

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2568

SPONSOR: Senator King

SUBJECT: Financial Matters

DATE: March 25, 1999

REVISED: 3/30/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill will authorize state and local governments, entering into cooperative agreements or contracts with the Federal Government, to hold harmless and indemnify the Federal Government and its contractors, when required by federal law, including damages for loss, cost, negligence and intentional wrongdoing by officers, agents, servants, or employees thereof. The contract or agreement would be contingent and entered upon similar indemnification provisions for state and local governments.

This bill will take effect upon becoming law.

This bill creates section 215.245, Florida Statutes.

II. Present Situation:

Pursuant to the Intergovernmental Cooperation Act, 31 U.S.C. ss. 6505 and 6506, the President is authorized to direct the head of an executive agency to provide services to state or local government when: (1) the state or local government makes written request; and (2) the state or local government provides to the executive agency the identifiable costs of providing the services required.

The development assistance provided by the Act is intended to promote economic and social development of the United States and to achieve satisfactory living conditions which depend upon sound and orderly development of urban and rural areas. In accord, the President is authorized to prescribe regulations in the review of United States Government programs and projects having a significant impact in these areas. Prescribed regulations provide consideration for:

- (1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.
- (2) wise development and conservation of all natural resources.

- (3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.
- (4) adequate outdoor recreation and open space.
- (5) protection of areas of unique natural beauty and historic and scientific interest.
- (6) properly planned community facilities (including utilities for supplying power, water and communications) for safely disposing of wastes, and for other purposes.
- (7) concern for high standards of design.

Under the authority of 10 U.S.C. s. 3036, the Secretary of the Army may direct the Chief of Engineers to accept orders to provide services to a state or political subdivision thereof, and may provide any part of those services by contract. The provision of services to state and local government are contingent upon whether:

- (1) Federal assistance is being provided and the head of the department or agency providing the assistance for the work does not object to the provision of services by the Chief of Engineers; and
- (2) the services are reimbursable.

Limitation of Liability

Pursuant to 42 U.S.C. 1962d-15, the United States Government is protected from liability regarding any water resources development project under the jurisdiction of the Secretary of the Army, held by non-federal interest, including damages for construction, operation, and maintenance of the project. This does not include damages due to fault or negligence on the part of the United States or its contractors.

St. Johns County currently seeks to enter into a contract with the U.S. Army Corps of Engineers to upgrade the Palm Valley Bridge design from two lanes to four. The preferred option is for the Corps to design and construct the four lane structure. This bridge is critical in the evacuation of residents near the intracoastal waterway. St. Johns River Water Management District entered into a similar contract with the Army Corps of Engineers in 1987 to construct the Upper St. Johns River Basin Flood Control Project. In a contract dated December 17, 1987, the contract provisions between the St. Johns River Water Management District and U.S. Army Corps of Engineers incorporation the following language with regard to immunity and indemnification:

“...The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the project, except for damages due to the fault or negligence of the Government, or its contractors...”

III. Effect of Proposed Changes:

This bill will authorize state and local governments, entering into cooperative agreements or contracts with the Federal Government, to hold harmless and indemnify the Federal Government and its contractors, when required by federal law, including damages for loss, cost, negligence and intentional wrongdoing by officers, agents, servants, or employees thereof. The contract or agreement would be contingent and entered upon similar indemnification provisions for state and local governments.

This bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, s. 13 of the Florida Constitution, provides that the Legislature may, by general law, make provision for the bringing of suit as to all liabilities. The state has waived its sovereign immunity for liability for torts, but only to the extent specified in s. 768.28 (1), F.S. The types of actions at law that may be prosecuted to recover damages in tort for money damages against the state or its agencies or subdivisions are for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision if the employee was acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant. The law authorizes that any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

State agencies or subdivisions are defined under s. 768.28(2), F.S., to include:

...the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Spaceport Florida Authority.

This waiver of sovereign immunity is limited, however. The state and its agencies and subdivisions are liable for tort claims in the same manner and to the same extent as private individuals under like circumstances, but liability cannot include punitive damages or interest for the period before judgment. The liability of the state is authorized up to a certain dollar amount. Neither the state nor its agencies or subdivisions are liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000.

Nothing precludes a judgment or judgments to be claimed and rendered in excess of the \$100,000 or \$200,000 amounts. Cases may be settled and paid pursuant to s. 768.28(5), F.S., up to \$100,000 or \$200,000, as the case may be. Any portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature through the passage of “claims bills.”

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill states that the “obligation for indemnification must remain subject to adequate appropriations being available to the indemnifying party.” Pursuant to s. 45.062, F.S., when an agency of the executive branch is a party in any civil action, any settlement, condition, or order requiring the expenditure of or the obligation to expend state funds or other state resources, or the establishment of any new program must: (1) be provided for by an existing appropriation or program established by law; (2) provide written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House minority leaders, and the Attorney General within 5 business days of the date of the settlement or presettlement agreement or order is made final.

The bill should include a reference to the provisions of s. 45.062, F.S.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Authorizes the state and its political subdivisions to enter into indemnification agreements with the Federal Government regarding water resource development projects as long as the contract language does not abrogate the provisions of s. 45.062, F.S. (WITH TITLE AMENDMENT)