

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 82

INTRODUCER: Senator Torres

SUBJECT: Relief of Kareem Hawari by the Osceola County School Board

DATE: February 1, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Bond</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 2. | <u>Brick</u> | <u>Bouck</u> | <u>ED</u> | Favorable |
| 3. | <u>Bond</u> | <u>Phelps</u> | <u>RC</u> | Favorable |

I. Summary:

SB 82, a claim bill, alleges that 13-year-old Kareem Hawari was injured while participating in athletic competition on behalf of his school due to the negligence of employees of the Osceola County School Board. Mr. Hawari, now an adult, settled the claim with the school board for \$3.6 million, of which \$100,000 has been paid in accordance with the state’s sovereign immunity waiver. The bill authorizes and directs the Osceola County School Board to pay the remaining \$3.5 million.

The bill is effective upon becoming law.

II. Present Situation:

Doctrine of Sovereign Immunity: Overview

Sovereign immunity is defined as: “A government’s immunity from being sued in its own courts without its consent.”¹ The doctrine had its origin with the judge-made law of England. During English feudal times, the King was the sovereign. Today, for the purposes of this discussion, the term “sovereign” refers to Florida state agencies and subdivisions including local governments.

Article X, section 13 of the State Constitution authorizes the Legislature to enact laws that allow suits against the state. The Legislature has, to some extent, allowed tort suits against the state and has limited the collectability of judgments against the state to \$200,000 per person and \$300,000 per incident (the caps applicable at the time of this incident giving rise to SB 82 were \$100,000 and \$200,000 respectively).² A person seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

¹ BLACK’S LAW DICTIONARY (8th ed. 2004).

² Section 768.28, F.S.

In medieval England “one could not sue the king in his own courts; hence the phrase ‘the king can do no wrong.’”³ The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

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.⁴

Although one could not sue the king, one could petition the king for relief.⁵

Under s. 2.01, F.S., Florida has adopted the common law of England as it existed on July 4, 1776.⁶ This adoption of English common law included adoption of the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁷

The Legislature was first expressly authorized to waive the state’s sovereign immunity under Article IV, section 19 of the Constitution of 1868.⁸ The Legislature again was expressly authorized to waive the state’s sovereign immunity under Article X, section 13 of the Constitution of 1968. This authorization to waive sovereign immunity 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.”⁹ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.¹⁰ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent Capitol building.¹¹

Florida’s Current Statutory Sovereign Immunity Waiver

Section 768.28(1), F.S., allows for suits in tort against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28 applies only to “injury or loss of property, personal injury, or death

³ *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981).

⁴ *Id.* (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

⁵ *Id.*

⁶ English common law that is inconsistent with state or federal law is not included.

⁷ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁸ 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.”

⁹ *Cauley*, 403 So. 2d at note 5.

¹⁰ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

¹¹ *Id.*

caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment.”¹²

Section 768.28(5), F.S., currently caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although an ‘excess’ judgment may be entered, “the statutory caps make it impossible, absent a special claim bill passed by the legislature, for a claimant to collect more than the caps provide.”¹³

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁴ A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.¹⁵

Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. “A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer of Florida, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.”¹⁶ Such obligations typically arise from the negligence of officers or employees of the State or a local governmental agency.¹⁷

Legislative claim bills are used either after procurement of a judgment in an action at law or as a mechanism to avoid an action at law altogether.¹⁸ The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.¹⁹ “Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace.”²⁰

The beneficiary of a claim bill recovers by virtue of its enactment, regardless of whether the governmental tortfeasor purchased liability insurance for the purpose of paying an excess judgment.²¹ However, where the governmental tortfeasor has liability insurance in excess of the

¹² *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

¹³ *Breaux v. City of Miami Beach*, 899 So. 2d 1059, n. 2 (Fla. 2005).

¹⁴ Section 768.28(9)(a), F.S.

¹⁵ *Id.*

¹⁶ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

¹⁷ *Id.*

¹⁸ *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

¹⁹ *Wagner*, 960 So. 2d at 788 (citing Kahn, *Legislative Claim Bills*, Fla. B. Journal (April 1988)).

²⁰ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

²¹ *Servs. Auto Ass'n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

statutory cap, and the claimant receives compensation in excess of that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.²²

A government entity may, without a claim bill, settle claim against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.²³

Negligence Law

Negligence is the failure to use due care. The failure may be by commission or omission. There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risk; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct of that duty; (3) causation—where the defendant’s conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.²⁴ A local government is liable in tort for the negligent act of an employee acting within the scope of his or her employment.²⁵

The Injury to Kareem Hawari

According to the bill, on March 5, 2010, claimant Kareem Hawari was a 13-year-old student attending middle school in Osceola County. Prior to his injury, he was a normal and active teenager who was a member of the school wrestling team. On March 5, 2010, he was severely injured during a wrestling meet.

The bill sets forth the facts of the case: The negligence is alleged to have occurred when the wrestling team coach, employed by the school board, directed Mr. Hawari to engage in a wrestling match against a vastly superior opponent. The allegation is that the coach knew or should have known that this match could cause injury to Mr. Hawari. The match was over quickly, as the opponent immediately grabbed Mr. Hawari, lifted him up, and forcibly slammed him into the mat. The force of the collision with the mat caused a brain stem hemorrhage that resulted in a traumatic brain injury. Mr. Hawari has incurred \$708,309.92 in medical expenses and is permanently and totally disabled because of his injuries.

The claimant timely filed suit against the school board. After extensive discovery and pretrial preparation, the parties settled in the amount of \$3.6 million.

III. Effect of Proposed Changes:

The bill authorizes and directs the Osceola County School Board to pay \$3.5 million to Kareem Hawari in full compensation for his injuries sustained due to the negligence of the school board. Attorney fees may not exceed 25 percent of the award.

The bill is effective upon becoming law.

²² *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544 (Fla. 4th DCA 2003).

²³ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

²⁴ *Saunders v. Dickens*, 151 So. 3d 434, 441 (Fla. 2014); *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).

²⁵ *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 82 authorizes and directs the Osceola County School Board to pay \$3.5 million to Kareem Hawari. The bill does not appear to have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
