STORAGE NAME: h1009.jud
DATE: March 23, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS

BILL #: HB 1009

RELATING TO: Contracts with Federal Government

SPONSOR(S): Rep. Wiles

COMPANION BILL(S): SB 2568(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) JUDICIARY
(2) GOVERNMENTAL OPERATIONS
(3) GENERAL APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill authorizes the State of Florida and its political subdivisions to enter into cooperative agreements and contracts with the federal government which include indemnification and hold harmless clauses when required by federal law in order to obtain federal funds or federal benefits.

The bill will become effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

There is no current general statute which authorizes the State of Florida or its political subdivisions to indemnify the federal government. In certain situations, a condition precedent to receiving funds or services from the federal government may be some limited form of indemnification to the federal government Currently, St. Johns County seeks to enter into a contract with the U.S. Department of the Army for the improvement of the Palm Valley Bridge. The Agreement would be entered into pursuant to the Intergovernmental Cooperation Act (31 USC 6505) and 10 USC 3036(d).

The U.S. Department of the Army maintains that the contract language must provide that if liability of any kind is imposed upon the United States as a result of the Army's provision of goods or services, the Army will accept accountability for its actions, but that St. Johns County shall remain responsible as the program proponent for providing the funds necessary to discharge the liability and all related costs. As a result of current law, St. Johns County cannot execute the agreement as drafted.

Apparently other agencies and counties have encountered similar requirements; and a uniform statute which permits indemnification for both the federal government and the Florida agency or local entity when required as a condition precedent to receive federal funds or services would enhance opportunities for these kinds of projects.

B. EFFECT OF PROPOSED CHANGES:

The changes would permit the state, its agencies, and political subdivisions to execute mutual indemnification agreements with the federal government when required as a condition precedent to the receipt of goods or services. The indemnification would be limited to adequate appropriations being available to the indemnifying party

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 state currently waives sovereign immunity for tort and in certain contract matters; the state would remain liable for the actions of its agents or employees and the federal government would remain liable for the actions of its agents or employees.

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

Yes. State agencies and entities could have available to them federal assistance which would not be available but for the indemnification.

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?

Costs may be paid by the federal government, or the federal government may furnish services to the state, its agencies, and political subdivisions.

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

Not determinable

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 215.245

E. SECTION-BY-SECTION ANALYSIS:

Please see II.B. above

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects</u>:

N/A

2. Recurring Effects:

   Agencies may be eligible for additional federal services or funds.

3. Long Run Effects Other Than Normal Growth:

   N/A

4. Total Revenues and Expenditures:

   N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   Local governments may be eligible for additional federal services or funds.

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   N/A

2. Direct Private Sector Benefits:

   N/A

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

   N/A

D. FISCAL COMMENTS:

   N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

   N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   N/A

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

   N/A

V. COMMENTS:

The language as proposed does not place a limitation on the amount of indemnification which may be demanded from the State. It also does not require mutual indemnification.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The proposed amendment will limit indemnity to available appropriations and provides for mutual indemnity between the federal government and the State of Florida, its agencies or its political subdivisions.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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