

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1107 Sovereign Immunity
SPONSOR(S): Civil Justice & Courts Policy Committee; Nehr
TIED BILLS: IDEN./SIM. BILLS: SB 2060

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 8 Y, 6 N, De La Paz, De La Paz. Row 2: Criminal & Civil Justice Policy Council, De La Paz, Havlicak. Rows 3-5 are empty.

SUMMARY ANALYSIS

Currently, legislative approval is required before subdivisions of the state may settle and pay tort claims in excess of the liability limits provided in statute. The one exception to this requirement is when the subdivision has insurance to cover such claims, in which case the statute authorizes the settlement and payment of claims up to the limits of the policy coverage.

CS/HB 1107, amends section 768.28(5), F.S., effective October 1, 2010, to raise the limited waiver of sovereign immunity applicable to subdivisions of the state from \$100,000 per individual claim and \$200,000 per aggregate claims, to \$200,000 per individual claim, and \$400,000 per aggregate claim, on the collectability of any tort judgment based on the subdivision's liability. The bill also makes significant changes to the limited waiver of sovereign immunity with respect to subdivisions of the state by removing the authority of subdivisions to settle, or claimants to seek, compensation above the liability limits. Essentially the bill amends current law to establish an absolute bar to pursuing claims against subdivisions which exceed the liability limits.

Claims by one person or by multiple claimants which are brought against more than one subdivision, or a combination of claims against the state and a subdivision, are also increased to \$200,000 per person, \$400,000 aggregate per incident limit until October 1, 2011, at which time these limits increase to \$250,000 per individual claim, and \$1,000,000 per aggregate claim.

CS/HB 1107, also amends section 768.28(5), F.S., effective October 1, 2011, to increase the limits of liability against the state and its agencies from \$100,000 per individual claim and \$200,000 per aggregate claims, to \$200,000 per person, and \$400,000 per aggregate limit per incident. For subdivisions of the state from this date forward liability limits are raised from their 2010 levels to \$250,000 per person, and \$1,000,000 per aggregate limit per incident.

The fiscal impact on this bill on state and local governments is indeterminate.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. 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 a limited waiver of sovereign immunity in 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 statutory definition includes the executive departments, the Legislature, the judicial branch and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, including the Florida Space Authority.<sup>1</sup> Liability does not include punitive damages<sup>2</sup> or interest for the period before judgment.<sup>3</sup>

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. 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 from state funds to pay a judgment against the state or a state agency.<sup>4</sup> Subdivisions of the state pay their claims from their own respective budgets and the provisions of section 768.28, F.S., operate to require the Legislature's approval of the expenditure of the subdivision's own funds to pay their claims. In fact, the legislative appropriation (for

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<sup>1</sup> Section 768.28(2), F.S.

<sup>2</sup> Punitive damages are distinguished from compensatory damages in that punitive damages are intended to punish the defendant for a wrong aggravated by violence, malice, fraud, or wanton or wicked conduct on the part of the defendant. Black's Law Dictionary (5<sup>th</sup> Edition 1979). In Florida, a non-government defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. Section 768.72, F.S.

<sup>3</sup> Section 768.28(5), F.S.

<sup>4</sup> Section 11.066, F.S.

state claims) or approval (for subdivision claims) is the sole method to compensate a tort claimant in an amount that exceeds the caps, and such act is considered a matter of legislative grace.<sup>5</sup> The only means the Legislature has provided to seek such an appropriation is through the filing of claim bills.<sup>6</sup>

Section 768.28(9)(a), F.S., provides that the exclusive remedy for injury or damage suffered by an act, event, or omission of a government employee acting within the course and scope of their employment is by action against the governmental entity, unless such act was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Notwithstanding the limited waiver of sovereign immunity provided by statute, the government may agree, up to the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action of the Legislature, but 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.<sup>7</sup> In this respect, the current law treats the state's ability to pay and settle claims, and a state subdivision's ability to pay and settle claims, in an identical manner.

### **Effect of CS/HB 1107**

CS/HB 1107 amends section 768.28(5), F.S., effective October 1, 2010, to raise the limited waiver of sovereign immunity applicable to subdivisions of the state from \$100,000 per individual claim and \$200,000 per aggregate claims, to \$200,000 per individual claim, and \$400,000 per aggregate claim, on the collectability of any tort judgment based on the subdivision's liability. Aside from the increased amount of liability exposure, the bill makes significant changes to the limited waiver of sovereign immunity with respect to subdivisions of the state. CS/HB 1107 removes the current authority for subdivisions of the state to settle claims even within the limits of insurance coverage. In addition, the bill removes provisions authorizing claims to be rendered in excess of the liability limits and reported to the Legislature. The bill also deletes the provision stating that claims in excess of the liability limits may be paid by further act of the Legislature. In short, although the bill raises liability limits for claims against subdivisions of the state, the bill also sets such limits as an absolute bar to pursuing claims against subdivisions which exceed the liability limits.

Additionally under this section of the bill effective October 1, 2010, claims by one person or by multiple claimants which are brought against more than one subdivision, or a combination of claims against the state and a subdivision, are subject to liability limits of \$200,000 per person, and \$400,000 aggregate limit per incident.

CS/HB 1107 also amends section 768.28(5), F.S., effective October 1, 2011, to increase the limits of liability against the state and its agencies from \$100,000 per individual claim and \$200,000 per aggregate claims, to \$200,000 per individual claim, and \$400,000 per aggregate claim. For subdivisions of the state from this date forward liability limits are raised from their 2010 levels to \$250,000 per person, and \$1,000,000 per aggregate limit per incident.

Also under the section of the bill effective October 1, 2011, claims by one person or by multiple claimants which are brought against more than one subdivision, or a combination of claims against the state and a subdivision, are raised to \$250,000 per person, and \$1,000,000 aggregate limit per incident.

The table below reflects the liability limits at the state and local levels under the bill beginning October 1, of 2010 and 2011:

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<sup>5</sup> See, Gamble v. Wells, 450 So.2d 850 (Fla. 1984).

<sup>6</sup> A claim bill is a bill that seeks to compensate a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

<sup>7</sup> Section 768.28(5) F.S.

	2010	2011
<b>State</b>	\$100,000 / \$200,000	\$200,000/ \$400,000
<b>Subdivisions</b>	\$200,000 / \$400,000	\$250,000 / \$1,000,000
<b>State and Subdivisions in Combined Claim/s</b>	\$200,000 / \$400,000	\$250,000 / \$1,000,000

**B. SECTION DIRECTORY:**

Section 1. Amends s. 768.28(5), F.S., effective October 1, 2010, revising the limited waiver of sovereign immunity of subdivisions of the state.

Section 2. Amends s. 768.28(5), F.S., effective October 1, 2011, revising the limited waiver of sovereign immunity of the state and its agencies.

Section 3. Providing an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

CS/HB 1107's fiscal impact with respect to the increased liability limits of state and local governments is indeterminate.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

3. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 16, 2010, the Civil Justice & Courts Policy Committee significantly amended the bill as filed. A strike-all amendment was adopted as amended by three amendments to the strike-all amendment. The amendments changed the liability limits for state and local governments in separate sections of the bill having different effective dates. The amendments also established the liability limits of local governments as firm limits which cannot be exceeded. Finally, one amendment removed the provision in the original bill providing for an additional 5% of attorneys fees for services rendered after a judgment or settlement has been obtained.