HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 985 Sovereign Immunity
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:** SB 974, 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		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. 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 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.

CS/HB 985 increases the cap on the collectability of damages against the state and its agencies and subdivisions for torts to $1,000,000 per person. The bill prohibits an insurance policy from conditioning the payment of benefits, in whole or in part, on the enactment of a claim bill.

Further, beginning on July 1, 2023, the bill requires the Department of Financial Services (DFS) to annually adjust the $1,000,000 cap to reflect changes in the Consumer Price Index. The bill eliminates any statute of limitations for filing a claim against the state or a subsidiary for sexual battery actions involving a victim who was younger than 16 years old at the time of the incident. As such, a claimant that meets these specifications may present his or her claim in writing at any time, and that action may commence at any time. The bill also 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.

The bill also reenacts several statutory sections for the purpose of incorporating the changes made by the language of this bill.

The bill will likely have a significant negative fiscal impact on local governments and state agencies. DFS estimates a first-year nonrecurring cost of $14.1 million and $9.3 million recurring each following year. The increased costs will affect the State Risk Management Trust Fund.

The bill provides an effective date of July 1, 2022.

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]

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[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.

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, and, as such, only allows recovery for 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]

Effect of Proposed Changes

The bill increases the cap for damages against the state and its agencies and subdivisions for torts from $200,000 to $1,000,000 per person, and the bill eliminates the $300,000 per accident cap. The bill prohibits an insurance policy from conditioning the payment of benefits, in whole or in part, on the enactment of a claim bill.

Further, beginning on July 1, 2023, the bill requires DFS to annually adjust the damages cap to reflect changes in the Consumer Prices Index. The bill eliminates any statute of limitations for filing a claim against the state or a subsidiary for sexual battery actions involving a victim who was younger than 16 years old at the time of the incident. As such, a claimant that meets these specifications may present his or her claim in writing at any time, and that action may commence at any time.

[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.

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 this bill.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions.
Section 2: Reenacts s. 45.061(5), F.S.
Section 3: Reenacts s. 110.504(4), F.S.
Section 4: Reenacts s. 111.071(1)(a), F.S.
Section 5: Reenacts s. 163.01(15)(k), F.S.
Section 6: Reenacts s. 190.043, F.S.
Section 7: Reenacts s. 213.015(13), F.S.
Section 8: Reenacts s. 252.51, F.S.
Section 9: Reenacts s. 252.89, F.S.
Section 10: Reenacts s. 252.944, F.S.
Section 11: Reenacts s. 260.0125(2), F.S.
Section 12: Reenacts s. 284.31, F.S.
Section 13: Reenacts s. 284.38, F.S.
Section 14: Reenacts s. 322.13, F.S.
Section 15: Reenacts s. 337.19(1), F.S.
Section 16: Reenacts s. 341.302(17), F.S.
Section 17: Reenacts s. 373.1395(6), F.S.
Section 18: Reenacts s. 375.251(3)(a), F.S.
Section 19: Reenacts s. 381.0056(9), F.S.
Section 20: Reenacts s. 393.075(3), F.S.
Section 21: Reenacts s. 395.1055(10)(g), F.S.
Section 22: Reenacts s. 403.706(17)(c), F.S.
Section 23: Reenacts s. 409.993, F.S.
Section 24: Reenacts s. 455.221(3), F.S.
Section 25: Reenacts s. 455.32(5), F.S.
Section 26: Reenacts s. 456.009(3), F.S.
Section 27: Reenacts s. 456.076(15)(a), F.S.
Section 28: Reenacts s. 471.038(3), F.S.
Section 29: Reenacts s. 472.006(11), F.S.
Section 30: Reenacts s. 497.167(7), F.S.
Section 31: Reenacts s. 513.118(2), F.S.
Section 32: Reenacts s. 548.046(1), F.S.
Section 33: Reenacts s. 556.106(8), F.S.
Section 34: Reenacts s. 589.19(4)(e), F.S.
Section 35: Reenacts s. 723.0611(2)(c), F.S.
Section 36: Reenacts s. 760.11(5), F.S.
Section 37: Reenacts s. 766.115(5), F.S.
Section 38: Reenacts s. 766.112(2), F.S.
Section 39: Reenacts s. 768.1355(3), F.S.
Section 40: Reenacts s. 768.295(4), F.S.
Section 41: Reenacts s. 944.713(2), F.S.
Section 42: Reenacts s. 946.5026, F.S.
Section 43: Reenacts s. 946.514(3), F.S.
Section 44: Reenacts s. 961.06, F.S.
Section 45: Reenacts s. 1002.33(12)(h), F.S.
Section 46: Reenacts s. 1002.333(6)(b), F.S.

Section 47: Reenacts s. 1002.34(17), F.S.
Section 48: Reenacts s.1002.55, F.S.
Section 49: Reenacts s. 1002.83(10), F.S.
Section 50: Reenacts s. 1002.88(1)(p), F.S.
Section 51: Reenacts s. 1006.24(1), F.S.
Section 52: Reenacts s. 1006.261(2)(b), F.S.
Section 53: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill specifies that claims that remain unsettled on July 1, 2022, will be subject to the provisions of HB 985. DFS currently has 2,300 claims in litigation. DFS estimates that applying the provisions of the bill, which increases sovereign immunity limits, to the current volume of claims will result in a nonrecurring increase of $14.1 million[24] in costs paid from the State Risk Management Trust Fund (RMTF) in Fiscal Year 2022-2023. The recurring impact of the bill is estimated to be $9.3 million[25] each fiscal year.

   The Revenue Estimating Conference (REC) projects cash needs for the RMTF to ensure there are sufficient funds to cover payments from the RMTF. The legislature annually provides appropriations to the RMTF to ensure there is a sufficient balance to cover claim costs. The December 2021 REC for RMTF projected the cash balance would be negative in Fiscal Year 2024-2025. Implementation of HB 985 will cause a negative cash balance in the RMTF in Fiscal Year 2023-2024, a year earlier. These figures do not reflect the annual increases in the sovereign immunity limit based on changes in the Consumer Price Index for the Southeast, which takes effect on July 1, 2023.

State Risk Management Trust Fund

	2022-23		2023-24		2024-25	
	Dec. 2021 REC	HB 985	Dec. 2021 REC	HB 985	Dec. 2021 REC	HB 985
Beginning Cash Balance	33.0	33.0	17.6	3.3	0.7	(22.9)
Total Income (Premiums)	204.6	204.6	204.6	204.6	204.6	204.6
Expenditures/Claims	220.0	234.3	221.5	230.8	222.2	231.5
Net Income	(15.4)	(29.7)	(16.9)	(26.2)	(17.6)	(26.9)
Ending Cash Balance	**17.6**	**3.3**	**0.7**	**(22.9)**	**(16.9)**	**(49.8)**

(In millions)

   DFS also expects an increase in annual expenditures for contracted legal services due to attorney fees charged by law firms representing the RMTF against liability lawsuits under contract with DFS.

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[24] Department of Financial Services (DFS), Agency Analysis of 2022 House Bill 985, p. 3 (Jan. 28, 2022).
[25] *Id.*

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 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.

The bill states that the limitations of liability in effect on the date a final judgment is entered apply to the claim. As a result, the increased limits on liability exposure may apply to some causes of action that have accrued before the effective date of the bill.

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:

Article I, section 10 of the Florida Constitution prohibits laws that impair the obligations of existing contracts. How this provision may affect the bill's prohibition on insurance contracts already in existence is a matter for the courts to resolve.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[26] DFS, *supra* note 24.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2022, the Civil Justice & 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.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Property Rights Subcommittee.