

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 985 Sovereign Immunity

SPONSOR(S): Judiciary Committee, Civil Justice & Property Rights Subcommittee, Beltran

TIED BILLS: IDEN./SIM. **BILLS:** HB 799

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 1 N, As CS	Mathews	Jones
2) Appropriations Committee	23 Y, 1 N	Harrington	Pridgeon
3) Judiciary Committee	19 Y, 0 N, As CS	Mathews	Kramer

SUMMARY ANALYSIS

Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In turn, s. 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(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although a court may enter a judgment in excess of these caps, it is impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps provide. Further, section 768.28(6), F.S., imposes pre-suit requirements upon a claimant seeking to recover against a state or local government entity, allowing a general six-month period for the government entity to review and dispose of a claim before the claimant may file a lawsuit.

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

CS/CS/HB 985:

- Increases the sovereign immunity caps for damages against state and local government entities to \$400,000 per person and \$600,000 per incident.
- Allows a subdivision of the state to settle a claim and pay the settled amount without the need for a claim bill, but does not provide for a state government entity to pay a claim above the statutory cap amount without a claim bill.
- Eliminates any statute of limitations for filing a claim against the state or a local government entity for sexual battery actions involving a victim who was younger than 16 years old at the time of the incident. However, the bill does not resuscitate any such claim which would have been time-barred as of July 1, 2010.
- Reduces from six months to three months the general pre-suit statutory time period for a government entity to review and dispose of a claim.
- Reenacts several statutory sections for the purpose of incorporating the changes made by the bill.

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments. The increased costs will affect the State Risk Management Trust Fund.

The bill provides an effective date of October 1, 2023. The bill applies to all claims accruing on or after that date, except as otherwise provided within the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.¹ Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, s. 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, F.S., applies only to “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 the employee’s office or employment”²

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident.³ Although a court may enter an excess judgment, the statutory caps make it impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps provide.⁴

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.⁵ 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.⁶

A law enforcement agency may be liable for injury, death, or property damage by a person fleeing one of its law enforcement officers if the pursuit involves conduct by the officer so reckless as to constitute disregard for human rights, the officer did not initiate pursuit under the reasonable belief that the fleeing person had committed a forcible felony, and the pursuit was not conducted pursuant to a written policy.⁷ While s. 768.28(9)(a), F.S., grants individual state officers immunity from judgment *and* suit in certain cases, s. 768.28(9)(d), F.S., only grants employing agencies immunity from judgment.⁸

Presuit Procedures for a Claim Against the Government

Before a claimant files a lawsuit against a government entity, the claimant generally must present its claim in writing to the government entity within the statute of limitations prescribed by law.⁹ If the claim is brought against the state, the claimant must also present its claim to the Department of Financial Services (DFS). The government entity generally then has six months to review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.¹⁰

¹ *Sovereign immunity*, Legal Information Institute, https://www.law.cornell.edu/wex/sovereign_immunity (last visited Feb. 17, 2022).
² *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.).
³ S. 768.28(5), F.S.
⁴ *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
⁵ S. 768.28(9)(a), F.S.
⁶ *Id.*
⁷ S. 768.28(9)(d), F.S.
⁸ *Ross v. City of Jacksonville*, 274 So. 3d 1180, 1186 (Fla. 1st DCA 2019).
⁹ See s. 768.28(6)(a), F.S.
¹⁰ See s. 768.28(6)(d), F.S.
STORAGE NAME: h0985e.JDC
DATE: 2/28/2022

Damages

The liability caps in s. 768.28(5), F.S., apply to “all of the elements of the monetary award to a plaintiff against a sovereignly immune entity.”¹¹ In other words, a plaintiff’s entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S.

Generally, damages are of two kinds: compensatory and punitive.¹² Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible.¹³ They arise from actual and indirect pecuniary loss.¹⁴ Section 768.28, F.S., does not allow for the recovery of punitive damages, but only for the recovery of compensatory damages.

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, 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.¹⁵ Such obligations typically arise from the negligence of officers or employees of the State or a local governmental agency.¹⁶ Legislative claim bills are typically used after procurement of a judgment or settlement in an action at law.¹⁷ 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.¹⁸ Unlike civil judgments, claim bills are not obtainable by right upon the claimant’s proof of his entitlement; rather, they are granted as a matter of legislative grace.¹⁹

Once a legislative claim bill is formally introduced, a special master usually conducts a quasi-judicial hearing.²⁰ This hearing may resemble a trial during which the claimant offers testimony as well as documentary and physical evidence necessary to establish the claim. Trial records may be substituted for witness testimony. Witnesses who testify are sworn and subject to cross-examination.²¹ A responding agency may present a defense to contest the claim, and the special master may then prepare a report with an advisory recommendation to the Legislature if the bill is placed on an agenda.²²

A government entity may, without the need for a claim bill, settle a claim or pay a judgment 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

Statute of Limitations for Sexual Battery on a Person Under 16

Section 95.11, F.S., provides statutes of limitations for various types of civil actions. In 2010, the Legislature amended s. 95.11 to remove any statute of limitations applying to a civil action for sexual battery if the victim was under 16 at the time of the crime.²⁴ The Legislature provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.²⁵

¹¹ *Gallagher v. Manatee Cty.*, 927 So. 2d 914, 918 (Fla. 2d DCA 2006).

¹² 22 Am. Jur. 2d s. 1 at 13 (1965).

¹³ *Fisher v. City of Miami*, 172 So. 2d 455 (Fla. 1965).

¹⁴ *Margaret Ann Supermarkets, Inc. v. Dent*, 64 So. 2d 291 (Fla. 1953).

¹⁵ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)

¹⁶ *Id.*

¹⁷ *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

¹⁸ *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

¹⁹ *United Servs. Auto. Ass’n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

²⁰ *Wagner*, 960 So. 2d at 788 (citing Kahn at 26).

²¹ *Id.*

²² *Id.*

²³ S. 768.28(5), F.S.

²⁴ Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.

²⁵ *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

Effect of Proposed Changes

The bill amends s. 768.28, F.S., to increase the caps for tort damages against the state, its agencies, and its subdivisions from \$200,000 to \$400,000 per person, and from \$300,000 to \$600,000 per incident.

The bill also amends s. 768.28(6) and (14), F.S., to eliminate any statute of limitations for a civil claim against the state or one of its subdivisions for sexual battery actions involving a victim who was younger than 16 years old at the time of the incident. As such, a claimant in such situation may present his or her claim in writing at any time, and he or she may commence the civil action at any time. However, the bill does not resuscitate any such claims which would have been time-barred as of July 1, 2010. In making these changes, the bill aligns the provisions of s. 768.28, F.S., with the 2010 amendments to s. 95.11, F.S., involving a civil action where a plaintiff under 16 is the victim of sexual battery. Under the bill, such victim of sexual battery will be able to bring his or her claim at any time, regardless of whether the civil defendant is a private party or a government entity.

The bill changes language within s. 768.28, F.S., to allow a subdivision of the state to settle a claim in any amount and then pay that amount without the need for a legislative claim bill. However, the bill does not allow a state government entity to settle a claim in excess of the statutory cap amount.

The bill also decreases from six months to three months the amount of time a government entity has to make a final disposition of a claim during the pre-suit process within s. 768.28(6), F.S., after which time the plaintiff may bring a lawsuit.

The bill reenacts a number of statutory sections for the purpose of incorporating the changes made by the language of the bill.

The bill provides an effective date of October 1, 2023. The provisions of the bill apply to all claims accruing on or after that date, except that the bill applies to claims relating to sexual battery on a person under 16 that may have accrued at any time. However, the bill does not resuscitate any such claims which would have been time-barred as of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions.

Section 2: Reenacts provisions within the Florida Statutes for the purpose of incorporating the amendments made by the act.

Section 3: Provides that the act applies to claims accruing on or after the effective date, except as otherwise provided.

Section 4: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has a negative fiscal impact on local governments. The amount of the cost resulting from the change to the state's waiver of sovereign immunity limits and ability to settle claims in excess of those limits under s. 768.28, F.S., is indeterminate. However, local government expenditures would likely increase for settlements, awards, and other legal costs.²⁶

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may enable more individuals who have tort claims against the state or one of its agencies or subdivisions to receive larger payments without the need to pursue a claim bill. The ability to collect larger settlements or judgments against government entities may also serve as an incentive for private attorneys to represent claimants in these matters. However, the bill may reduce government services to the public in proportion to additional amounts paid to satisfy tort claims.

D. FISCAL COMMENTS:

By increasing the sovereign immunity cap, the bill increases the possibility that the state and its agencies and subdivisions will spend more of their resources to satisfy tort claims. The provision of larger payments in satisfaction of tort claims, however, may also reduce the demand for other government services that would have otherwise been necessary for claimants.

By reducing the pre-suit time period for a government entity or DFS to review and dispose of a claim against the state, the bill may have an impact on the pre-suit settlement process.

Finally, the bill may reduce the workload of the Legislature by reducing the number of claim bills filed but may also reduce the legislative oversight of claims against government entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2022, the Civil Justice and Property Rights Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment decreased from six months to three months the amount of time a state or local government entity has to make a final disposition of a claim during the pre-suit process set out in s. 768.28(6), F.S.

On February 28, 2022, the Judiciary Committee adopted a proposed committee substitute and passed the bill favorably as a committee substitute. The committee substitute differed from the underlying bill in that it:

²⁶ DFS, *supra* note 24.
STORAGE NAME: h0985e.JDC
DATE: 2/28/2022

- Changed the sovereign immunity cap, for the state and subdivisions of the state, from:
 - \$1,000,000 per person to \$400,000 per person.
 - An unlimited amount per incident to \$600,000 per incident.
- Permitted a subdivision of the state to settle and pay a claim in any amount without the need for a claim bill, but did not provide for a state government entity to do so.
- Removed language prohibiting an insurance agreement from conditioning payment on the passage of a claim bill.
- Removed an automatic annual adjustment to the sovereign immunity cap based on the Consumer Price Index (CPI).
- Changed the bill's effective date from July 1, 2022, to October 1, 2023, to accommodate the fiscal cycle of subdivisions of the state.
- Provided that the bill generally applies to a cause of action accruing on or after the bill's effective date.
- Made other technical and clarifying changes.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.