

**STORAGE NAME:** h1923.jud

**DATE:** March 30, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** HB 1923 (PCB GA 00-13)

**RELATING TO:** Lawsuits Involving the Executive Branch

**SPONSOR(S):** Committee on General Appropriations and Representative Pruitt

**TIED BILL(S):**

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

- (1) GENERAL APPROPRIATIONS YEAS 17 NAYS 0
  - (2) JUDICIARY
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

During the 1999-2000 legislative interim, the General Appropriations Committee collected information from various state agencies on outstanding litigation with the potential to affect the state budget. PCB GA 00-13 was adopted in response to to the Committee's review, and requires:

- agencies proposing to settle lawsuits to specify how they will address costs within current appropriations.
- settlements that commit state spending to be contingent on legislative appropriation.
- money received by the state as a settlement to be deposited to the General Revenue Fund or the appropriate trust fund.
- an inventory of lawsuits to be submitted by agencies to the legislature twice a year in association with the budget process.
- the Division of Risk Management to provide more information to agencies it represents.

The bill does not appear to have any fiscal impact on state or local government.

The bill has an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

**Settlement of Civil Actions**

Section 45.062, F.S., limits the ability of counsel or a party to an action involving a state executive agency or officer to settle an action, consent to any condition, or agree to any order in connection therewith, on behalf of the state agency or officer, if the settlement, condition or order requires the expenditure of or the obligation to expend any state funds or other state resources, or the establishment of any new program, unless the expenditure is provided for by an existing appropriation or program established by law. Prior written notification must be given within 5 business days of the date the settlement or presettlement agreement or order is to be made final to the President of the Senate, the Speaker of the House of Representatives, the Senate and House minority leaders, and the Attorney General.

This section also requires the state executive branch agency or officer to negotiate a closure date as soon as possible for the civil action, and prohibits the agency or officer from pledging any current or future action of another branch of state government as a condition of settling a civil action.

**Legislative Budget Requests**

Section 216.023, F.S., requires the head of each state agency to submit a final legislative budget request to the Legislature and the Governor. This section provides for the creation of budget instructions by the Executive Office of the Governor and the appropriations committees of both houses of the Legislature and the submission of preliminary budget requests by state agencies, as well as other guidelines on the form, content, and submission dates of budget requests.

**Reporting and Handling of Claims**

Section 284.385, F.S., requires all departments covered by the Florida Casualty Insurance Risk Management Trust Fund to report all known or potential claims to the Department of Insurance for handling, except employment complaints which have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or similar agency. Counsel assigned to such claims by the Department of Insurance are to report regularly to the department on the status of such claims or litigation as required by the department. No claims may be compromised or settled for monetary compensation without the prior approval of the department. Payments for the settlement of any claim covered or reported

under this section shall be made from the Florida Casualty Insurance Risk Management Trust Fund.

**C. EFFECT OF PROPOSED CHANGES:**

**Settlement of Civil Actions**

The bill requires notices of settlement or presettlement to specify how the agency involved will address the costs in future years within the limits of current appropriations. It provides that settlements that commit the state to spending in excess of current appropriations or to policy changes inconsistent with current state law will be contingent upon and subject to legislative appropriation or statutory amendment. State agencies or officers may agree to use all efforts to procure legislative funding or statutory amendments. It also directs funds received in a settlement by the state to be deposited in the General Revenue Fund or in the appropriate agency trust fund, and states that it is the intent of the Legislature that state agencies and officers advise the appropriate legislative committees of potential settlements which may commit the state to spending in excess of current appropriations or to policy changes inconsistent with current state law and of progress thereon during the settlement process.

**Legislative Budget Requests**

The bill directs the head of each state agency to include in its legislative budget request an inventory of all litigation in which the agency is involved that may require additional appropriations to the agency or amendments to the law under which the agency operates.

**Reporting and Handling of Claims**

The bill requires the Division of Risk Management's assigned counsel to report regularly to the covered department in addition to the Department of Insurance. The assigned counsel must also notify the covered department if a claim shall be compromised or settled for monetary compensation.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1** amends s. 45.062, F.S., to revise a provision of law governing settlements, conditions, or orders when an agency of the executive branch of government is a party to meet additional requirements with respect to notification. It provides that described settlements or orders shall be contingent upon and subject to legislative appropriation or statutory amendment, allows state agencies or officers to agree to use all efforts to procure legislative funding or statutory amendment, directs funds to be deposited unallocated in the General Revenue Fund or in the appropriate agency fund, and states the intent of the Legislature with respect to potential settlements.

**Section 2** amends s. 216.023, F.S., to direct the head of each state agency to include in the legislative budget request an inventory of all litigation in which the agency is involved that may require additional appropriations to the agency or amendments to the law under which the agency operates.

**Section 3** amends s. 284.385, F.S., to require Division of Risk Management's assigned counsel in a case involving a state agency of the executive branch to report regularly to the covered department in addition to the Department of Insurance. The assigned counsel must

also notify the covered department if a claim shall be compromised or settled for monetary compensation.

**Section 4** establishes an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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 any actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989.

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

This bill does not reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Paragraph (6) on page 3 of the bill requires state agencies and officers to notify "appropriate legislative committees" of potential settlements under certain circumstances. It is not clear what an "appropriate" committee is.

The Departments of Transportation, Children and Families, and Environmental Protection have raised concerns with the requirement that the agency "inventory" litigation in their legislative budget requests. In particular, the requirement that the agency list the "estimated value of a claim" may, once it is in the form of a budget request and a public record, inform a party in litigation against the agency about what the agency considers to be its best guess as to where the litigation will resolve. This information may give an opposing party a tactical advantage in settlement, and should not be made public. It would be clearer if the bill required a report of the "amount of the claim," which would be the opposing party's demand.

In addition, the Departments of Transportation and Children and Families report that they already provide comprehensive information regarding pending litigation, including estimates of liability, to the Legislature.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GENERAL APPROPRIATIONS:

Prepared by:

Staff Director:

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**STORAGE NAME:** h1923.jud

**DATE:** March 30, 2000

**PAGE 6**

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

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Michael W. Carlson, J.D.

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