

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 2002

SPONSOR: Judiciary Committee and Senators Posey and Clary

SUBJECT: Sovereign Immunity

DATE: April 27, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute provides that a law enforcement agency is not liable for damages caused or effectuated by a person who leads a law enforcement officer on a high-speed chase when:

- the law enforcement officer reasonably believes that the fleeing person has committed a forcible felony; and
- the pursuit is conducted pursuant to the law enforcement agency's high-speed pursuit policy.

This committee substitute substantially amends section 768.28, Florida Statutes.

## II. Present Situation:

Sovereign immunity is the legal doctrine which provides that a government may not be sued for a claim without its consent. However, the federal government and most states have waived their immunity from suit in varying degrees in certain cases. Article X, section 13 of the Florida Constitution establishes that laws may be enacted in the statutes for suits to be brought against the state for its liabilities. Accordingly, s. 768.28(1), F.S., provides that the state "waives sovereign immunity for liability for torts, but only to the extent specified in this act."

In s. 768.28(5), F.S., the state has limited its financial liability for a tort action by any one person to \$100,000 or to \$200,000 for additional claims and judgments arising from the same incident or occurrence. If a judgment is rendered by a court in excess of those amounts, the plaintiff may pursue a claim bill in the Legislature for the amount in excess of the statutory limit.

Section 768.28(9)(a) F.S., provides that an officer, employee, or agent of the state or any of its subdivisions may not be held personally liable or named as a defendant for an injury or damage if the act occurred in the scope of his or her employment unless the officer, employee, or agent acted in bad faith or with malicious purpose or in a manner that exhibited a “wanton and willful disregard of human rights, safety, or property.” If the officer’s actions caused injury to another party, and the officer did not act in a manner that was wanton or willful, the standard by which the negligence is measured is the standard of reasonableness. The section further provides that the state will not be liable for acts or omissions which are committed while the officer, employee, or agent acts outside the course and scope of his or her employment or for acts that are “committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”

Over the years multiple cases have been brought by plaintiffs under this statute seeking relief against municipalities and counties for damages sustained by them during high-speed chases. The plaintiffs are often seeking damages from the government for injuries actually caused by the suspect, not the law enforcement officer. The plaintiff is suing the government for relief because the law enforcement officer initiated the chase which caused the injury. In 1989, the Florida Supreme Court held that when the government’s conduct in a police chase creates a “foreseeable zone of risk,” a duty is placed upon the government to either lessen that risk or ensure that sufficient precautions are taken to protect other people from that harm which the risk poses. *Kaisner v. Kolb*, 543 So. 2d 732 (Fla. 1989)<sup>1</sup>

The courts have held that sovereign immunity does shield governmental entities from acts that are deemed to be “discretionary” in their nature but does not shield those entities from acts that are “operational.” An act is considered to be “discretionary” and therefore immune from liability if it involves fundamental questions of policy or planning. An act is “operational” if it is not necessary or inherent in policy or planning and reflects a “secondary decision as to how policies or plans will be implemented.” *City of Pinellas Park v. Brown*, 604 So. 2d 1222 (Fla. 1992)

### **III. Effect of Proposed Changes:**

This committee substitute provides that a law enforcement agency is not liable for damages caused or effectuated by a person who leads a law enforcement officer on a high-speed chase when:

- the law enforcement officer reasonably believes that the fleeing person has committed a forcible felony; and
- the pursuit is conducted pursuant to the law enforcement agency’s high-speed pursuit policy.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>1</sup> The dissenting opinion in *City of Pinellas Park v. Brown*, 604 So. 2d 1222, 1228 (Fla. 1992), stated that: “[A] clear, definitive policy in regard to car chases needs to be established by the executive and legislative branches of our government.”

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This committee substitute may reduce the costs to law enforcement agencies of defending lawsuits resulting from damages caused by a person who leads a law enforcement officer on a high-speed chase.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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