

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 Community Affairs

BILL: CS/CS/SB 974

INTRODUCER: Community Affairs Committee; Judiciary Committee; and Senator Gruters

SUBJECT: Sovereign Immunity

DATE: February 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 974 increases the limits of the state’s waiver of sovereign immunity from \$200,000 per injured person and \$300,000 per incident to \$1 million per injured person and \$3 million per incident. The limits must be adjusted for inflation every ten years in the future. A claim may be voluntarily paid in excess of the limits without the need for a claim bill. An insurance policy may not condition the payment of benefits on the enactment of a claim bill.

The bill also provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute.

The bill appears to have a significant indeterminate negative fiscal impact on state and local governments.

The bill is effective July 1, 2022.

II. Present Situation:

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. The basis

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

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.²

The State Constitution authorizes the Legislature to enact laws that permit suits against the state and its subdivisions. Currently, tort suits against the state and its subdivisions are allowed, but collectability of judgments is limited to \$200,000 per person and \$300,000 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

Florida has adopted the common law of England as it existed on July 4, 1776.³ This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁴

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV, State Const. (1868).⁵ 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."⁶ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.⁷ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.⁸

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

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

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

⁵ 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."

⁶ *Cauley*, 403 So. 2d at note 5.

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

⁸ *Id.*

Statutory Waivers of Sovereign Immunity

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

In 1973, the Legislature again adopted a law that acted as a general waiver to the state's sovereign immunity.¹¹ 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 or settlements.¹² In 1981, the Legislature increased the amount of damages that could be collected to \$100,000 per person and \$200,000 per incident.¹³ In 2010, the Legislature increased the limits to \$200,000 per person and \$300,000 per incident.¹⁴

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. 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 the amount of the sovereign immunity waiver.¹⁵ The Division also settles and defends tort suits filed against the agencies.

⁹ Chapter 69-116, Laws of Fla.

¹⁰ Chapter 69-357, Laws of Fla.

¹¹ Chapter 73-313, Laws of Fla.

¹² Section 768.28(8), F.S. (1973).

¹³ Chapter 81-317, Laws of Fla.

¹⁴ Chapter 2010-26, Laws of Fla.

¹⁵ Section 284.30, F.S.

In Fiscal Year 2020-21, the Division paid \$4,189,287 for the resolution of 2,588 general liability claims.¹⁶ Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2020-21, the Division paid \$5,884,341 for the resolution of 478 automobile liability claims.¹⁷

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. 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.

III. Effect of Proposed Changes:

The bill changes the limits of the waiver of sovereign immunity to \$1 million per injured person and \$3 million per incident. A claim may be voluntarily paid in excess of the limits without the need for a claim bill. An insurance policy may not condition the payment of benefits on the enactment of a claim bill.

The bill provides for adjustment of the limits based on the Consumer Price Index for the Southeast or a successor index of the United States Department of Labor, every 10 years, starting October 1, 2023. The adjustment must be to the nearest \$10,000. By July 1 in the year of an adjustment date, the Department of Financial Services must calculate the adjusted values and publish them on its website.

The bill provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute. This portion of the bill applies to those claims that would not have been time barred on or before July 1, 2010.

The bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁶ Department of Financial Services, Division of Risk Management, *Fiscal Year 2021 Annual Report*, at 24 (2021).

¹⁷ *Id.* at 22.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those individuals obtaining judgments from or settlements with the state and its agents and subdivisions may receive additional compensation because of the increase in the liability limits for claims arising on or after October 1, 2022. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

C. Government Sector Impact:

The potential fiscal impact of increasing the liability limits of state and local governments will be contingent upon the number of claims filed and the value of those claims. The state and its subdivisions may experience an increase in insurance premiums for liability coverage in response to the increase in liability limits. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on February 8, 2022:

The CS changes the limits of the waiver of sovereign immunity to \$1 million per injured person with a \$3 million limit per incident. A claim may be voluntarily paid in excess of the limits without the need for a claim bill. An insurance policy may not condition the payment of benefits on the enactment of a claim bill.

The CS provides that the annual adjustment of the waiver amount will start July 1, 2023, rather than July 1, 2032.

The CS further provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute. This section applies to those claims that would not have been time barred on or before July 1, 2010.

CS by Judiciary on January 31, 2022:

The CS changes the liability limits, changes the inflation adjustment period, and provides that inflationary adjustments are rounded to the nearest \$10,000. The CS also removes provisions for retroactivity, the ability of an entity to voluntarily pay a claim above the limits without a claim bill, the prohibition on claim bill clauses in insurance contracts, and the extension of a statute of limitations.

- B. **Amendments:**

None.