caused the financial harm to the party.
21 (5) WAIVER OF SOVEREIGN IMMUNITY.--The limitations on
22 waiver of sovereign immunity in any other provision of law to
23 the contrary notwithstanding, the state, in accordance with s.
24 13, Art. X of the State Constitution, hereby waives sovereign
25 immunity for the state itself, for its agencies and
26 subdivisions, and for the employees of its agencies and
27 subdivisions, for the express and limited purpose necessary to
28 carry out this section.
29 Section 2. This act shall take effect July 1 of the
30 year in which enacted, and shall apply to all proceedings for
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532-153B-98

1 which final agency action has been rendered on or after that
2 date.

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5 HOUSE SUMMARY

6 Creates the "Agency Accountability Act." Provides for
7 court orders to impose liability upon an agency employee,
8 as defined, who has made a determination affecting the
9 substantial interests of a party based upon a grossly
10 negligent factual assessment or an erroneous
11 interpretation, under specified circumstances.
12 Prescribes conditions for and guidelines relating to the
13 agency employee's liability. Provides for waiver of
14 sovereign immunity to the extent necessary to carry out
15 the act.
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