

By Senator Hukill

14-00617-18

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1                   A bill to be entitled  
2       An act relating to the court of claims; providing a  
3       directive to the Division of Law Revision and  
4       Information; creating s. 36.23, F.S.; providing a  
5       short title; creating s. 36.24, F.S.; establishing the  
6       Court of Claims; providing for venue; specifying that  
7       the court is headed by the Chief Judge of the Court of  
8       Claims; requiring the Governor to appoint court of  
9       claims judges from nominees recommended by a judicial  
10      nominating commission; providing that appointments to  
11      the court of claims are subject to Senate  
12      confirmation; authorizing the Governor to make  
13      temporary appointments to the court under certain  
14      circumstances; requiring a court of claims judge to  
15      reapply to the judicial nominating commission if  
16      seeking reappointment; creating s. 36.25, F.S.;  
17      providing for jurisdiction, procedure, and appeal of  
18      judgments and orders of the Court of Claims; providing  
19      for staggered terms for initial appointments to the  
20      judicial nominating commission and the Court of  
21      Claims; providing applicability; amending ss. 11.02,  
22      11.047, 25.382, 409.993, and 768.28, F.S.; conforming  
23      provisions to changes made by the act; repealing s.  
24      11.065, F.S., relating to claims against the state;  
25      providing a contingent effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

28  
29       Section 1. The Division of Law Revision and Information is

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30 directed to entitle chapter 36, Florida Statutes, as "Court of  
31 Claims."

32 Section 2. Section 36.23, Florida Statutes, is created to  
33 read:

34 36.23 Short title.—Sections 36.23-36.25 may be cited as the  
35 "Court of Claims Act."

36 Section 3. Section 36.24, Florida Statutes, is created to  
37 read:

38 36.24 Court of Claims established.—

39 (1) Effective July 1, 2020, the Court of Claims is  
40 established. The court shall be located in Leon County. The  
41 court shall consist of three judges and be headed by the Chief  
42 Judge of the Court of Claims. A person may not serve as a court  
43 of claims judge unless he or she has been a member of The  
44 Florida Bar in good standing for the previous 5 years. A court  
45 of claims judge may not engage in the private practice of law  
46 during his or her term of office.

47 (2) The Governor shall appoint a court of claims judge from  
48 a list of three persons nominated by a judicial nominating  
49 commission for the Court of Claims. Of the three judges, the  
50 Governor shall designate one judge as the Chief Judge of the  
51 Court of Claims. A court of claims judge shall be appointed for  
52 a term of 4 years. The judicial nominating commission shall be  
53 governed in accordance with s. 43.291.

54 (3) Each initial appointment of a court of claims judge,  
55 including the chief judge, is subject to confirmation by the  
56 Senate. If the Senate votes to not confirm the appointment, the  
57 judicial nominating commission must reconvene as though a new  
58 vacancy had occurred. The commission may not renominate a person

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59 whose prior appointment to fill the same vacancy was not  
60 confirmed by the Senate. A court of claims judge is not subject  
61 to Senate confirmation if reappointed to subsequent terms of  
62 office without any break in service.

63 (4) If a vacancy for a court of claims judge occurs while  
64 the Senate is not in session, the Governor may make a temporary  
65 appointment to fill such vacancy until the Legislature  
66 reconvenes for session.

67 (5) A court of claims judge who wishes to seek  
68 reappointment must reapply to the judicial nominating commission  
69 before the expiration of his or her term of office.

70 Section 4. Section 36.25, Florida Statutes, is created to  
71 read:

72 36.25 Jurisdiction; procedure.-

73 (1) The Court of Claims has jurisdiction to hear claims  
74 against the state or any of its agencies or subdivisions for  
75 tort actions for which sovereign immunity has been waived in  
76 which a claimant is seeking to satisfy payment of a judgment in  
77 excess of the limitations on damages imposed in s. 768.28(5).

78 (2) An action against the state or any of its agencies or  
79 subdivisions shall be heard and determined by a panel of three  
80 judges. Concurrence of two members of the panel is necessary for  
81 any judgment or order.

82 (3) Any judgment or order entered by the Court of Claims  
83 may be appealed to the First District Court of Appeal.

84 Section 5. (1) In order to achieve staggered terms among  
85 initial appointments to the judicial nominating commission for  
86 the Court of Claims, the Governor shall appoint members to the  
87 commission in the following manner:

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88 (a) Of the four members appointed by the Governor selected  
89 from nominations submitted by the Board of Governors of The  
90 Florida Bar:

91 1. Two appointments for terms ending July 1, 2020.

92 2. Two appointments for terms ending July 1, 2022.

93 (b) Of the five members appointed directly by the Governor:

94 1. One appointment for a term ending July 1, 2020.

95 2. Two appointments for terms ending July 1, 2021.

96 3. Two appointments for terms ending July 1, 2023.

97 (2) The judicial nominating commission shall submit its  
98 recommendations for nominees to the Court of Claims to the  
99 Governor by January 1, 2020. The Governor shall submit initial  
100 appointments for the Court of Claims to the Senate for  
101 consideration in the 2020 Regular Session of the Legislature.

102 (3) In order to achieve staggered terms among the court of  
103 claims judges first appointed, one judge shall be appointed to a  
104 2-year term beginning July 1, 2020, one judge shall be appointed  
105 to a 3-year term beginning July 1, 2020, and the chief judge  
106 shall be appointed to a 4-year term beginning July 1, 2020.

107 Section 6. Any tort claim brought against the state or its  
108 agencies or subdivisions for which sovereign immunity has been  
109 waived pursuant to s. 768.28, Florida Statutes, before July 1,  
110 2020, shall continue to be governed by the laws in effect on the  
111 date that such claim was filed. Judgments in excess of the  
112 limitations on damages imposed in s. 768.28(5), Florida  
113 Statutes, from a tort claim brought before July 1, 2020, may be  
114 submitted to the Legislature in accordance with s. 11.065,  
115 Florida Statutes.

116 Section 7. Section 11.02, Florida Statutes, is amended to

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117 read:

118 11.02 Notice of special or local legislation ~~or certain~~  
119 ~~relief acts.~~—The notice required to obtain special or local  
120 legislation ~~or any relief act specified in s. 11.065~~ shall be by  
121 publishing the identical notice in each county involved in some  
122 newspaper as defined in chapter 50 published in or circulated  
123 throughout the county or counties where the matter or thing to  
124 be affected by such legislation shall be situated one time at  
125 least 30 days before introduction of the proposed law into the  
126 Legislature or, there being no newspaper circulated throughout  
127 or published in the county, by posting for at least 30 days at  
128 not less than three public places in the county or each of the  
129 counties, one of which places shall be at the courthouse in the  
130 county or counties where the matter or thing to be affected by  
131 such legislation shall be situated. Notice of special or local  
132 legislation shall state the substance of the contemplated law,  
133 as required by s. 10, Art. III of the State Constitution. ~~Notice~~  
134 ~~of any relief act specified in s. 11.065 shall state the name of~~  
135 ~~the claimant, the nature of the injury or loss for which the~~  
136 ~~claim is made, and the amount of the claim against the affected~~  
137 ~~municipality's revenue-sharing trust fund.~~

138 Section 8. Subsection (2) of section 11.047, Florida  
139 Statutes, is amended to read:

140 11.047 Contingency fees; prohibitions; penalties.—

141 (2) No person may, in whole or in part, pay, give, or  
142 receive, or agree to pay, give, or receive, a contingency fee.  
143 ~~However, this subsection does not apply to claims bills.~~

144 Section 9. Subsection (1) of section 25.382, Florida  
145 Statutes, is amended to read:

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146 25.382 State courts system.—

147 (1) As used in this section, "state courts system" means  
148 all officers, employees, and divisions of the Supreme Court,  
149 district courts of appeal, the Court of Claims, circuit courts,  
150 and county courts.

151 Section 10. Paragraph (a) of subsection (2) and paragraph  
152 (a) of subsection (3) of section 409.993, Florida Statutes, are  
153 amended to read:

154 409.993 Lead agencies and subcontractor liability.—

155 (2) LEAD AGENCY LIABILITY.—

156 (a) Other than an entity to which s. 768.28 applies, an  
157 eligible community-based care lead agency, or its employees or  
158 officers, except as otherwise provided in paragraph (b), shall,  
159 as a part of its contract, obtain a minimum of \$1 million per  
160 occurrence with a policy period aggregate limit of \$3 million in  
161 general liability insurance coverage. The lead agency must also  
162 require that staff who transport client children and families in  
163 their personal automobiles in order to carry out their job  
164 responsibilities obtain minimum bodily injury liability  
165 insurance in the amount of \$100,000 per person per any one  
166 automobile accident, and subject to such limits for each person,  
167 \$300,000 for all damages resulting from any one automobile  
168 accident, on their personal automobiles. In lieu of personal  
169 motor vehicle insurance, the lead agency's casualty, liability,  
170 or motor vehicle insurance carrier may provide nonowned  
171 automobile liability coverage. This insurance provides liability  
172 insurance for an automobile that the lead agency uses in  
173 connection with the lead agency's business but does not own,  
174 lease, rent, or borrow. This coverage includes an automobile

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175 owned by an employee of the lead agency or a member of the  
176 employee's household but only while the automobile is used in  
177 connection with the lead agency's business. The nonowned  
178 automobile coverage for the lead agency applies as excess  
179 coverage over any other collectible insurance. The personal  
180 automobile policy for the employee of the lead agency shall be  
181 primary insurance, and the nonowned automobile coverage of the  
182 lead agency acts as excess insurance to the primary insurance.  
183 The lead agency shall provide a minimum limit of \$1 million in  
184 nonowned automobile coverage. In a tort action brought against  
185 such a lead agency or employee, net economic damages shall be  
186 limited to \$2 million per liability claim and \$200,000 per  
187 automobile claim, including, but not limited to, past and future  
188 medical expenses, wage loss, and loss of earning capacity,  
189 offset by any collateral source payment paid or payable. In any  
190 tort action brought against a lead agency, noneconomic damages  
191 shall be limited to \$400,000 per claim. An action ~~A claims bill~~  
192 may be brought on behalf of a claimant pursuant to s. 768.28 in  
193 the Court of Claims for any amount exceeding the limits  
194 specified in this paragraph. Any offset of collateral source  
195 payments made as of the date of the settlement or judgment shall  
196 be in accordance with s. 768.76. The lead agency is not liable  
197 in tort for the acts or omissions of its subcontractors or the  
198 officers, agents, or employees of its subcontractors.

199 (3) SUBCONTRACTOR LIABILITY.—

200 (a) A subcontractor of an eligible community-based care  
201 lead agency that is a direct provider of foster care and related  
202 services to children and families, and its employees or  
203 officers, except as otherwise provided in paragraph (b), must,

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204 as a part of its contract, obtain a minimum of \$1 million per  
205 occurrence with a policy period aggregate limit of \$3 million in  
206 general liability insurance coverage. The subcontractor of a  
207 lead agency must also require that staff who transport client  
208 children and families in their personal automobiles in order to  
209 carry out their job responsibilities obtain minimum bodily  
210 injury liability insurance in the amount of \$100,000 per person  
211 in any one automobile accident, and subject to such limits for  
212 each person, \$300,000 for all damages resulting from any one  
213 automobile accident, on their personal automobiles. In lieu of  
214 personal motor vehicle insurance, the subcontractor's casualty,  
215 liability, or motor vehicle insurance carrier may provide  
216 nonowned automobile liability coverage. This insurance provides  
217 liability insurance for automobiles that the subcontractor uses  
218 in connection with the subcontractor's business but does not  
219 own, lease, rent, or borrow. This coverage includes automobiles  
220 owned by the employees of the subcontractor or a member of the  
221 employee's household but only while the automobiles are used in  
222 connection with the subcontractor's business. The nonowned  
223 automobile coverage for the subcontractor applies as excess  
224 coverage over any other collectible insurance. The personal  
225 automobile policy for the employee of the subcontractor shall be  
226 primary insurance, and the nonowned automobile coverage of the  
227 subcontractor acts as excess insurance to the primary insurance.  
228 The subcontractor shall provide a minimum limit of \$1 million in  
229 nonowned automobile coverage. In a tort action brought against  
230 such subcontractor or employee, net economic damages shall be  
231 limited to \$2 million per liability claim and \$200,000 per  
232 automobile claim, including, but not limited to, past and future



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233 medical expenses, wage loss, and loss of earning capacity,  
234 offset by any collateral source payment paid or payable. In a  
235 tort action brought against such subcontractor, noneconomic  
236 damages shall be limited to \$400,000 per claim. An action ~~A~~  
237 ~~claims bill~~ may be brought on behalf of a claimant pursuant to  
238 s. 768.28 in the Court of Claims for any amount exceeding the  
239 limits specified in this paragraph. Any offset of collateral  
240 source payments made as of the date of the settlement or  
241 judgment shall be in accordance with s. 768.76.

242 Section 11. Subsection (5) of section 768.28, Florida  
243 Statutes, is amended to read:

244 768.28 Waiver of sovereign immunity in tort actions;  
245 recovery limits; limitation on attorney fees; statute of  
246 limitations; exclusions; indemnification; risk management  
247 programs.—

248 (5) The state and its agencies and subdivisions shall be  
249 liable for tort claims in the same manner and to the same extent  
250 as a private individual under like circumstances, but liability  
251 shall not include punitive damages or interest for the period  
252 before judgment. Neither the state nor its agencies or  
253 subdivisions shall be liable to pay a claim or a judgment by any  
254 one person which exceeds the sum of \$200,000 or any claim or  
255 judgment, or portions thereof, which, when totaled with all  
256 other claims or judgments paid by the state or its agencies or  
257 subdivisions arising out of the same incident or occurrence,  
258 exceeds the sum of \$300,000. However, a judgment or judgments  
259 may be claimed and rendered in excess of these amounts and may  
260 be settled and paid pursuant to this act up to \$200,000 or  
261 \$300,000, as the case may be; and that portion of the judgment

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262 that exceeds these amounts ~~may be reported to the Legislature,~~  
263 ~~but~~ may be paid in part or in whole only by a judgment of the  
264 Court of Claims ~~further act of the Legislature~~. Notwithstanding  
265 the limited waiver of sovereign immunity provided herein, the  
266 state or an agency or subdivision thereof may agree, within the  
267 limits of insurance coverage provided, to settle a claim made or  
268 a judgment rendered against it without further action by the  
269 Legislature, but the state or agency or subdivision thereof  
270 shall not be deemed to have waived any defense of sovereign  
271 immunity or to have increased the limits of its liability as a  
272 result of its obtaining insurance coverage for tortious acts in  
273 excess of the \$200,000 or \$300,000 waiver provided above. The  
274 limitations of liability set forth in this subsection shall  
275 apply to the state and its agencies and subdivisions whether or  
276 not the state or its agencies or subdivisions possessed  
277 sovereign immunity before July 1, 1974.

278 Section 12. Section 11.065, Florida Statutes, is repealed.

279 Section 13. This act shall take effect on the effective  
280 date of the amendment to the State Constitution proposed by SJR  
281 \_\_ or a similar joint resolution having substantially the same  
282 specific intent or purpose, if such amendment to the State  
283 Constitution is approved at the general election held in  
284 November 2018 or at an earlier special election specifically  
285 authorized by law.