

1                                   A bill to be entitled  
2           An act relating to sovereign immunity; amending s.  
3           768.28, F.S.; removing the statutory limits on  
4           liability for tort claims against the state and its  
5           agencies and subdivisions; revising requirements for a  
6           government entity to settle a claim or judgment;  
7           revising the timeframes within which a claim must be  
8           presented and within which the appropriate agency must  
9           make final disposition of a claim after it is filed to  
10          prevent the claim from being deemed denied; revising  
11          exceptions relating to instituting actions on claims  
12          against the state or one of its agencies or  
13          subdivisions and to the statute of limitations for  
14          such claims; amending ss. 45.061, 111.071, 341.302,  
15          373.1395, 381.0056, 403.0862, 760.11, 768.295, 944.713  
16          and 961.06, F.S.; conforming provisions to changes  
17          made by the act; reenacting ss. 110.504, 163.01,  
18          190.043, 213.015, 252.51, 252.89, 252.944, 260.0125,  
19          284.31, 284.38, 322.13, 337.19, 375.251, 393.075,  
20          395.1055, 403.706, 409.993, 455.221, 455.32, 456.009,  
21          456.076, 471.038, 472.006, 497.167, 513.118, 548.046,  
22          556.106, 589.19, 723.0611, 766.1115, 766.112,  
23          768.1355, 946.5026, 946.514, 1002.33, 1002.333,  
24          1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and  
25          1006.261, F.S., to incorporate the amendments made to

26 s. 768.28, F.S., in references thereto; providing  
 27 applicability; providing an effective date.  
 28

29 Be It Enacted by the Legislature of the State of Florida:  
 30

31 Section 1. Subsection (5), paragraphs (a) and (d) of  
 32 subsection (6), and subsections (10), (11), (12), (14), and (19)  
 33 of section 768.28, Florida Statutes, are amended to read:

34 768.28 Waiver of sovereign immunity in tort actions;  
 35 recovery limits; civil liability for damages caused during a  
 36 riot; limitation on attorney fees; statute of limitations;  
 37 exclusions; indemnification; risk management programs.—

38 (5)(a) The state and its agencies and subdivisions shall  
 39 be liable for tort claims in the same manner and to the same  
 40 extent as a private individual under like circumstances. . ~~but~~  
 41 ~~liability shall not include punitive damages or interest for the~~  
 42 ~~period before judgment. Neither the state nor its agencies or~~  
 43 ~~subdivisions shall be liable to pay a claim or a judgment by any~~  
 44 ~~one person which exceeds the sum of \$200,000 or any claim or~~  
 45 ~~judgment, or portions thereof, which, when totaled with all~~  
 46 ~~other claims or judgments paid by the state or its agencies or~~  
 47 ~~subdivisions arising out of the same incident or occurrence,~~  
 48 ~~exceeds the sum of \$300,000. However, a judgment or judgments~~  
 49 ~~may be claimed and rendered in excess of these amounts and may~~  
 50 ~~be settled and paid pursuant to this act up to \$200,000 or~~

51 ~~\$300,000, as the case may be; and that portion of the judgment~~  
52 ~~that exceeds these amounts may be reported to the Legislature,~~  
53 ~~but may be paid in part or in whole only by further act of the~~  
54 ~~Legislature. Notwithstanding the limited waiver of sovereign~~  
55 ~~immunity provided herein,~~ The state or an agency or subdivision  
56 thereof may agree, ~~within the limits of insurance coverage~~  
57 ~~provided,~~ to settle a claim made or a judgment rendered against  
58 it ~~without further action by the Legislature, but the state or~~  
59 ~~agency or subdivision thereof shall not be deemed to have waived~~  
60 ~~any defense of sovereign immunity or to have increased the~~  
61 ~~limits of its liability as a result of its obtaining insurance~~  
62 ~~coverage for tortious acts in excess of the \$200,000 or \$300,000~~  
63 ~~waiver provided above. The limitations of liability set forth in~~  
64 ~~this subsection shall apply to the state and its agencies and~~  
65 ~~subdivisions whether or not the state or its agencies or~~  
66 ~~subdivisions possessed sovereign immunity before July 1, 1974.~~

67 (b) A municipality has a duty to allow the municipal law  
68 enforcement agency to respond appropriately to protect persons  
69 and property during a riot or an unlawful assembly based on the  
70 availability of adequate equipment to its municipal law  
71 enforcement officers and relevant state and federal laws. If the  
72 governing body of a municipality or a person authorized by the  
73 governing body of the municipality breaches that duty, the  
74 municipality is civilly liable for any damages, including  
75 damages arising from personal injury, wrongful death, or

76 | property damages proximately caused by the municipality's breach  
 77 | of duty. ~~The sovereign immunity recovery limits in paragraph (a)~~  
 78 | ~~do not apply to an action under this paragraph.~~

79 |         (6) (a) An action may not be instituted on a claim against  
 80 | the state or one of its agencies or subdivisions unless the  
 81 | claimant presents the claim in writing to the appropriate  
 82 | agency, and also, except as to any claim against a municipality,  
 83 | county, or the Florida Space Authority, presents such claim in  
 84 | writing to the Department of Financial Services, within 4 ~~3~~  
 85 | years after such claim accrues and the Department of Financial  
 86 | Services or the appropriate agency denies the claim in writing;  
 87 | except that, if:

88 |             1. Such claim is for contribution pursuant to s. 768.31,  
 89 | it must be so presented within 6 months after the judgment  
 90 | against the tortfeasor seeking contribution has become final by  
 91 | lapse of time for appeal or after appellate review or, if there  
 92 | is no such judgment, within 6 months after the tortfeasor  
 93 | seeking contribution has either discharged the common liability  
 94 | by payment or agreed, while the action is pending against her or  
 95 | him, to discharge the common liability; ~~or~~

96 |             2. Such action is for wrongful death, the claimant must  
 97 | present the claim in writing to the Department of Financial  
 98 | Services within 2 years after the claim accrues; or

99 |             3. Such action arises from a violation of s. 794.011  
 100 | involving a victim who was younger than the age of 16 at the

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101 time of the act, the claimant may present the claim in writing  
102 at any time pursuant to s. 95.11(9). This subparagraph applies  
103 to a claim accruing at any time but shall also be construed in  
104 accordance with s. 95.11(9) to apply only to claims which would  
105 not have been time barred on or before July 1, 2010.

106 (d) For purposes of this section, complete, accurate, and  
107 timely compliance with the requirements of paragraph (c) shall  
108 occur prior to settlement payment, close of discovery or  
109 commencement of trial, whichever is sooner; provided the ability  
110 to plead setoff is not precluded by the delay. This setoff shall  
111 apply only against that part of the settlement or judgment  
112 payable to the claimant, minus claimant's reasonable attorney's  
113 fees and costs. Incomplete or inaccurate disclosure of unpaid  
114 adjudicated claims due the state, its agency, officer, or  
115 subdivision, may be excused by the court upon a showing by the  
116 preponderance of the evidence of the claimant's lack of  
117 knowledge of an adjudicated claim and reasonable inquiry by, or  
118 on behalf of, the claimant to obtain the information from public  
119 records. Unless the appropriate agency had actual notice of the  
120 information required to be disclosed by paragraph (c) in time to  
121 assert a setoff, an unexcused failure to disclose shall, upon  
122 hearing and order of court, cause the claimant to be liable for  
123 double the original undisclosed judgment and, upon further  
124 motion, the court shall enter judgment for the agency in that  
125 amount. Except as provided otherwise in this subsection, the

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126 failure of the Department of Financial Services or the  
127 appropriate agency to make final disposition of a claim within 3  
128 ~~6~~ months after it is filed shall be deemed a final denial of the  
129 claim for purposes of this section. For purposes of this  
130 subsection, in medical malpractice actions and in wrongful death  
131 actions, the failure of the Department of Financial Services or  
132 the appropriate agency to make final disposition of a claim  
133 within 90 days after it is filed shall be deemed a final denial  
134 of the claim. The statute of limitations for medical malpractice  
135 actions and wrongful death actions is tolled for the period of  
136 time taken by the Department of Financial Services or the  
137 appropriate agency to deny the claim. The provisions of this  
138 subsection do not apply to such claims as may be asserted by  
139 counterclaim pursuant to s. 768.14.

140 (10) (a) Health care providers or vendors, or any of their  
141 employees or agents, that have contractually agreed to act as  
142 agents of the Department of Corrections to provide health care  
143 services to inmates of the state correctional system shall be  
144 considered agents of the State of Florida, Department of  
145 Corrections, for the purposes of this section, while acting  
146 within the scope of and pursuant to guidelines established in  
147 said contract or by rule. The contracts shall provide for the  
148 indemnification of the state by the agent for any liabilities  
149 incurred ~~up to the limits set out in this chapter.~~

150 (b) This subsection shall not be construed as designating

151 persons providing contracted health care services to inmates as  
152 employees or agents of the state for the purposes of chapter  
153 440.

154 (c) For purposes of this section, regional poison control  
155 centers created in accordance with s. 395.1027 and coordinated  
156 and supervised under the Division of Children's Medical Services  
157 Prevention and Intervention of the Department of Health, or any  
158 of their employees or agents, shall be considered agents of the  
159 State of Florida, Department of Health. Any contracts with  
160 poison control centers must provide, to the extent permitted by  
161 law, for the indemnification of the state by the agency for any  
162 liabilities incurred ~~up to the limits set out in this chapter.~~

163 (d) For the purposes of this section, operators,  
164 dispatchers, and providers of security for rail services and  
165 rail facility maintenance providers in the South Florida Rail  
166 Corridor, or any of their employees or agents, performing such  
167 services under contract with and on behalf of the South Florida  
168 Regional Transportation Authority or the Department of  
169 Transportation shall be considered agents of the state while  
170 acting within the scope of and pursuant to guidelines  
171 established in said contract or by rule.

172 (e) For purposes of this section, a professional firm that  
173 provides monitoring and inspection services of the work required  
174 for state roadway, bridge, or other transportation facility  
175 construction projects, or any of the firm's employees performing

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176 such services, shall be considered agents of the Department of  
177 Transportation while acting within the scope of the firm's  
178 contract with the Department of Transportation to ensure that  
179 the project is constructed in conformity with the project's  
180 plans, specifications, and contract provisions. Any contract  
181 between the professional firm and the state, to the extent  
182 permitted by law, shall provide for the indemnification of the  
183 department for any liability, including reasonable attorney's  
184 fees, incurred ~~up to the limits set out in this chapter~~ to the  
185 extent caused by the negligence of the firm or its employees.  
186 This paragraph shall not be construed as designating persons who  
187 provide monitoring and inspection services as employees or  
188 agents of the state for purposes of chapter 440. This paragraph  
189 is not applicable to the professional firm or its employees if  
190 involved in an accident while operating a motor vehicle. This  
191 paragraph is not applicable to a firm engaged by the Department  
192 of Transportation for the design or construction of a state  
193 roadway, bridge, or other transportation facility construction  
194 project or to its employees, agents, or subcontractors.

195 (f) For purposes of this section, any nonprofit  
196 independent college or university located and chartered in this  
197 state which owns or operates an accredited medical school, or  
198 any of its employees or agents, and which has agreed in an  
199 affiliation agreement or other contract to provide, or permit  
200 its employees or agents to provide, patient services as agents



201 of a teaching hospital, is considered an agent of the teaching  
 202 hospital while acting within the scope of and pursuant to  
 203 guidelines established in the affiliation agreement or other  
 204 contract. To the extent allowed by law, the contract must  
 205 provide for the indemnification of the teaching hospital, ~~up to~~  
 206 ~~the limits set out in this chapter,~~ by the agent for any  
 207 liability incurred which was caused by the negligence of the  
 208 college or university or its employees or agents. The contract  
 209 must also provide that those limited portions of the college,  
 210 university, or medical school which are directly providing  
 211 services pursuant to the contract and which are considered an  
 212 agent of the teaching hospital for purposes of this section are  
 213 deemed to be acting on behalf of a public agency as defined in  
 214 s. 119.011(2).

215 1. For purposes of this paragraph, the term:

216 a. "Employee or agent" means an officer, employee, agent,  
 217 or servant of a nonprofit independent college or university  
 218 located and chartered in this state which owns or operates an  
 219 accredited medical school, including, but not limited to, the  
 220 faculty of the medical school, any health care practitioner or  
 221 licensee as defined in s. 456.001 for which the college or  
 222 university is vicariously liable, and the staff or  
 223 administrators of the medical school.

224 b. "Patient services" mean:

225 (I) Comprehensive health care services as defined in s.

226 | 641.19, including any related administrative service, provided  
 227 | to patients in a teaching hospital;

228 |       (II) Training and supervision of interns, residents, and  
 229 | fellows providing patient services in a teaching hospital; or

230 |       (III) Training and supervision of medical students in a  
 231 | teaching hospital.

232 |       c. "Teaching hospital" means a teaching hospital as  
 233 | defined in s. 408.07 which is owned or operated by the state, a  
 234 | county or municipality, a public health trust, a special taxing  
 235 | district, a governmental entity having health care  
 236 | responsibilities, or a not-for-profit entity that operates such  
 237 | facility as an agent of the state, or a political subdivision of  
 238 | the state, under a lease or other contract.

239 |       2. The teaching hospital or the medical school, or its  
 240 | employees or agents, must provide notice to each patient, or the  
 241 | patient's legal representative, that the college or university  
 242 | that owns or operates the medical school and the employees or  
 243 | agents of that college or university are acting as agents of the  
 244 | teaching hospital and that the exclusive remedy for injury or  
 245 | damage suffered as the result of any act or omission of the  
 246 | teaching hospital, the college or university that owns or  
 247 | operates the medical school, or the employees or agents of the  
 248 | college or university, while acting within the scope of duties  
 249 | pursuant to the affiliation agreement or other contract with a  
 250 | teaching hospital, is by commencement of an action pursuant to

251 the provisions of this section. This notice requirement may be  
252 met by posting the notice in a place conspicuous to all persons.

253 3. This paragraph does not designate any employee  
254 providing contracted patient services in a teaching hospital as  
255 an employee or agent of the state for purposes of chapter 440.

256 (g) For the purposes of this section, the executive  
257 director of the Board of Nursing, when serving as the state  
258 administrator of the Nurse Licensure Compact pursuant to s.  
259 464.0095, and any administrator, officer, executive director,  
260 employee, or representative of the Interstate Commission of  
261 Nurse Licensure Compact Administrators, when acting within the  
262 scope of their employment, duties, or responsibilities in this  
263 state, are considered agents of the state. The commission shall  
264 pay any claims or judgments pursuant to this section and may  
265 maintain insurance coverage to pay any such claims or judgments.

266 (h) For purposes of this section, the individual appointed  
267 under s. 491.004(8) as the state's delegate on the Counseling  
268 Compact Commission, when serving in that capacity pursuant to s.  
269 491.017, and any administrator, officer, executive director,  
270 employee, or representative of the commission, when acting  
271 within the scope of his or her employment, duties, or  
272 responsibilities in this state, is considered an agent of the  
273 state. The commission shall pay any claims or judgments pursuant  
274 to this section and may maintain insurance coverage to pay any  
275 such claims or judgments.

276 (11) (a) Providers or vendors, or any of their employees or  
 277 agents, that have contractually agreed to act on behalf of the  
 278 state as agents of the Department of Juvenile Justice to provide  
 279 services to children in need of services, families in need of  
 280 services, or juvenile offenders are, solely with respect to such  
 281 services, agents of the state for purposes of this section while  
 282 acting within the scope of and pursuant to guidelines  
 283 established in the contract or by rule. A contract must provide  
 284 for the indemnification of the state by the agent for any  
 285 liabilities incurred ~~up to the limits set out in this chapter.~~

286 (b) This subsection does not designate a person who  
 287 provides contracted services to juvenile offenders as an  
 288 employee or agent of the state for purposes of chapter 440.

289 (12) (a) A health care practitioner, as defined in s.  
 290 456.001(4), who has contractually agreed to act as an agent of a  
 291 state university board of trustees to provide medical services  
 292 to a student athlete for participation in or as a result of  
 293 intercollegiate athletics, to include team practices, training,  
 294 and competitions, shall be considered an agent of the respective  
 295 state university board of trustees, for the purposes of this  
 296 section, while acting within the scope of and pursuant to  
 297 guidelines established in that contract. The contracts shall  
 298 provide for the indemnification of the state by the agent for  
 299 any liabilities incurred ~~up to the limits set out in this~~  
 300 ~~chapter.~~

301 (b) This subsection shall not be construed as designating  
 302 persons providing contracted health care services to athletes as  
 303 employees or agents of a state university board of trustees for  
 304 the purposes of chapter 440.

305 (14) Every claim against the state or one of its agencies  
 306 or subdivisions for damages for a negligent or wrongful act or  
 307 omission pursuant to this section shall be forever barred unless  
 308 the civil action is commenced by filing a complaint in the court  
 309 of appropriate jurisdiction within 4 years after such claim  
 310 accrues, ~~and~~ except that:

311 (a) An action for contribution must be commenced within  
 312 the limitations provided in s. 768.31(4); ~~and~~

313 (b) An action for damages arising from medical malpractice  
 314 or wrongful death must be commenced within the limitations for  
 315 such actions in s. 95.11(4); and

316 (c) An action arising from any act constituting a  
 317 violation of s. 794.011 involving a victim who was younger than  
 318 the age of 16 at the time of the act may be commenced at any  
 319 time pursuant to s. 95.11(9). This paragraph applies to a claim  
 320 accruing at any time as long as such claim would not have been  
 321 time barred on or before July 1, 2010, under s. 95.11(9).

322 (19) Neither the state nor any agency or subdivision of  
 323 the state waives any defense of sovereign immunity, ~~or increases~~  
 324 ~~the limits of its liability,~~ upon entering into a contractual  
 325 relationship with another agency or subdivision of the state.

326 Such a contract must not contain any provision that requires one  
 327 party to indemnify or insure the other party for the other  
 328 party's negligence or to assume any liability for the other  
 329 party's negligence. This does not preclude a party from  
 330 requiring a nongovernmental entity to provide such  
 331 indemnification or insurance. The restrictions of this  
 332 subsection do not prevent a regional water supply authority from  
 333 indemnifying and assuming the liabilities of its member  
 334 governments for obligations arising from past acts or omissions  
 335 at or with property acquired from a member government by the  
 336 authority and arising from the acts or omissions of the  
 337 authority in performing activities contemplated by an interlocal  
 338 agreement. ~~Such indemnification may not be considered to~~  
 339 ~~increase or otherwise waive the limits of liability to third-~~  
 340 ~~party claimants established by this section.~~

341 Section 2. Subsection (5) of section 45.061, Florida  
 342 Statutes, is amended to read:

343 45.061 Offers of settlement.—

344 (5) Sanctions authorized under this section may be imposed  
 345 notwithstanding any limitation on recovery of costs or expenses  
 346 which may be provided by contract or in other provisions of  
 347 Florida law. ~~This section shall not be construed to waive the~~  
 348 ~~limits of sovereign immunity set forth in s. 768.28.~~

349 Section 3. Paragraph (a) of subsection (1) of section  
 350 111.071, Florida Statutes, is amended to read:

351 111.071 Payment of judgments or settlements against  
 352 certain public officers or employees.—

353 (1) Any county, municipality, political subdivision, or  
 354 agency of the state which has been excluded from participation  
 355 in the Insurance Risk Management Trust Fund is authorized to  
 356 expend available funds to pay:

357 (a) Any final judgment, including damages, costs, and  
 358 attorney's fees, arising from a complaint for damages or injury  
 359 suffered as a result of any act or omission of action of any  
 360 officer, employee, or agent in a civil or civil rights lawsuit  
 361 described in s. 111.07. If the civil action arises under s.  
 362 768.28 as a tort claim, the ~~limitations and~~ provisions of s.  
 363 768.28 governing payment shall apply. If the action is a civil  
 364 rights action arising under 42 U.S.C. s. 1983, or similar  
 365 federal statutes, payments for the full amount of the judgment  
 366 may be made unless the officer, employee, or agent has been  
 367 determined in the final judgment to have caused the harm  
 368 intentionally.

369 Section 4. Subsection (17) of section 341.302, Florida  
 370 Statutes, is amended to read:

371 341.302 Rail program; duties and responsibilities of the  
 372 department.—The department, in conjunction with other  
 373 governmental entities, including the rail enterprise and the  
 374 private sector, shall develop and implement a rail program of  
 375 statewide application designed to ensure the proper maintenance,

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376 safety, revitalization, and expansion of the rail system to  
377 assure its continued and increased availability to respond to  
378 statewide mobility needs. Within the resources provided pursuant  
379 to chapter 216, and as authorized under federal law, the  
380 department shall:

381 (17) In conjunction with the acquisition, ownership,  
382 construction, operation, maintenance, and management of a rail  
383 corridor, have the authority to:

384 (a) Assume obligations pursuant to the following:

385 1.a. The department may assume the obligation by contract  
386 to forever protect, defend, indemnify, and hold harmless the  
387 freight rail operator, or its successors, from whom the  
388 department has acquired a real property interest in the rail  
389 corridor, and that freight rail operator's officers, agents, and  
390 employees, from and against any liability, cost, and expense,  
391 including, but not limited to, commuter rail passengers and rail  
392 corridor invitees in the rail corridor, regardless of whether  
393 the loss, damage, destruction, injury, or death giving rise to  
394 any such liability, cost, or expense is caused in whole or in  
395 part, and to whatever nature or degree, by the fault, failure,  
396 negligence, misconduct, nonfeasance, or misfeasance of such  
397 freight rail operator, its successors, or its officers, agents,  
398 and employees, or any other person or persons whomsoever; or

399 b. The department may assume the obligation by contract to  
400 forever protect, defend, indemnify, and hold harmless National



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401 Railroad Passenger Corporation, or its successors, and officers,  
402 agents, and employees of National Railroad Passenger  
403 Corporation, from and against any liability, cost, and expense,  
404 including, but not limited to, commuter rail passengers and rail  
405 corridor invitees in the rail corridor, regardless of whether  
406 the loss, damage, destruction, injury, or death giving rise to  
407 any such liability, cost, or expense is caused in whole or in  
408 part, and to whatever nature or degree, by the fault, failure,  
409 negligence, misconduct, nonfeasance, or misfeasance of National  
410 Railroad Passenger Corporation, its successors, or its officers,  
411 agents, and employees, or any other person or persons  
412 whomsoever.

413 2. The assumption of liability of the department by  
414 contract pursuant to sub-subparagraph 1.a. or sub-subparagraph  
415 1.b. may not in any instance exceed the following parameters of  
416 allocation of risk:

417 a. The department may be solely responsible for any loss,  
418 injury, or damage to commuter rail passengers, or rail corridor  
419 invitees, or trespassers, regardless of circumstances or cause,  
420 subject to sub-subparagraph b. and subparagraphs 3., 4., 5., and  
421 6.

422 b.(I) In the event of a limited covered accident, the  
423 authority of the department to protect, defend, and indemnify  
424 the freight operator for all liability, cost, and expense,  
425 including punitive or exemplary damages, in excess of the

426 deductible or self-insurance retention fund established under  
 427 paragraph (b) and actually in force at the time of the limited  
 428 covered accident exists only if the freight operator agrees,  
 429 with respect to the limited covered accident, to protect,  
 430 defend, and indemnify the department for the amount of the  
 431 deductible or self-insurance retention fund established under  
 432 paragraph (b) and actually in force at the time of the limited  
 433 covered accident.

434 (II) In the event of a limited covered accident, the  
 435 authority of the department to protect, defend, and indemnify  
 436 National Railroad Passenger Corporation for all liability, cost,  
 437 and expense, including punitive or exemplary damages, in excess  
 438 of the deductible or self-insurance retention fund established  
 439 under paragraph (b) and actually in force at the time of the  
 440 limited covered accident exists only if National Railroad  
 441 Passenger Corporation agrees, with respect to the limited  
 442 covered accident, to protect, defend, and indemnify the  
 443 department for the amount of the deductible or self-insurance  
 444 retention fund established under paragraph (b) and actually in  
 445 force at the time of the limited covered accident.

446 3. When only one train is involved in an incident, the  
 447 department may be solely responsible for any loss, injury, or  
 448 damage if the train is a department train or other train  
 449 pursuant to subparagraph 4., but only if:

450 a. When an incident occurs with only a freight train

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451 involved, including incidents with trespassers or at grade  
452 crossings, the freight rail operator is solely responsible for  
453 any loss, injury, or damage, except for commuter rail passengers  
454 and rail corridor invitees; or

455       b. When an incident occurs with only a National Railroad  
456 Passenger Corporation train involved, including incidents with  
457 trespassers or at grade crossings, National Railroad Passenger  
458 Corporation is solely responsible for any loss, injury, or  
459 damage, except for commuter rail passengers and rail corridor  
460 invitees.

461       4. For the purposes of this subsection:

462       a. Any train involved in an incident that is neither the  
463 department's train nor the freight rail operator's train,  
464 hereinafter referred to in this subsection as an "other train,"  
465 may be treated as a department train, solely for purposes of any  
466 allocation of liability between the department and the freight  
467 rail operator only, but only if the department and the freight  
468 rail operator share responsibility equally as to third parties  
469 outside the rail corridor who incur loss, injury, or damage as a  
470 result of any incident involving both a department train and a  
471 freight rail operator train, and the allocation as between the  
472 department and the freight rail operator, regardless of whether  
473 the other train is treated as a department train, shall remain  
474 one-half each as to third parties outside the rail corridor who  
475 incur loss, injury, or damage as a result of the incident. The

476 involvement of any other train shall not alter the sharing of  
 477 equal responsibility as to third parties outside the rail  
 478 corridor who incur loss, injury, or damage as a result of the  
 479 incident; or

480       b. Any train involved in an incident that is neither the  
 481 department's train nor the National Railroad Passenger  
 482 Corporation's train, hereinafter referred to in this subsection  
 483 as an "other train," may be treated as a department train,  
 484 solely for purposes of any allocation of liability between the  
 485 department and National Railroad Passenger Corporation only, but  
 486 only if the department and National Railroad Passenger  
 487 Corporation share responsibility equally as to third parties  
 488 outside the rail corridor who incur loss, injury, or damage as a  
 489 result of any incident involving both a department train and a  
 490 National Railroad Passenger Corporation train, and the  
 491 allocation as between the department and National Railroad  
 492 Passenger Corporation, regardless of whether the other train is  
 493 treated as a department train, shall remain one-half each as to  
 494 third parties outside the rail corridor who incur loss, injury,  
 495 or damage as a result of the incident. The involvement of any  
 496 other train shall not alter the sharing of equal responsibility  
 497 as to third parties outside the rail corridor who incur loss,  
 498 injury, or damage as a result of the incident.

499       5. When more than one train is involved in an incident:

500       a.(I) If only a department train and freight rail

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501 operator's train, or only an other train as described in sub-  
502 subparagraph 4.a. and a freight rail operator's train, are  
503 involved in an incident, the department may be responsible for  
504 its property and all of its people, all commuter rail  
505 passengers, and rail corridor invitees, but only if the freight  
506 rail operator is responsible for its property and all of its  
507 people, and the department and the freight rail operator each  
508 share one-half responsibility as to trespassers or third parties  
509 outside the rail corridor who incur loss, injury, or damage as a  
510 result of the incident; or

511 (II) If only a department train and a National Railroad  
512 Passenger Corporation train, or only an other train as described  
513 in sub-subparagraph 4.b. and a National Railroad Passenger  
514 Corporation train, are involved in an incident, the department  
515 may be responsible for its property and all of its people, all  
516 commuter rail passengers, and rail corridor invitees, but only  
517 if National Railroad Passenger Corporation is responsible for  
518 its property and all of its people, all National Railroad  
519 Passenger Corporation's rail passengers, and the department and  
520 National Railroad Passenger Corporation each share one-half  
521 responsibility as to trespassers or third parties outside the  
522 rail corridor who incur loss, injury, or damage as a result of  
523 the incident.

524 b.(I) If a department train, a freight rail operator  
525 train, and any other train are involved in an incident, the

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526 allocation of liability between the department and the freight  
527 rail operator, regardless of whether the other train is treated  
528 as a department train, shall remain one-half each as to third  
529 parties outside the rail corridor who incur loss, injury, or  
530 damage as a result of the incident; the involvement of any other  
531 train shall not alter the sharing of equal responsibility as to  
532 third parties outside the rail corridor who incur loss, injury,  
533 or damage as a result of the incident; and, if the owner,  
534 operator, or insurer of the other train makes any payment to  
535 injured third parties outside the rail corridor who incur loss,  
536 injury, or damage as a result of the incident, the allocation of  
537 credit between the department and the freight rail operator as  
538 to such payment shall not in any case reduce the freight rail  
539 operator's third-party-sharing allocation of one-half under this  
540 paragraph to less than one-third of the total third party  
541 liability; or

542 (II) If a department train, a National Railroad Passenger  
543 Corporation train, and any other train are involved in an  
544 incident, the allocation of liability between the department and  
545 National Railroad Passenger Corporation, regardless of whether  
546 the other train is treated as a department train, shall remain  
547 one-half each as to third parties outside the rail corridor who  
548 incur loss, injury, or damage as a result of the incident; the  
549 involvement of any other train shall not alter the sharing of  
550 equal responsibility as to third parties outside the rail

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551 | corridor who incur loss, injury, or damage as a result of the  
552 | incident; and, if the owner, operator, or insurer of the other  
553 | train makes any payment to injured third parties outside the  
554 | rail corridor who incur loss, injury, or damage as a result of  
555 | the incident, the allocation of credit between the department  
556 | and National Railroad Passenger Corporation as to such payment  
557 | shall not in any case reduce National Railroad Passenger  
558 | Corporation's third-party-sharing allocation of one-half under  
559 | this sub-subparagraph to less than one-third of the total third  
560 | party liability.

561 |         6. Any such contractual duty to protect, defend,  
562 | indemnify, and hold harmless such a freight rail operator or  
563 | National Railroad Passenger Corporation shall expressly include  
564 | a specific cap on the amount of the contractual duty, which  
565 | amount shall not exceed \$200 million without prior legislative  
566 | approval, and the department to purchase liability insurance and  
567 | establish a self-insurance retention fund in the amount of the  
568 | specific cap established under this subparagraph, provided that:

569 |         a. No such contractual duty shall in any case be effective  
570 | nor otherwise extend the department's liability in scope and  
571 | effect beyond the contractual liability insurance and self-  
572 | insurance retention fund required pursuant to this paragraph;  
573 | and

574 |         b.(I) The freight rail operator's compensation to the  
575 | department for future use of the department's rail corridor

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576 shall include a monetary contribution to the cost of such  
577 liability coverage for the sole benefit of the freight rail  
578 operator.

579 (II) National Railroad Passenger Corporation's  
580 compensation to the department for future use of the  
581 department's rail corridor shall include a monetary contribution  
582 to the cost of such liability coverage for the sole benefit of  
583 National Railroad Passenger Corporation.

584 (b) Purchase liability insurance, which amount shall not  
585 exceed \$200 million, and establish a self-insurance retention  
586 fund for the purpose of paying the deductible limit established  
587 in the insurance policies it may obtain, including coverage for  
588 the department, any freight rail operator as described in  
589 paragraph (a), National Railroad Passenger Corporation, commuter  
590 rail service providers, governmental entities, or any ancillary  
591 development, which self-insurance retention fund or deductible  
592 shall not exceed \$10 million. The insureds shall pay a  
593 reasonable monetary contribution to the cost of such liability  
594 coverage for the sole benefit of the insured. Such insurance and  
595 self-insurance retention fund may provide coverage for all  
596 damages, including, but not limited to, compensatory, special,  
597 and exemplary, and be maintained to provide an adequate fund to  
598 cover claims and liabilities for loss, injury, or damage arising  
599 out of or connected with the ownership, operation, maintenance,  
600 and management of a rail corridor.



601 (c) Incur expenses for the purchase of advertisements,  
 602 marketing, and promotional items.

603 (d) Without altering any of the rights granted to the  
 604 department under this section, agree to assume the obligations  
 605 to indemnify and insure, pursuant to s. 343.545, freight rail  
 606 service, intercity passenger rail service, and commuter rail  
 607 service on a department-owned rail corridor, whether ownership  
 608 is in fee or by easement, or on a rail corridor where the  
 609 department has the right to operate.

610  
 611 ~~Neither the assumption by contract to protect, defend,~~  
 612 ~~indemnify, and hold harmless; the purchase of insurance; nor the~~  
 613 ~~establishment of a self-insurance retention fund shall be deemed~~  
 614 ~~to be a waiver of any defense of sovereign immunity for torts~~  
 615 ~~nor deemed to increase the limits of the department's or the~~  
 616 ~~governmental entity's liability for torts as provided in s.~~  
 617 ~~768.28.~~ The requirements of s. 287.022(1) shall not apply to the  
 618 purchase of any insurance under this subsection. The provisions  
 619 of this subsection shall apply and inure fully as to any other  
 620 governmental entity providing commuter rail service and  
 621 constructing, operating, maintaining, or managing a rail  
 622 corridor on publicly owned right-of-way under contract by the  
 623 governmental entity with the department or a governmental entity  
 624 designated by the department. Notwithstanding any law to the  
 625 contrary, procurement for the construction, operation,

626 maintenance, and management of any rail corridor described in  
 627 this subsection, whether by the department, a governmental  
 628 entity under contract with the department, or a governmental  
 629 entity designated by the department, shall be pursuant to s.  
 630 287.057 and shall include, but not be limited to, criteria for  
 631 the consideration of qualifications, technical aspects of the  
 632 proposal, and price. Further, any such contract for design-build  
 633 shall be procured pursuant to the criteria in s. 337.11(7).

634 Section 5. Subsection (6) of section 373.1395, Florida  
 635 Statutes, is amended to read:

636 373.1395 Limitation on liability of water management  
 637 district with respect to areas made available to the public for  
 638 recreational purposes without charge.—

639 (6) This section does not relieve any water management  
 640 district of any liability that would otherwise exist for gross  
 641 negligence or a deliberate, willful, or malicious injury to a  
 642 person or property. ~~This section does not create or increase the~~  
 643 ~~liability of any water management district or person beyond that~~  
 644 ~~which is authorized by s. 768.28.—~~

645 Section 6. Subsection (9) of section 381.0056, Florida  
 646 Statutes, is amended to read:

647 381.0056 School health services program.—

648 (9) Any health care entity that provides school health  
 649 services under contract with the department pursuant to a school  
 650 health services plan developed under this section, and as part

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651 of a school nurse services public-private partnership, is deemed  
652 to be a corporation acting primarily as an instrumentality of  
653 the state solely for the purpose of s. 768.28 ~~limiting liability~~  
654 ~~pursuant to s. 768.28(5). The limitations on tort actions~~  
655 ~~contained in s. 768.28(5) shall apply to any action against the~~  
656 ~~entity with respect to the provision of school health services,~~  
657 ~~if the entity is acting within the scope of and pursuant to~~  
658 ~~guidelines established in the contract or by rule of the~~  
659 ~~department.~~ The contract must require the entity, or the  
660 partnership on behalf of the entity, to obtain general liability  
661 insurance coverage, with any additional endorsement necessary to  
662 insure the entity for liability assumed by its contract with the  
663 department. The Legislature intends that insurance be purchased  
664 by entities, or by partnerships on behalf of the entity, to  
665 cover all liability claims, and under no circumstances shall the  
666 state or the department be responsible for payment of any claims  
667 or defense costs for claims brought against the entity or its  
668 subcontractor for services performed under the contract with the  
669 department. This subsection does not preclude consideration by  
670 the Legislature for payment by the state of any claims bill  
671 involving an entity contracting with the department pursuant to  
672 this section.

673 Section 7. Subsection (4) of section 403.0862, Florida  
674 Statutes, is amended to read:

675 403.0862 Discharge of waste from state groundwater cleanup

676 operations to publicly owned treatment works.—

677 ~~(4) The limitation on damages provided by s. 768.28(5)~~  
 678 ~~shall not apply to any obligation or payment which may become~~  
 679 ~~due under this section.~~

680 Section 8. Subsection (5) of section 760.11, Florida  
 681 Statutes, is amended to read:

682 760.11 Administrative and civil remedies; construction.—

683 (5) In any civil action brought under this section, the  
 684 court may issue an order prohibiting the discriminatory practice  
 685 and providing affirmative relief from the effects of the  
 686 practice, including back pay. The court may also award  
 687 compensatory damages, including, but not limited to, damages for  
 688 mental anguish, loss of dignity, and any other intangible  
 689 injuries, and punitive damages. The provisions of ss. 768.72 and  
 690 768.73 do not apply to this section. The judgment for the total  
 691 amount of punitive damages awarded under this section to an  
 692 aggrieved person shall not exceed \$100,000. In any action or  
 693 proceeding under this subsection, the court, in its discretion,  
 694 may allow the prevailing party a reasonable attorney's fee as  
 695 part of the costs. It is the intent of the Legislature that this  
 696 provision for attorney's fees be interpreted in a manner  
 697 consistent with federal case law involving a Title VII action.  
 698 The right to trial by jury is preserved in any such private  
 699 right of action in which the aggrieved person is seeking  
 700 compensatory or punitive damages, and any party may demand a

701 trial by jury. The commission's determination of reasonable  
 702 cause is not admissible into evidence in any civil proceeding,  
 703 including any hearing or trial, except to establish for the  
 704 court the right to maintain the private right of action. A civil  
 705 action brought under this section shall be commenced no later  
 706 than 1 year after the date of determination of reasonable cause  
 707 by the commission. The commencement of such action shall divest  
 708 the commission of jurisdiction of the complaint, except that the  
 709 commission may intervene in the civil action as a matter of  
 710 right. Notwithstanding the above, the state and its agencies and  
 711 subdivisions shall not be liable for punitive damages. ~~The total~~  
 712 ~~amount of recovery against the state and its agencies and~~  
 713 ~~subdivisions shall not exceed the limitation as set forth in s.~~  
 714 ~~768.28(5).~~

715 Section 9. Subsection (4) of section 768.295, Florida  
 716 Statutes, is amended to read:

717 768.295 Strategic Lawsuits Against Public Participation  
 718 (SLAPP) prohibited.—

719 (4) A person or entity sued by a governmental entity or  
 720 another person in violation of this section has a right to an  
 721 expeditious resolution of a claim that the suit is in violation  
 722 of this section. A person or entity may move the court for an  
 723 order dismissing the action or granting final judgment in favor  
 724 of that person or entity. The person or entity may file a motion  
 725 for summary judgment, together with supplemental affidavits,

726 seeking a determination that the claimant's or governmental  
 727 entity's lawsuit has been brought in violation of this section.  
 728 The claimant or governmental entity shall thereafter file a  
 729 response and any supplemental affidavits. As soon as  
 730 practicable, the court shall set a hearing on the motion, which  
 731 shall be held at the earliest possible time after the filing of  
 732 the claimant's or governmental entity's response. The court may  
 733 award, ~~subject to the limitations in s. 768.28,~~ the party sued  
 734 by a governmental entity actual damages arising from a  
 735 governmental entity's violation of this section. The court shall  
 736 award the prevailing party reasonable attorney fees and costs  
 737 incurred in connection with a claim that an action was filed in  
 738 violation of this section.

739 Section 10. Subsection (2) of section 944.713, Florida  
 740 Statutes, is amended to read:

741 944.713 Insurance against liability.—

742 (2) The contract shall provide for indemnification of the  
 743 state by the private vendor for any liabilities incurred ~~up to~~  
 744 ~~the limits provided under s. 768.28(5)~~. The contract shall  
 745 provide that the private vendor, or the insurer of the private  
 746 vendor, is liable to pay any claim or judgment for any one  
 747 person which does not exceed the sum of \$100,000 or any claim or  
 748 judgment, or portions thereof, which, when totaled with all  
 749 other claims or judgments arising out of the same incident or  
 750 occurrence, does not exceed the sum of \$200,000. In addition,

751 the contractor must agree to defend, hold harmless, and  
 752 indemnify the department against any and all actions, claims,  
 753 damages and losses, including costs and attorney's fees.

754 Section 11. Subsection (7) of section 961.06, Florida  
 755 Statutes, is amended to read:

756 961.06 Compensation for wrongful incarceration.—

757 (7) Any payment made under this act does not constitute a  
 758 waiver of any defense of sovereign immunity ~~or an increase in~~  
 759 ~~the limits of liability~~ on behalf of the state or any person  
 760 subject to the provisions of s. 768.28 or other law.

761 Section 12. Sections 110.504, 163.01, 190.043, 213.015,  
 762 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13,  
 763 337.19, 375.251, 393.075, 395.1055, 403.706, 409.993, 455.221,  
 764 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118,  
 765 548.046, 556.106, 589.19, 723.0611, 766.1115, 766.112, 768.1355,  
 766 946.5026, 946.514, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83,  
 767 1002.88, 1006.24, and 1006.261, Florida Statutes, are reenacted  
 768 for the purpose of incorporating the amendments made by this act  
 769 to s. 768.28, Florida Statutes, in references thereto.

770 Section 13. Except as otherwise expressly provided herein,  
 771 this act applies to claims accruing on or after October 1, 2024.

772 Section 14. This act shall take effect October 1, 2024.