

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

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

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee	8 Y, 6 N, As CS	De La Paz	De La Paz
2)	Criminal & Civil Justice Policy Council	14 Y, 1 N, As CS	De La Paz	Havlicak
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

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**SUMMARY ANALYSIS**

Sovereign immunity is a doctrine that prohibits suits against the government without the government’s consent.

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. 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.

CS/CS/HB 1107 amends section 768.28(5), F.S., effective October 1, 2011, to raise the limited waiver of sovereign immunity applicable to the state, its agencies and subdivisions from \$100,000 per individual claim and \$200,000 per aggregate claims, to \$200,000 per individual claim, and \$300,000 per aggregate claim, on the collectability of any tort judgment.

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

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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.

expenditure of the subdivision's own funds to pay their claims. In fact, the legislative appropriation (for 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/CS/HB 1107 amends section 768.28(5), F.S., effective October 1, 2011, to raise the limited waiver of sovereign immunity applicable to the state, its agencies and subdivisions from \$100,000 per individual claim and \$200,000 per aggregate claims, to \$200,000 per individual claim, and \$300,000 per aggregate claim, on the collectability of any tort judgment. In effect, the state and its agencies and subdivisions may pay up to \$200,000 for any claim or judgment by any one person, or portion thereof, which, when totaled with all other claims or judgments paid arising out of the same incident or occurrence, does not exceed the sum of \$300,000. Any portion of the judgment that exceeds these amounts may only be paid in part or in whole by further act of the Legislature.

The effective date of the bill is October 1, 2011, and applies to claims arising on or after that date. A person injured on or after October 1, 2011, by actions of the state, its agencies, or subdivisions, will be subject to the increased liability caps.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 768.28(5), F.S., effective October 1, 2011, relating to the limited waiver of sovereign immunity for suits against the state, its agencies or subdivisions.

Section 2. Provides an effective date.

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

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

##### **1. Revenues:**

None.

##### **2. Expenditures:**

Indeterminate. See Fiscal Comments.

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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.

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

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

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

Those individuals receiving judgments from or settlements with the state and its agents and subdivisions may receive additional compensation because of the increase in the liability limits on or after October 1, 2011.

**D. FISCAL COMMENTS:**

CS/CS/HB 1107's fiscal impact is indeterminate. The potential fiscal impact of increasing the liability limits of state and local governments to \$200,000/\$300,000 on October 1, 2011, will be contingent upon the number of claims filed that are greater than the current limits but lower than the limits proposed under the bill.

**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.

On April 6, 2010, the Criminal & Civil Justice Policy Council adopted a strike-all amendment which substantially amended the bill to raise the limits on the amounts of the limited waiver of sovereign immunity for state and local governments to \$200,000/\$300,000 on October 1, 2011. All other previous revisions to section 768.28, F.S., in earlier versions of the bill were removed.