

By Senator Aronberg

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1                   A bill to be entitled  
2           An act relating to sovereign immunity; amending s.  
3           768.28, F.S.; providing that a subdivision of the  
4           state may pay a judgment in excess of the specified  
5           limits on the recovery of judgments from funds of the  
6           subdivision without an act of the Legislature;  
7           providing an effective date.

8  
9   Be It Enacted by the Legislature of the State of Florida:

10  
11           Section 1. Section 768.28, Florida Statutes, is amended to  
12   read:

13           768.28 Waiver of sovereign immunity in tort actions;  
14   recovery limits; limitation on attorney fees; statute of  
15   limitations; exclusions; indemnification; risk management  
16   programs.—

17           (1) In accordance with s. 13, Art. X of the State  
18   Constitution, the state, for itself and for its agencies or  
19   subdivisions, hereby waives sovereign immunity for liability for  
20   torts, but only to the extent specified in this act. Actions at  
21   law against the state or any of its agencies or subdivisions to  
22   recover damages in tort for money damages against the state or  
23   its agencies or subdivisions for injury or loss of property,  
24   personal injury, or death caused by the negligent or wrongful  
25   act or omission of any employee of the agency or subdivision  
26   while acting within the scope of the employee's office or  
27   employment under circumstances in which the state or such agency  
28   or subdivision, if a private person, would be liable to the  
29   claimant, in accordance with the general laws of this state, may

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30 be prosecuted subject to the limitations specified in this act.  
31 Any such action may be brought in the county where the property  
32 in litigation is located or, if the affected agency or  
33 subdivision has an office in such county for the transaction of  
34 its customary business, where the cause of action accrued.  
35 However, any such action against a state university board of  
36 trustees shall be brought in the county in which that  
37 university's main campus is located or in the county in which  
38 the cause of action accrued if the university maintains therein  
39 a substantial presence for the transaction of its customary  
40 business.

41 (2) As used in this act, "state agencies or subdivisions"  
42 include the executive departments, the Legislature, the judicial  
43 branch (including public defenders), and the independent  
44 establishments of the state, including state university boards  
45 of trustees; counties and municipalities; and corporations  
46 primarily acting as instrumentalities or agencies of the state,  
47 counties, or municipalities, including the Florida Space  
48 Authority.

49 (3) Except for a municipality and the Florida Space  
50 Authority, the affected agency or subdivision may, at its  
51 discretion, request the assistance of the Department of  
52 Financial Services in the consideration, adjustment, and  
53 settlement of any claim under this act.

54 (4) Subject to the provisions of this section, any state  
55 agency or subdivision shall have the right to appeal any award,  
56 compromise, settlement, or determination to the court of  
57 appropriate jurisdiction.

58 (5) (a) The state and its agencies are ~~and subdivisions~~

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59 ~~shall be~~ liable for tort claims in the same manner and to the  
60 same extent as a private individual under like circumstances;  
61 except that, but liability may ~~shall~~ not include punitive  
62 damages or interest for the period before judgment. ~~Neither~~ The  
63 state and ~~nor~~ its agencies are not ~~or subdivisions~~ shall be  
64 liable to pay a claim or a judgment by any one person which  
65 exceeds the sum of \$100,000 or any claim or judgment, or  
66 portions thereof, which, when totaled with all other claims or  
67 judgments paid by the state or its agencies ~~or subdivisions~~  
68 arising out of the same incident or occurrence, exceeds the sum  
69 of \$200,000. However, a judgment or judgments may be claimed and  
70 rendered in excess of these amounts and may be settled and paid  
71 pursuant to this act up to \$100,000 or \$200,000. The, ~~as the~~  
72 ~~ease may be;~~ and that portion of the judgment which ~~that~~ exceeds  
73 these amounts may be reported to the Legislature, but may be  
74 paid in part or in whole only by further act of the Legislature.  
75 Notwithstanding the limited waiver of sovereign immunity  
76 provided in this paragraph ~~herein~~, the state or an agency ~~or~~  
77 ~~subdivision~~ thereof may agree, within the limits of insurance  
78 coverage provided, to settle a claim made or a judgment rendered  
79 against it without further action by the Legislature, but the  
80 state or agency ~~or subdivision~~ thereof does ~~shall~~ not waive ~~be~~  
81 ~~deemed to have waived~~ any defense of sovereign immunity or  
82 increase ~~to have increased~~ the limits of its liability as a  
83 result of ~~its~~ obtaining insurance coverage for tortious acts in  
84 excess of the \$100,000 or \$200,000 waiver ~~provided above~~. ~~The~~  
85 ~~limitations of liability set forth in this subsection shall~~  
86 ~~apply to the state and its agencies and subdivisions whether or~~  
87 ~~not the state or its agencies or subdivisions possessed~~

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88 ~~sovereign immunity before July 1, 1974.~~

89 (b) Subdivisions of the state are liable for tort claims in  
90 the same manner and to the same extent as a private individual  
91 under like circumstances; except that liability may not include  
92 punitive damages or interest for the period before judgment. A  
93 subdivision of the state is not liable to pay a claim or a  
94 judgment by any one person which exceeds the sum of \$100,000 or  
95 any claim or judgment, or portions thereof, which, when totaled  
96 with all other claims or judgments paid by the subdivision  
97 arising out of the same incident or occurrence, exceeds the sum  
98 of \$200,000. Notwithstanding the limits on liability provided in  
99 this paragraph, a claim may be made and a judgment rendered in  
100 excess of the limits. Such claim and judgment may be settled and  
101 paid from insurance proceeds or otherwise available funds of the  
102 subdivision, without further act of the Legislature. However, if  
103 a subdivision does not pay the portion of a claim or judgment  
104 which exceeds the liability limits, that portion of the claim or  
105 judgment may be paid only upon an act of the Legislature. A  
106 subdivision of the state does not waive a defense of sovereign  
107 immunity or increase the limits of its liability as a result of  
108 obtaining insurance coverage for tortious acts in excess of the  
109 \$100,000 or \$200,000 waiver or as a result of an agreement to  
110 pay a judgment in an amount exceeding the limits on liability.

111 (6) (a) An action may not be instituted on a claim against  
112 the state or one of its agencies or subdivisions unless the  
113 claimant presents the claim in writing to the appropriate  
114 agency, and also, except as to any claim against a municipality  
115 or the Florida Space Authority, presents such claim in writing  
116 to the Department of Financial Services, within 3 years after

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117 such claim accrues and the Department of Financial Services or  
118 the appropriate agency denies the claim in writing; except that,  
119 if such claim is for contribution pursuant to s. 768.31, it must  
120 be so presented within 6 months after the judgment against the  
121 tortfeasor seeking contribution has become final by lapse of  
122 time for appeal or after appellate review or, if there is no  
123 such judgment, within 6 months after the tortfeasor seeking  
124 contribution has either discharged the common liability by  
125 payment or agreed, while the action is pending against her or  
126 him, to discharge the common liability.

127 (b) For purposes of this section, the requirements of  
128 notice to the agency and denial of the claim pursuant to  
129 paragraph (a) are conditions precedent to maintaining an action  
130 but shall not be deemed to be elements of the cause of action  
131 and shall not affect the date on which the cause of action  
132 accrues.

133 (c) The claimant shall also provide to the agency the  
134 claimant's date and place of birth and social security number if  
135 the claimant is an individual, or a federal identification  
136 number if the claimant is not an individual. The claimant shall  
137 also state the case style, tribunal, the nature and amount of  
138 all adjudicated penalties, fines, fees, victim restitution fund,  
139 and other judgments in excess of \$200, whether imposed by a  
140 civil, criminal, or administrative tribunal, owed by the  
141 claimant to the state, its agency, officer or subdivision. If  
142 there exists no prior adjudicated unpaid claim in excess of  
143 \$200, the claimant shall so state.

144 (d) For purposes of this section, complete, accurate, and  
145 timely compliance with the requirements of paragraph (c) shall

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146 occur prior to settlement payment, close of discovery or  
147 commencement of trial, whichever is sooner; provided the ability  
148 to plead setoff is not precluded by the delay. This setoff shall  
149 apply only against that part of the settlement or judgment  
150 payable to the claimant, minus claimant's reasonable attorney's  
151 fees and costs. Incomplete or inaccurate disclosure of unpaid  
152 adjudicated claims due the state, its agency, officer, or  
153 subdivision, may be excused by the court upon a showing by the  
154 preponderance of the evidence of the claimant's lack of  
155 knowledge of an adjudicated claim and reasonable inquiry by, or  
156 on behalf of, the claimant to obtain the information from public  
157 records. Unless the appropriate agency had actual notice of the  
158 information required to be disclosed by paragraph (c) in time to  
159 assert a setoff, an unexcused failure to disclose shall, upon  
160 hearing and order of court, cause the claimant to be liable for  
161 double the original undisclosed judgment and, upon further  
162 motion, the court shall enter judgment for the agency in that  
163 amount. The failure of the Department of Financial Services or  
164 the appropriate agency to make final disposition of a claim  
165 within 6 months after it is filed shall be deemed a final denial  
166 of the claim for purposes of this section. For purposes of this  
167 subsection, in medical malpractice actions, the failure of the  
168 Department of Financial Services or the appropriate agency to  
169 make final disposition of a claim within 90 days after it is  
170 filed shall be deemed a final denial of the claim. The  
171 provisions of this subsection do not apply to such claims as may  
172 be asserted by counterclaim pursuant to s. 768.14.

173 (7) In actions brought pursuant to this section, process  
174 shall be served upon the head of the agency concerned and also,

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175 except as to a defendant municipality or the Florida Space  
176 Authority, upon the Department of Financial Services; and the  
177 department or the agency concerned shall have 30 days within  
178 which to plead thereto.

179 (8) No attorney may charge, demand, receive, or collect,  
180 for services rendered, fees in excess of 25 percent of any  
181 judgment or settlement.

182 (9) (a) No officer, employee, or agent of the state or of  
183 any of its subdivisions shall be held personally liable in tort  
184 or named as a party defendant in any action for any injury or  
185 damage suffered as a result of any act, event, or omission of  
186 action in the scope of her or his employment or function, unless  
187 such officer, employee, or agent acted in bad faith or with  
188 malicious purpose or in a manner exhibiting wanton and willful  
189 disregard of human rights, safety, or property. However, such  
190 officer, employee, or agent shall be considered an adverse  
191 witness in a tort action for any injury or damage suffered as a  
192 result of any act, event, or omission of action in the scope of  
193 her or his employment or function. The exclusive remedy for  
194 injury or damage suffered as a result of an act, event, or  
195 omission of an officer, employee, or agent of the state or any  
196 of its subdivisions or constitutional officers shall be by  
197 action against the governmental entity, or the head of such  
198 entity in her or his official capacity, or the constitutional  
199 officer of which the officer, employee, or agent is an employee,  
200 unless such act or omission was committed in bad faith or with  
201 malicious purpose or in a manner exhibiting wanton and willful  
202 disregard of human rights, safety, or property. The state or its  
203 subdivisions shall not be liable in tort for the acts or

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204 omissions of an officer, employee, or agent committed while  
205 acting outside the course and scope of her or his employment or  
206 committed in bad faith or with malicious purpose or in a manner  
207 exhibiting wanton and willful disregard of human rights, safety,  
208 or property.

209 (b) As used in this subsection, the term:

210 1. "Employee" includes any volunteer firefighter.

211 2. "Officer, employee, or agent" includes, but is not  
212 limited to, any health care provider when providing services  
213 pursuant to s. 766.1115, any member of the Florida Health  
214 Services Corps, as defined in s. 381.0302, who provides  
215 uncompensated care to medically indigent persons referred by the  
216 Department of Health, and any public defender or her or his  
217 employee or agent, including, among others, an assistant public  
218 defender and an investigator.

219 (c) For purposes of the waiver of sovereign immunity only,  
220 a member of the Florida National Guard is not acting within the  
221 scope of state employment when performing duty under the  
222 provisions of Title 10 or Title 32 of the United States Code or  
223 other applicable federal law; and neither the state nor any  
224 individual may be named in any action under this chapter arising  
225 from the performance of such federal duty.

226 (d) The employing agency of a law enforcement officer as  
227 defined in s. 943.10 is not liable for injury, death, or  
228 property damage effected or caused by a person fleeing from a  
229 law enforcement officer in a motor vehicle if:

230 1. The pursuit is conducted in a manner that does not  
231 involve conduct by the officer which is so reckless or wanting  
232 in care as to constitute disregard of human life, human rights,



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233 safety, or the property of another;

234 2. At the time the law enforcement officer initiates the  
235 pursuit, the officer reasonably believes that the person fleeing  
236 has committed a forcible felony as defined in s. 776.08; and

237 3. The pursuit is conducted by the officer pursuant to a  
238 written policy governing high-speed pursuit adopted by the  
239 employing agency. The policy must contain specific procedures  
240 concerning the proper method to initiate and terminate high-  
241 speed pursuit. The law enforcement officer must have received  
242 instructional training from the employing agency on the written  
243 policy governing high-speed pursuit.

244 (10) (a) Health care providers or vendors, or any of their  
245 employees or agents, that have contractually agreed to act as  
246 agents of the Department of Corrections to provide health care  
247 services to inmates of the state correctional system shall be  
248 considered agents of the State of Florida, Department of  
249 Corrections, for the purposes of this section, while acting  
250 within the scope of and pursuant to guidelines established in  
251 said contract or by rule. The contracts shall provide for the  
252 indemnification of the state by the agent for any liabilities  
253 incurred up to the limits set out in this chapter.

254 (b) This subsection shall not be construed as designating  
255 persons providing contracted health care services to inmates as  
256 employees or agents of the state for the purposes of chapter  
257 440.

258 (c) For purposes of this section, regional poison control  
259 centers created in accordance with s. 395.1027 and coordinated  
260 and supervised under the Division of Children's Medical Services  
261 Prevention and Intervention of the Department of Health, or any

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262 of their employees or agents, shall be considered agents of the  
263 State of Florida, Department of Health. Any contracts with  
264 poison control centers must provide, to the extent permitted by  
265 law, for the indemnification of the state by the agency for any  
266 liabilities incurred up to the limits set out in this chapter.

267 (d) For the purposes of this section, operators,  
268 dispatchers, and providers of security for rail services and  
269 rail facility maintenance providers in the South Florida Rail  
270 Corridor, or any of their employees or agents, performing such  
271 services under contract with and on behalf of the South Florida  
272 Regional Transportation Authority or the Department of  
273 Transportation shall be considered agents of the state while  
274 acting within the scope of and pursuant to guidelines  
275 established in said contract or by rule.

276 (e) For purposes of this section, a professional firm that  
277 provides monitoring and inspection services of the work required  
278 for state roadway, bridge, or other transportation facility  
279 construction projects, or any of the firm's employees performing  
280 such services, shall be considered agents of the Department of  
281 Transportation while acting within the scope of the firm's  
282 contract with the Department of Transportation to ensure that  
283 the project is constructed in conformity with the project's  
284 plans, specifications, and contract provisions. Any contract  
285 between the professional firm and the state, to the extent  
286 permitted by law, shall provide for the indemnification of the  
287 department for any liability, including reasonable attorney's  
288 fees, incurred up to the limits set out in this chapter to the  
289 extent caused by the negligence of the firm or its employees.  
290 This paragraph shall not be construed as designating persons who

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291 provide monitoring and inspection services as employees or  
292 agents of the state for purposes of chapter 440. This paragraph  
293 is not applicable to the professional firm or its employees if  
294 involved in an accident while operating a motor vehicle. This  
295 paragraph is not applicable to a firm engaged by the Department  
296 of Transportation for the design or construction of a state  
297 roadway, bridge, or other transportation facility construction  
298 project or to its employees, agents, or subcontractors.

299 (11) (a) Providers or vendors, or any of their employees or  
300 agents, that have contractually agreed to act on behalf of the  
301 state as agents of the Department of Juvenile Justice to provide  
302 services to children in need of services, families in need of  
303 services, or juvenile offenders are, solely with respect to such  
304 services, agents of the state for purposes of this section while  
305 acting within the scope of and pursuant to guidelines  
306 established in the contract or by rule. A contract must provide  
307 for the indemnification of the state by the agent for any  
308 liabilities incurred up to the limits set out in this chapter.

309 (b) This subsection does not designate a person who  
310 provides contracted services to juvenile offenders as an  
311 employee or agent of the state for purposes of chapter 440.

312 (12) (a) A health care practitioner, as defined in s.  
313 456.001(4), who has contractually agreed to act as an agent of a  
314 state university board of trustees to provide medical services  
315 to a student athlete for participation in or as a result of  
316 intercollegiate athletics, to include team practices, training,  
317 and competitions, shall be considered an agent of the respective  
318 state university board of trustees, for the purposes of this  
319 section, while acting within the scope of and pursuant to

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320 guidelines established in that contract. The contracts shall  
321 provide for the indemnification of the state by the agent for  
322 any liabilities incurred up to the limits set out in this  
323 chapter.

324 (b) This subsection shall not be construed as designating  
325 persons providing contracted health care services to athletes as  
326 employees or agents of a state university board of trustees for  
327 the purposes of chapter 440.

328 (13) Laws allowing the state or its agencies or  
329 subdivisions to buy insurance are still in force and effect and  
330 are not restricted in any way by the terms of this act.

331 (14) Every claim against the state or one of its agencies  
332 or subdivisions for damages for a negligent or wrongful act or  
333 omission pursuant to this section shall be forever barred unless  
334 the civil action is commenced by filing a complaint in the court  
335 of appropriate jurisdiction within 4 years after such claim  
336 accrues; except that an action for contribution must be  
337 commenced within the limitations provided in s. 768.31(4), and  
338 an action for damages arising from medical malpractice must be  
339 commenced within the limitations for such an action in s.  
340 95.11(4).

341 (15) No action may be brought against the state or any of  
342 its agencies or subdivisions by anyone who unlawfully  
343 participates in a riot, unlawful assembly, public demonstration,  
344 mob violence, or civil disobedience if the claim arises out of  
345 such riot, unlawful assembly, public demonstration, mob  
346 violence, or civil disobedience. Nothing in this act shall  
347 abridge traditional immunities pertaining to statements made in  
348 court.

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349 (16) (a) The state and its agencies and subdivisions are  
350 authorized to be self-insured, to enter into risk management  
351 programs, or to purchase liability insurance for whatever  
352 coverage they may choose, or to have any combination thereof, in  
353 anticipation of any claim, judgment, and claims bill which they  
354 may be liable to pay pursuant to this section. Agencies or  
355 subdivisions, and sheriffs, that are subject to homogeneous  
356 risks may purchase insurance jointly or may join together as  
357 self-insurers to provide other means of protection against tort  
358 claims, any charter provisions or laws to the contrary  
359 notwithstanding.

360 (b) Claims files maintained by any risk management program  
361 administered by the state, its agencies, and its subdivisions  
362 are confidential and exempt from the provisions of s. 119.07(1)  
363 and s. 24(a), Art. I of the State Constitution until termination  
364 of all litigation and settlement of all claims arising out of  
365 the same incident, although portions of the claims files may  
366 remain exempt, as otherwise provided by law. Claims files  
367 records may be released to other governmental agencies upon  
368 written request and demonstration of need; such records held by  
369 the receiving agency remain confidential and exempt as provided  
370 for in this paragraph.

371 (c) Portions of meetings and proceedings conducted pursuant  
372 to any risk management program administered by the state, its  
373 agencies, or its subdivisions, which relate solely to the  
374 evaluation of claims filed with the risk management program or  
375 which relate solely to offers of compromise of claims filed with  
376 the risk management program are exempt from the provisions of s.  
377 286.011 and s. 24(b), Art. I of the State Constitution. Until

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378 termination of all litigation and settlement of all claims  
379 arising out of the same incident, persons privy to discussions  
380 pertinent to the evaluation of a filed claim shall not be  
381 subject to subpoena in any administrative or civil proceeding  
382 with regard to the content of those discussions.

383 (d) Minutes of the meetings and proceedings of any risk  
384 management program administered by the state, its agencies, or  
385 its subdivisions, which relate solely to the evaluation of  
386 claims filed with the risk management program or which relate  
387 solely to offers of compromise of claims filed with the risk  
388 management program are exempt from the provisions of s.  
389 119.07(1) and s. 24(a), Art. I of the State Constitution until  
390 termination of all litigation and settlement of all claims  
391 arising out of the same incident.

392 (17) This section, as amended by chapter 81-317, Laws of  
393 Florida, shall apply only to causes of actions which accrue on  
394 or after October 1, 1981.

395 (18) No provision of this section, or of any other section  
396 of the Florida Statutes, whether read separately or in  
397 conjunction with any other provision, shall be construed to  
398 waive the immunity of the state or any of its agencies from suit  
399 in federal court, as such immunity is guaranteed by the Eleventh  
400 Amendment to the Constitution of the United States, unless such  
401 waiver is explicitly and definitely stated to be a waiver of the  
402 immunity of the state and its agencies from suit in federal  
403 court. This subsection shall not be construed to mean that the  
404 state has at any time previously waived, by implication, its  
405 immunity, or that of any of its agencies, from suit in federal  
406 court through any statute in existence prior to June 24, 1984.

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407 (19) Neither the state nor any agency or subdivision of the  
408 state waives any defense of sovereign immunity, or increases the  
409 limits of its liability, upon entering into a contractual  
410 relationship with another agency or subdivision of the state.  
411 Such a contract must not contain any provision that requires one  
412 party to indemnify or insure the other party for the other  
413 party's negligence or to assume any liability for the other  
414 party's negligence. This does not preclude a party from  
415 requiring a nongovernmental entity to provide such  
416 indemnification or insurance. The restrictions of this  
417 subsection do not prevent a regional water supply authority from  
418 indemnifying and assuming the liabilities of its member  
419 governments for obligations arising from past acts or omissions  
420 at or with property acquired from a member government by the  
421 authority and arising from the acts or omissions of the  
422 authority in performing activities contemplated by an interlocal  
423 agreement. Such indemnification may not be considered to  
424 increase or otherwise waive the limits of liability to third-  
425 party claimants established by this section.

426 (20) Every municipality, and any agency thereof, is  
427 authorized to undertake to indemnify those employees that are  
428 exposed to personal liability pursuant to the Clean Air Act  
429 Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq., and all rules  
430 and regulations adopted to implement that act, for acts  
431 performed within the course and scope of their employment with  
432 the municipality or its agency, including but not limited to  
433 indemnification pertaining to the holding, transfer, or  
434 disposition of allowances allocated to the municipality's or its  
435 agency's electric generating units, and the monitoring,

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436 submission, certification, and compliance with permits, permit  
437 applications, records, compliance plans, and reports for those  
438 units, when such acts are performed within the course and scope  
439 of their employment with the municipality or its agency. The  
440 authority to indemnify under this section covers every act by an  
441 employee when such act is performed within the course and scope  
442 of her or his employment with the municipality or its agency,  
443 but does not cover any act of willful misconduct or any  
444 intentional or knowing violation of any law by the employee. The  
445 authority to indemnify under this section includes, but is not  
446 limited to, the authority to pay any fine and provide legal  
447 representation in any action.

448       Section 2. This act shall take effect July 1, 2009.