

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 'whereas' clauses in the bill state that the joint rule shall not be construed to waive any defense of sovereign immunity or to increase the limits of statutory tort liability on any government entity or person subject to the provisions of s. 768.28, F.S.

Current Rules Regarding Claim Bills: 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.

Generally, a claimant may request that any Member of each chamber file a claim bill. 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

¹ Section 768.28(2), F.S.

² Section 768.28(5), F.S.

³ Sections 11.066 and 768.28(5), F.S.

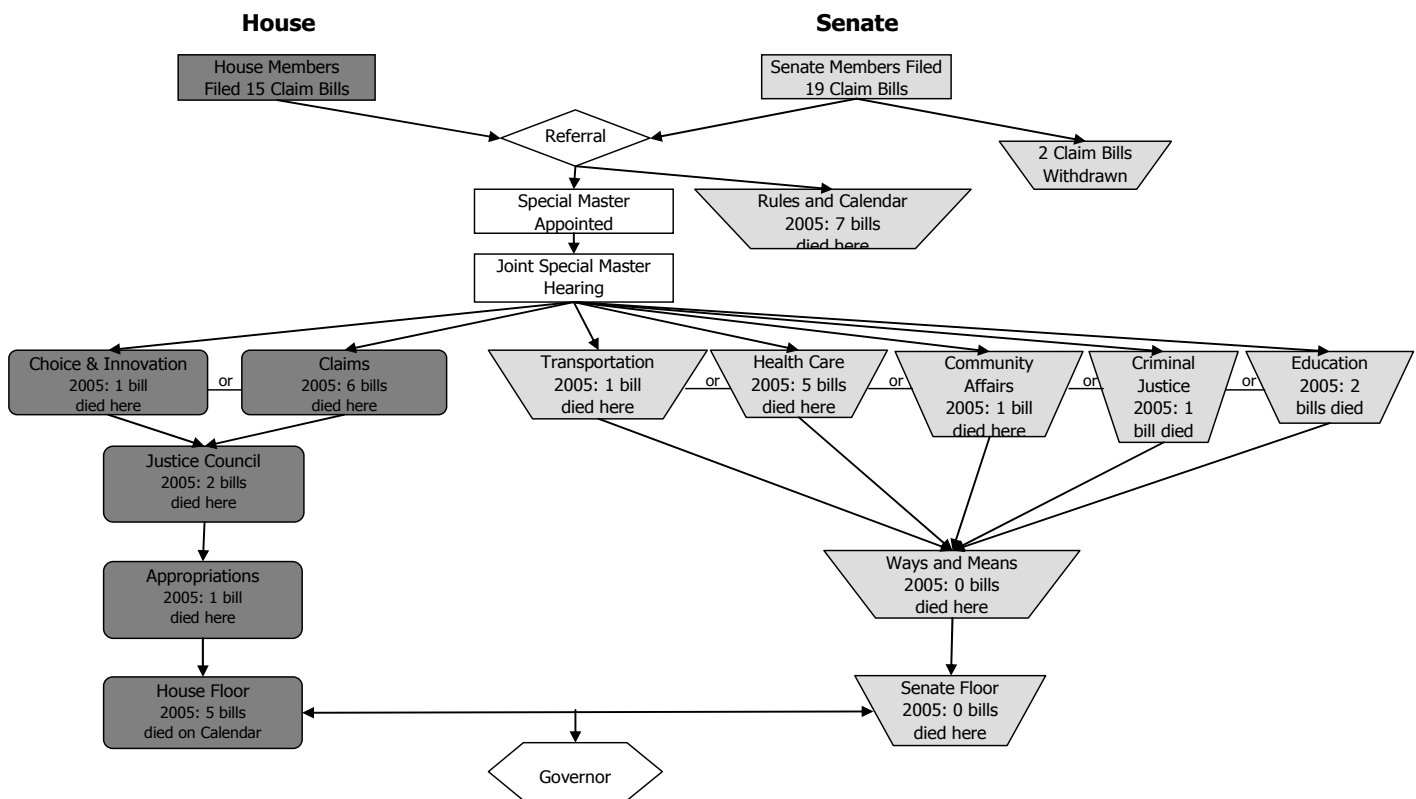
⁴ Notwithstanding the limited waiver of sovereign immunity provided by statute, the government entity may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action of the Legislature. The government shall not be deemed to 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).

sponsor, though the Legislature is not bound by the Special Master's recommendation. 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 a law without the Governor's signature.

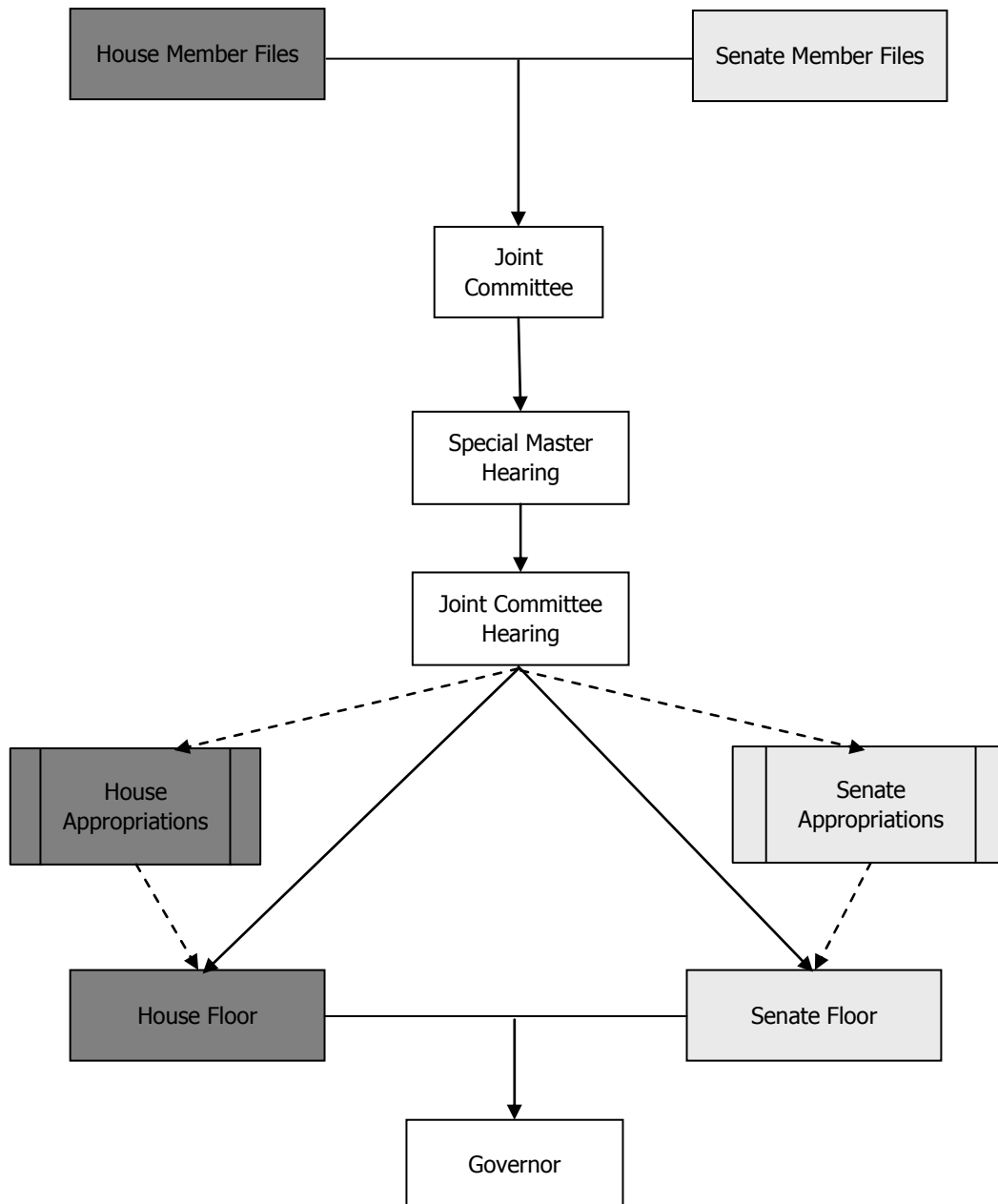
As detailed in the flow chart below, a review of the current legislative scheme for the handling of claim bills includes a multitude of legislative decisions, each of which is an opportunity for a lobbyist to make a difference in the outcome of a claim bill. The current legislative scheme results in the perception that more lobbying is required, not less, and punishes deserving claimants in an effort to curtail perceived inequities by lobbyists.

2005 Claim Bill Process



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 detailed in the flow chart below:

Unified Claim Bill Process as Contemplated by This Bill



The New Joint Rule: There are a number of issues regarding claim bills wherein the House and Senate rules and practices are virtually identical; the new joint rule maintains the substance of each of these issues:

- The presiding officer of each chamber is authorized to appoint a Special Master to review a claim bill or conduct a hearing if necessary.⁶ Note that HB 7003 authorizes the presiding officers to jointly appoint a single Special Master, who may then conduct a hearing pursuant to the joint rule. The joint rule authorizes the Special Master to control all proceedings before the special master; conduct hearings, prehearing conferences,

⁶ Rule 5.6(a), Rules of the Florida House of Representatives and Rule 4.81(3), Rules of the Florida Senate.

and management conferences pursuant to reasonable notice; allow discovery; administer oaths to witnesses; admit or reject evidence; prepare a record of the proceedings; accept tangible and documentary evidence; and issue subpoenas as provided by law. In this respect, the joint rule is consistent with the current practice of the Special Masters.

- The joint rule provides that in proceedings before the Special Master, the provisions of the Florida Rules of Civil Procedure and the Florida Evidence Code shall be instructive. This is consistent with the current practice of the Special Masters.
- Stipulations entered into by the parties are not binding on the Special Master, either chamber, or its committees. This is consistent with current rules of the House and Senate.⁷
- Hearing and consideration of claim bills shall be held in abeyance until all available judicial and administrative remedies have been exhausted, except when there is a written settlement agreement. This is consistent with current rules of the House and Senate.⁸

There are several areas where the rules and practices of the two chambers diverge:

- Filing deadline:
 - The House requires claim bills to be filed no later than noon on the first day of regular session (March 7, 2006).⁹ The Senate requires claim bills to be filed by August 1st in order to be considered during the next legislative session. The Senate will not consider House bills without timely filed Senate companions.¹⁰
 - The joint rule does not include a filing deadline, thus claim bills could be filed and considered by the Special Master year round.
- Limitations on filing:
 - The House limits members to filing 6 bills during regular session. Local claim bills¹¹ do not count toward this limit.¹² The Senate has no limit.
 - The joint rule requires that local claims be filed by a member of the legislative delegation where any claimant resides or where any claimant resided when the cause of action occurred. Local bills filed for claimants who live out of state, and general claims may be filed by any member. A claim bill would be required to be filed in each chamber.
 - The joint rule also requires that notwithstanding any House or Senate rule to the contrary, a member shall not be restricted in the number of claim bills that he or she may file for a regular session.
- Special Master report deadline:
 - The Senate requires the Special Master report to be filed no later than December 1.¹³ The House has no deadline.
 - The joint rule does not include a deadline for submission of the Special Master's report.
- Committee referral:
 - The House typically refers claim bills to the Claims Committee, the Justice Council, and general bills get a referral to an appropriations committee. The bills

⁷ Rule 5.6(b), Rules of the Florida House of Representatives and Rule 4.81(5), Rules of the Florida Senate.

⁸ Rule 5.6(c), Rules of the Florida House of Representatives and Rule 4.81(6), Rules of the Florida Senate.

⁹ Rule 5.2, Rules of the Florida House of Representatives.

¹⁰ Rule 4.81(2), Rules of the Florida Senate. Note that this rule provides an exception: newly elected members have 60 days from the date of election to file claim bills.

¹¹ A local claim bill applies to an area or entity that is less than the total population of the state and contains subject matter that entitles those to whom it is applicable to the publication of notice or referendum required by Article 3, Section 10 of the Florida Constitution. Local claim bills are generally funded by a county, municipality, school board, local constitutional officer, or other subdivision of the state. In contrast, general claim bills are intended to have statewide application and usually involve a state agency, which situation would require an appropriation from the state's general revenue or from an executive agency's budget.

¹² Rule 5.3(a) and (b), Rules of the Florida House of Representatives.

¹³ Rule 4.81(3), Rules of the Florida Senate.

are first considered by a single Special Master appointed by the Speaker. For the parties, this process poses a Special Master hearing and three committees that need to be lobbied. The Senate doesn't have a Claims Committee, and typically refers bills to the committee that has the respondent agency within its jurisdiction, as well as referring general bills to Ways and Means. Legal staff from the Senate are typically appointed by the President as Special Masters. From the parties' perspective, a Special Master's hearing is held and any of six committees need to be lobbied. The combined committee referrals have several effects on the process:

- Duplicative hearings by House and Senate Special Masters;
 - Opportunity for inconsistent rulings by varied Special Masters in the Senate, and between the House and the Senate; and
 - Perception that lobbyists are required to navigate through a complicated process.
- The joint rule streamlines the process by requiring that claim bills be referred to the Joint Legislative Claims Committee, and may be referred to one appropriations committee in each chamber at the discretion of the presiding officer. No further referrals are allowed by the joint rule. The joint rule provides that after the JLCC reports out a claim bill, it may be reported back to the originating chamber for consideration by an appropriations committee or placed directly on the calendar of each chamber in accordance with the rules of each chamber.

Lobbying fees: Lobbying fees are not restricted by state law, and while fees contingent upon the outcome of any specific legislative action are generally prohibited, a statutory exception exists for the lobbying of claim bills.¹⁴ Current law restricts attorney's fees to 25% of the amount awarded in the claim bill.¹⁵ The Florida Supreme Court has upheld the Legislature's authority to limit attorney's fees in claim bills, notwithstanding an attorney's contract with his/her client.¹⁶

The Governor has adopted a policy that the payment of fees to the attorney and the lobbyist(s) should not exceed a combined total of 25% of the judgment or settlement amount paid.¹⁷ It is important to note that the Legislature is not bound by the Governor's policy. An attempt to codify the inclusion of lobbyist fees within the 25% limitation on attorney's fees failed during the 2005 legislative session.¹⁸

Based on the holding in *Gamble v. Wells*, wherein the Florida Supreme Court affirmed the Legislature's authority to limit attorney's fees in claim bills and held that parties cannot enter into a contract to bind the state in the exercise of its sovereign power,¹⁹ an argument can be made that lobbying fees could also be limited by the Legislature on a case-by-case basis.

The joint rule authorizes the Special Master and the JLCC to examine lobbying fees relative to filed claim bills, and provides a presumption that such fees are excessive if they are more than 3% of the total amount awarded in the bill for a claim that is settled when filed; or 5% of the total amount awarded in the bill for a claim that is not settled when filed.

Joint rules, generally: All joint rules adopted by concurrent resolution, and amendments thereto, are continued in effect from session to session or Legislature to Legislature, until repealed by concurrent

¹⁴ Sections 11.047 and 112.3217, F.S.

¹⁵ Section 768.28(8), F.S.

¹⁶ *Gamble v. Wells*, 450 So.2d 850 (Fla. 1984), holding that the limitation of attorney fees did not constitute an impairment of the right to contract protected by Article 1, section 10 of the Florida Constitution.

¹⁷ Governor Bush's claim bill policy, updated 1/10/05.

¹⁸ HB 703/SB 882 (2005).

¹⁹ *Gamble v. Wells* at 853.

resolution.²⁰ Because the power of a future legislature cannot be limited by acts of a present or prior legislature,²¹ it would appear that the joint rules are only binding to the extent that both chambers are willing to consider them as such.

C. SECTION DIRECTORY:

The 'whereas' clauses in the title provide legislative intent that the joint rule establishes an internal process of the Legislature; does not create any new rights or remedies; shall not be construed to create any right to legislative hearing or consideration of a claim bill; and shall not be construed to waive any defense of sovereign immunity or to increase the limits of liability on behalf of the state or any person or entity subject to the provisions of s. 768.28, F.S.

Joint Rule 10.1 provides for the filing and referral of claim bills.

Joint Rule 10.2 provides for the appointment of members of the Joint Legislative Claims Committee and provides powers and duties of the Committee.

Joint Rule 10.3 provides for Special Master hearings, the non-binding nature of stipulations, holding a claim bill in abeyance under certain circumstances, and a presumption regarding lobbying fees.

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 ²²	\$135,000	\$140,595
Office space ²³	11,200	11,200
Special Master travel ²⁴	12,000	12,000
Office supplies and equipment	50,000	50,000
Telephone/Computer/Fax	50,000	50,000
Start-up expenses ²⁵	<u>50,000</u>	<u> </u>

²⁰ Joint Rule 8, Joint Rules of the Florida Legislature.

²¹ *Neu v. Miami Herald Publishing Co.*, 462 So.2d 821 (Fla. 1985).

²² 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.

²³ Office space is calculated at \$14 per square foot (the approximate average rental expense for space in the capitol complex) for 800 square feet.

²⁴ Special master travel is estimated at a maximum of 20 trips at \$600 per trip.

²⁵ Start-up expenses include the purchase of computers, telephones, and furniture as well as the installation of phone/computer/fax lines.

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:

Article 3, section 4 of the Florida Constitution provides that each house shall determine its rules of procedure. The Florida Supreme Court has held that based on the Legislature's constitutional authority to adopt and enforce its own rules of legislative procedure, proceedings in conformity to legislative rules are valid when not in conflict with the Constitution.²⁶ The 'whereas' clauses in the title of the bill reflect legislative intent that the joint rule establishes an internal process of the Legislature and does not create any new rights or remedies; shall not be construed to create any right to a legislative hearing or consideration of a claim bill; and shall not be construed to waive any defense of sovereign immunity or to increase the limits of liability on behalf of the state or any person or entity subject to the provisions of s. 768.28, F.S.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the November 9, 2005 meeting of the Claims Committee, four amendments were adopted as follows:

- Amendment 1 changed the number of the joint rule from '8' to '10'.

²⁶ State ex rel. X-Cel Stores v. Lee, 122 Fla. 685 (1936).

- Amendment 2 provided that notwithstanding any other rule to the contrary, that a member shall not be restricted in the number of claim bills that he or she may file.
- Amendment 3 provided that in the event of multiple claimants, a local bill could be filed by a member of the legislative delegation of any of the claimants.
- Amendment 4 provided that a local claim bill could be filed by a member in the legislative delegation where any claimant currently resides, or resided at the time the cause of action occurred.