

By Senator Villalobos

38-03642-08

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1 A bill to be entitled

2 An act relating to sovereign immunity; amending s.
3 768.28, F.S.; revising procedures for recovery from the
4 state and its agencies and political subdivisions under
5 a tort action; authorizing the payment of claims in
6 excess of statutory caps from sources other than the
7 General Revenue Fund without an act of the Legislature;
8 authorizing the court to order payment of excess
9 judgment amounts; providing for the presentation of
10 evidence by the parties as to why unpaid excess judgment
11 amounts should or should not be paid; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsection (5) of section 768.28, Florida
17 Statutes, is amended to read:

18 768.28 Waiver of sovereign immunity in tort actions;
19 recovery limits; limitation on attorney fees; statute of
20 limitations; exclusions; indemnification; risk management
21 programs.--

22 (5) (a) The state and its agencies and subdivisions are
23 ~~shall be~~ liable for tort claims in the same manner and to the
24 same extent as a private individual under like circumstances, but
25 liability does ~~shall~~ not include punitive damages or interest for
26 the period before judgment. Except as otherwise provided in this
27 subsection, neither the state nor its agencies or subdivisions
28 are ~~shall be~~ liable to pay a claim or a judgment by any one
29 person which exceeds the sum of \$100,000 or any claim or

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30 judgment, or portions thereof, which, when totaled with all other
31 claims or judgments paid by the state or its agencies or
32 subdivisions arising out of the same incident or occurrence,
33 exceeds the sum of \$200,000.

34 (b)1. With regard to any claim that, if paid, would be
35 required to be paid directly from the General Revenue Fund of the
36 state ~~However,~~ a judgment or judgments may be claimed and
37 rendered in excess of the these amounts specified in paragraph
38 (a) and may be settled and paid pursuant to this act up to the
39 amounts specified in paragraph (a), \$100,000 or \$200,000, as the
40 ~~ease may be;~~ and that portion of the judgment which ~~that~~ exceeds
41 these amounts may be reported to the Legislature, but may be paid
42 in part or in whole only by further act of the Legislature.
43 Notwithstanding the limited waiver of sovereign immunity provided
44 herein, the state or an agency or subdivision thereof may agree,
45 within the limits of insurance coverage provided, to settle a
46 claim made or a judgment rendered against it without further
47 action by the Legislature, ~~but the state or agency or subdivision~~
48 ~~thereof shall not be deemed to have waived any defense of~~
49 ~~sovereign immunity or to have increased the limits of its~~
50 ~~liability as a result of its obtaining insurance coverage for~~
51 ~~tortious acts in excess of the \$100,000 or \$200,000 waiver~~
52 ~~provided above.~~

53 2. With regard to any claim that, if paid, would not be
54 required to be paid directly from the General Revenue Fund of the
55 state, a judgment or judgments may be claimed and rendered in
56 excess of the amounts specified in paragraph (a) and may be
57 settled and paid pursuant to this act by the state or an agency
58 or subdivision thereof without regard to the limits specified in

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59 paragraph (a). When a final judgment provides for an award in
60 excess of the amounts specified in paragraph (a) and the state or
61 agency or subdivision thereof against whom the judgment was
62 rendered does not agree to settle or pay the excess amount of the
63 judgment, the court having jurisdiction over the matter, upon due
64 consideration of evidence submitted by the parties as to why the
65 unpaid excess part of the judgment should or should not be paid,
66 may order payment of the unpaid excess amount in full or in part.

67 (c) The state or an agency or subdivision thereof may not
68 be deemed to have waived any defense of sovereign immunity or to
69 have increased the limits of its liability as a result of its
70 obtaining insurance coverage for tortious acts in excess of the
71 amounts specified in paragraph (a).

72 (d) The limitations of liability set forth in this
73 subsection shall apply to the state and its agencies and
74 subdivisions whether or not the state or its agencies or
75 subdivisions possessed sovereign immunity before July 1, 1974.

76 Section 2. This act shall take effect July 1, 2008, and
77 applies to causes of action that accrue on or after that date.