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:	CS/SB 1534
INTRODUCER:	Judiciary Committee and Senator Bradley
SUBJECT:	Sovereign Immunity
DATE:	February 13, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Hackett	Ryon	CA	**Favorable**
3.	Bond	Twogood	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1534 revises a statute that treats contractors providing monitoring and inspection services for state road and related infrastructure projects as agents of the state for purposes of sovereign immunity protections. As revised, the liability protections expressly also apply to consultants to a contractor performing monitoring and inspection services for the Florida Department of Transportation related to a state road or related infrastructure project.

The bill is effective July 1, 2024.

II. Present Situation:

Florida Sovereign Immunity Law

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 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

[1] BLACK'S LAW DICTIONARY (8th ed. 2004).

> 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. Persons seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

Extent of Sovereign Immunity (i.e. who is covered?)

The state's sovereign immunity protection extends to the officers, employees, and agents of the state that were involved in the commission of the tort.[3] Sovereign immunity extends to all subdivisions of the state, including counties and school boards and any agents or employees of these governmental entities.[4]

Whether sovereign immunity applies to an agent depends on the degree of control of the agent of the state retained by the state.[5] Normally, this is a finding of fact to be decided by the courts, but numerous statutes foreclose the inquiry and provide that certain individuals and entities are deemed agents of the state and thereby covered by the state's sovereign immunity.[6]

Agency Law, in General

"Agency is a legal concept which depends upon the existence of required factual elements: the manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking."[7] An agent may be authorized to appoint a subagent. A subagent is liable for his acts and may at the same time subject the agent and the principal to liability.[8]

Florida Department of Transportation

The Florida Department of Transportation (FDOT) is a state executive branch agency. FDOT's continuing mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and

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[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 768.28(9)(a), F.S., provides that no officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, *unless* such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
[4] Section 768.28(2), F.S.
[5] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[6] See, e.g., s. 768.28(9), F.S.
[7] Restatement (Second) of Agency § 1 (1958).
[8] Restatement (Second) of Agency § 5 (1958).

communities. This mission is accomplished through a primary purpose to plan and develop (either directly or indirectly) Florida's robust transportation system.[9]

For purposes of sovereign immunity, current law specifies that certain contractors of the FDOT are deemed agents of FDOT and therefore covered by the state's sovereign immunity. That statute reads in pertinent part:

> [A] professional firm that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, or any of the firm's employees performing such services, shall be considered agents of the Department of Transportation while acting within the scope of the firm's contract with the Department of Transportation to ensure that the project is constructed in conformity with the project's plans, specifications, and contract provisions.[10]

A recent trial court decision interpreting this statute ruled that this statute only applies to a contractor who directly contracted with FDOT, and thus a subcontractor of that contractor, which subcontractor was providing the specified monitoring and inspection services, is not covered by the state's sovereign immunity.[11] The trial court apparently believed that only the contractors listed in the relevant statute could be considered agents for purposes of sovereign immunity, regardless of any actual agency relationship that existed between DOT and its contractors and subcontractors.

III. Effect of Proposed Changes:

The bill amends the state's limited waiver of sovereign immunity to follow agency law. It expressly provides that a consultant that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, is an agent of the state covered by the state's sovereign immunity.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[9] https://www.fdot.gov/agencyresources/aboutfdot.shtm
[10] Section 768.28(10)(e), F.S.
[11] Order on Defendant, Pinnacle Consulting Enterprises, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint, *Lillo v. Lead Engineering Contractors LLC,* (Fla. 17th Jud.Cir. CACE22004434, Apr. 10, 2023).

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:

This bill may clarify an unclear area of the law, resulting in lower legal fees incurred by the private sector. The bill may reduce the value of a tort claim by individuals harmed by a subcontractor providing specified services to FDOT. Few such claims are anticipated.

C. Government Sector Impact:

None. To the extent that this bill would add new entities to be covered by the state's sovereign immunity, there would be no fiscal impact to the state. This is because the applicable statute requires those entities to reimburse the state for any payment made by FDOT in satisfaction of a tort claim.[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

[12] Section 768.28(10)(e), F.S.

IX. Additional Information:

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

CS by Judiciary on January 29, 2024:
The committee substitute limits the scope of the bill to only consultants hired by a contractor, where the contractor has a direct contract with the Florida Department of Transportation.

B. Amendments:

None.