

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7003 PCB CLAM 06-01 Joint Legislative Claims Committee
SPONSOR(S): Claims Committee
TIED BILLS: HB 7005 IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Claims Committee, 4 Y, 0 N, Birtman, Birtman. Rows 2-5 are numbered 1) through 5) with blank entries.

SUMMARY ANALYSIS

This proposed committee bill is the result of an interim project completed by the Claims Committee entitled: "Review of House and Senate Claim Bill Procedures - Policy Options for Legislative Review." The interim project suggested that a legislative process which retains legislative authority over the award of claims, but simplifies the process by deleting some of the duplicative and complex legislative decision-making requirements might decrease the need for lobbyists and maximize the net award to the claimant.

This bill provides for the statutory creation of the Joint Legislative Claims Committee and provides for appointment of membership. The Joint Legislative Claims Committee would be a standing committee governed by joint rules of the Senate and the House of Representatives (as created by HB 7005), and is given the authority to exercise all of the statutory powers of a standing committee. The bill also provides for the joint designation of a Special Master.

It appears that this bill has a minimal fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - This bill streamlines the claims bill process and eliminates duplication of efforts between the chambers.

B. EFFECT OF PROPOSED CHANGES:

Sovereign Immunity: Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. The Florida Constitution addresses sovereign immunity in Article X, section 13 as follows:

Suits Against the State.—Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

In 1973, the Florida Legislature enacted section 768.28, F.S. This section provides that the state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. Sovereign immunity extends to all state agencies or subdivisions of the state, which by definition includes the executive departments, the Legislature, the judicial branch, the state university boards of trustees, counties, municipalities, and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities.¹

The statute imposes a \$100,000 limit per person, and a \$200,000 limit per incident, on the collectability of any tort judgment based on the government's liability.² These limits do not preclude plaintiffs from obtaining judgments in excess of the statutory cap; however, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Florida law requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to pay a judgment against the state or state agency.³ In fact, the legislative appropriation is the sole method to compensate a tort claimant in an amount that exceeds the caps,⁴ and such act is considered an act of legislative grace.⁵

This bill does not make any changes to the statutory waiver of sovereign immunity provisions, but does create a streamlined process for legislative consideration of claim bills by a joint legislative committee.

The Current Claim Bill Process: A claim bill, sometimes called a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence of a public officer or entity. It is a means by which a party who is injured by the negligence of an uninsured government entity may recover damages that exceed the statutory caps.

While each chamber maintains individual rules regarding claim bills⁶, generally, a claimant who seeks to enforce either a judgment or a settlement agreement against a government entity for a tort action in an amount that exceeds the statutory caps requests a Member to file a claim bill in each chamber.

¹ Section 768.28(2), F.S.

² Section 768.28(5), F.S.

³ Sections 11.066 and 768.28(5), F.S.

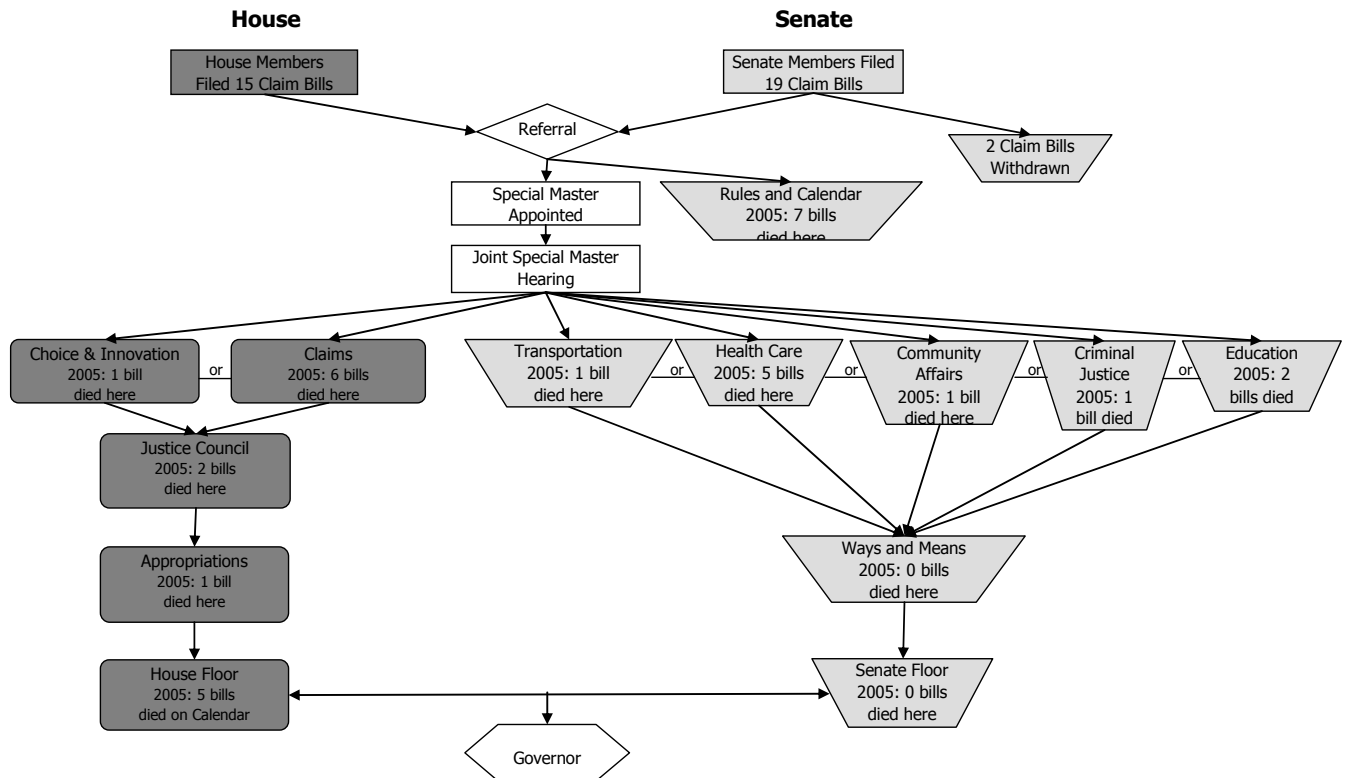
⁴ Notwithstanding the limited waiver of sovereign immunity provided by statute, the government entity may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action of the Legislature. The government shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of obtaining insurance coverage for tortious acts in excess of the statutory caps. Section 768.28(5), F.S.

⁵ See *Gamble v. Wells*, 450 So.2d 850, 852 (Fla. 1984).

⁶ Rule 5.6 of the Rules of the Florida House of Representatives (2004-2006) and Rule 4.81 of the Rules of the Florida Senate (2004-2006).

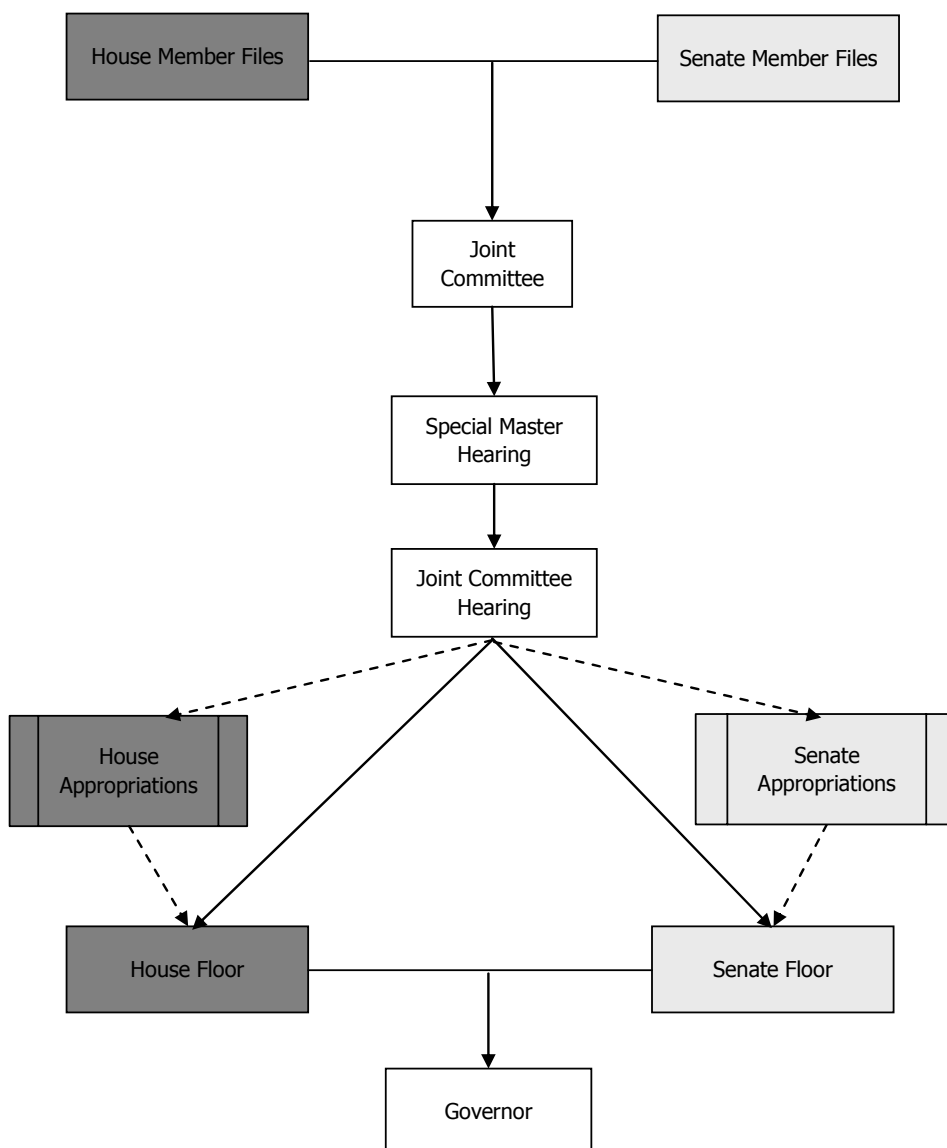
Once filed, the presiding officers each appoint a Special Master to review the claim via a hearing and report back to the body. Claims which are reported unfavorably by the Special Master are typically withdrawn by the sponsor, though the Legislature is not bound by the recommendation of the Special Master. Once a recommendation is made, the bill proceeds through each chamber's committee process. After final passage, the bill is either signed by the Governor, vetoed, or allowed to become law without the Governor's signature. Once the act becomes law, the government entity is required to pay the award pursuant to the terms of the law.

2005 Claim Bill Process



As indicated in the flowchart above, a review of the current legislative scheme for the handling of claim bills includes a multitude of legislative decisions, each of which is an opportunity for a lobbyist to make a difference in the outcome of a claim bill. The current legislative scheme results in the perception that more lobbying is required, not less, and punishes deserving claimants in an effort to curtail perceived inequities by lobbyists. It was suggested that a process that retains legislative authority over the award of claims, but simplifies the process by deleting some of the duplicative and complex legislative decision-making requirements might significantly decrease the need for lobbyists and maximize the net award to the claimant, while retaining legislative authority and control over the process, as indicated in the flowchart below:

Unified Claim Bill Process As Contemplated by This Bill



This bill creates the Joint Legislative Claims Committee, consisting of ten Members: five appointed by the Speaker of the House of Representatives, and five appointed by the President of the Senate. The terms of the Members are for two years and run from the organization of one Legislature to the organization of the next Legislature. The Speaker of the House appoints the chair in odd years and the vice chair in even years, and the President of the Senate appoints the chair in even years and the vice chair in odd years, from among the committee membership. The bill requires that the joint committee be governed by joint rules (see HB 7005) which shall remain in effect until repealed or amended by

concurrent resolution.⁷ The Joint Committee is authorized to exercise all powers vested in a standing or select committee pursuant to s. 11.143, F.S., which authorizes standing committees of the legislature to:

- o Invite public officials and private individuals to appear before the committee;
- o Inspect and investigate the books, records, papers, documents, data, operation and physical plant of any public agency in this state, including any confidential information;
- o Issue subpoena and other necessary process to compel the attendance of witnesses before the committee;
- o Administer oaths and affirmations to witnesses who appear before the committee;
- o Compel by subpoena duces tecum the production of any books, letters, or other documentary evidence, including any confidential information, it desires to examine; and
- o Punish by fine or imprisonment any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or of a refusal to obey its lawful summons.⁸

Lastly, the bill provides that a Special Master be designated jointly by the Speaker and the President, who shall serve at the pleasure of the presiding officers.

C. SECTION DIRECTORY:

Section 1 creates the Joint Legislative Claims Committee; provides for governance by joint rules; authorizes the joint committee to exercise all powers of a standing committee; and provides for the joint designation of a Special Master.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For the purpose of estimating expenditures, figures are based on the operating budget of the Joint Legislative Auditing Committee, a joint committee with a small staff.

	2006-2007	2007-2008
Salary and benefits ⁹	\$135,000	\$140,595
Office space ¹⁰	11,200	11,200
Special Master travel ¹¹	12,000	12,000
Office supplies and equipment	50,000	50,000

⁷ Joint Rule 8.1 provides that all joint rules adopted by concurrent resolution, and amendments thereto, shall continue in effect from session to session or Legislature to Legislature until repealed by concurrent resolution.

⁸ Imprisonment must not extend beyond the final adjournment of the session pursuant to s. 11.143(3)(c), F.S. Subsection (4)(a) of section 11.143, F.S., provides that whoever willfully affirms or swears falsely in regard to any material matter or thing before a legislative committee is guilty of false swearing, which constitutes a second degree felony.

⁹ Salary figures are based on the average House of Representatives Staff Director salary, a mid-level committee administrative assistant salary, and an additional 30% for benefits.

¹⁰ Office space is calculated at \$14 per square foot (the approximate average rental expense for space in the capitol complex) for 800 square feet.

¹¹ Special master travel is estimated at a maximum of 20 trips at \$600 per trip.

Telephone/Computer/Fax Start-up expenses ¹²	50,000 <u>50,000</u>	50,000 <u> </u>
TOTAL	\$308,200	\$263,795

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On November 9, 2005, the Claims Committee considered PCB CLAM 06-01 and adopted one amendment that specified that the special master shall serve at the pleasure of the presiding officers.

¹² Start-up expenses include the purchase of computers, telephones, and furniture as well as the installation of phone/computer/fax lines.