

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

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BILL: CS/SB 2060

INTRODUCER: Judiciary Committee and Senator Bennett

SUBJECT: Sovereign Immunity

DATE: March 23, 2010

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Treadwell	Maclure	JU	<b>FAV/CS</b>
2. McVaney	Coburn	WPSC	<b>Favorable</b>
3.			
4.			
5.			
6.			

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill increases, effective October 1, 2011, the current waiver-of-liability limits for the state and its agencies and subdivisions to \$200,000 per individual claim and \$300,000 per aggregate claim. The current liability limits are \$100,000 per individual claim and \$200,000 per aggregate claim.

The bill substantially amends section 768.28, Florida Statutes.

**II. Present Situation:**

**Overview of Sovereign Immunity**

Sovereign immunity is defined as: "A government's immunity from being sued in its own courts without its consent."<sup>1</sup> The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

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<sup>1</sup> BLACK'S LAW DICTIONARY (8th ed. 2004)

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.<sup>2</sup>

The Florida Constitution authorizes the Legislature to enact laws that permit suits against the state. The Legislature has, to some extent, permitted tort suits against the state and has limited the collectability of judgments against the state to \$100,000 per person and \$200,000 per incident. Damaged persons seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

### **Florida Sovereign Immunity Law**

Under current law, Florida has adopted the common law of England as it existed on July 4, 1776.<sup>3</sup> This adoption of English common law included the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.<sup>4</sup>

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV, State Const. (1868).<sup>5</sup> The Legislature again was expressly authorized to waive the state's sovereign immunity under s. 13, Art. X, State Const. (1968). Section 13, Art. X, State Const. (1968) states:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Although the first general waiver of the state's sovereign immunity was not adopted until 1969, "one . . . could always petition for legislative relief by means of a claims bill."<sup>6</sup> The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.<sup>7</sup> The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.<sup>8</sup>

### **Statutory Waivers**

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of sovereign immunity.<sup>9</sup> The 1969 Legislature also adopted another law that provided for the repeal of s. 768.15, F.S., after a year in effect.<sup>10</sup>

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<sup>2</sup> *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawanakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

<sup>3</sup> Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.

<sup>4</sup> *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

<sup>5</sup> Section 19, Art. VI, State Const. (1868), states:

Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.

<sup>6</sup> *Cauley*, 403 So. 2d at note 5.

<sup>7</sup> D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

<sup>8</sup> *Id.*

<sup>9</sup> Chapter 69-116, Laws of Fla.

In 1973, the Legislature again adopted a law that acted as a general waiver to the state's sovereign immunity.<sup>11</sup> The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today. Section 768.28(1), F.S. (1973), states:

In accordance with s. 13, Art. X, state constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

Under s. 768.28(5), F.S. (1973), the collectability of tort judgments against the state was limited to \$50,000 per person and \$100,000 per incident. Attorney fees were also limited to 25 percent of the proceeds of judgments against, or settlements with, the state.<sup>12</sup> In 1981, the Legislature increased the amount of damages that could be collected from the state to \$100,000 per person and \$200,000 per incident.<sup>13</sup> Although efforts have been made to raise the caps on damages,<sup>14</sup> these limitations remain in effect today, more than 20 years after their adoption.<sup>14</sup>

### **Cost of Florida's Waiver of Sovereign Immunity**

The exact cost of the state's waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff's offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver.<sup>15</sup> Information documenting the cost of the sovereign immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to \$100,000 per person, \$200,000 per incident under the sovereign immunity waiver.<sup>16</sup> The Division also settles and defends tort suits filed against the agencies.

In Fiscal Year 2008-09, the Division funded \$8,483,111 for the resolution of 1,747 general liability claims.<sup>17</sup> Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2008-09, the Division funded \$2,965,339 for the resolution of 585 automobile liability claims.<sup>18</sup>

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<sup>10</sup> Chapter 69-357, Laws of Fla.

<sup>11</sup> Chapter 73-313, Laws of Fla.

<sup>12</sup> Section 768.28(8), F.S. (1973).

<sup>13</sup> Chapter 81-317, Laws of Fla.

<sup>14</sup> See Fla. SB 895 (1981).

<sup>15</sup> The Fla. Senate, Committee on Judiciary, *Sovereign Immunity and the Claim Bill Process*, 4 (Interim Report 2005-147) (Nov. 2004), available at [http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim\\_reports/pdf/2005-147ju.pdf](http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-147ju.pdf).

<sup>16</sup> Section 284.30, F.S.

<sup>17</sup> Department of Financial Services, Division of Risk Management, *Fiscal Year 2009 Annual Report*, 15 (2009).

<sup>18</sup> *Id.*

## Claim Bill Process

Persons who wish to seek the payment of claims in excess of the statutory limits must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master, as well as to one or more committees, for review.<sup>19</sup> Senate and House Special Masters typically hold a joint hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.

The hearing is a *de novo* hearing, meaning that the Special Masters treat the subject of the hearing as if no decision has been rendered by a court.<sup>20</sup> During the hearing, the Special Masters accept all relevant evidence. The Special Masters also typically ask claimants whether any condition exists, such as a history of drug abuse or a criminal record, which may cause the Legislature to decline to pass a claim bill. After the hearing, each Special Master writes a report describing the facts giving rise to the claim bill and setting forth conclusions of law as to whether each element of negligence was satisfied. The report includes a recommendation as to whether the Legislature should pass or reject the claim bill.<sup>21</sup>

The following figure represents the annual summary of all claim bill activity in the Florida Legislature from 2004 through 2008:<sup>22</sup>

Year of Session	Total Number of Claims Filed	Total Dollar Amount Claimed	Total Number of Claims that Became Law	Total Dollar Amount Paid
2008	31	97,660,955	11	18,500,825
2007	35	47,210,529	13	23,667,881
2006	27	33,296,481	0	0
2005	21	29,430,496	1	2,000,000
2004	24	48,451,050	6	9,444,937

Of the total 35 claim bills filed in 2007, 22 were local claim bills (i.e., submitted by claimants against subdivisions of the state).<sup>23</sup> Of the 31 claim bills filed in 2008, 13 were local claim bills.<sup>24</sup>

### III. Effect of Proposed Changes:

The bill increases the current waiver-of-liability limits for the state and its agencies and subdivisions to \$200,000 per individual claim and \$300,000 per aggregate claim. 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

<sup>19</sup> The Florida Senate, Office of the President and the Florida House of Representatives, Committee on Constitution and Civil Law, *Legislative Claim Bill Manual*, 4 (2009-2010).

<sup>20</sup> Senate Rule 4.81(3) and House Rule 5.7(a) (2002-2004).

<sup>21</sup> The Florida Senate, *supra* note 19, at 4.

<sup>22</sup> *Id.* at 12-13.

<sup>23</sup> *Id.* at 56-57.

<sup>24</sup> *Id.* at 54-55.

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.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

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.

**C. Government Sector Impact:**

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.

Further, the state and its subdivisions may experience an increase in insurance premiums for liability coverage in response to the increase in liability limits.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 18, 2010:**

The committee substitute:

- Increases the current waiver of liability limits for the state and its agencies and subdivisions to \$200,000 per individual claim and \$300,000 per aggregate claim (rather than the \$250,000 limit per claim or judgment by any one person under the bill);
- Removes the provision in the bill allowing the liability limit to be increased annually beginning July 1, 2012, according to the average of the change in the Consumer Price Index;
- Removes the provision in the bill allowing a subdivision of the state to agree, within the limits of insurance coverage provided or other available funds, to settle a claim or judgment without further action by the Legislature;
- Deletes the provision in the bill allowing attorneys in governmental tort cases to collect an additional 5 percent upon the initiation of an appeal or other postjudgment activity in the case; and
- Provides an effective date of October 1, 2011, which applies to all claims arising on or after that date.

**B. Amendments:**

None.