The Committee on Rules (Book) recommended the following:

Senate Substitute for Amendment (274920) (with title amendment)

Delete lines 65 - 174
and insert:
entities, governmental entities, and religious institutions that contribute to the overall well-being of the state. The threat of unknown and potentially unbounded liability to such businesses, entities, and institutions, in the wake of a pandemic that has already left many of these businesses, entities, and institutions vulnerable, has created an overpowering public
necessity to provide an immediate and remedial legislative
solution. Therefore, the Legislature intends for certain
business entities, governmental entities, and religious
institutions to enjoy heightened legal protections against
liability as a result of the COVID-19 pandemic. The Legislature
also finds that there are no alternative means to meet this
public necessity, especially in light of the sudden,
unprecedented nature of the COVID-19 pandemic. The Legislature
finds the public interest as a whole is best served by providing
relief to these businesses, entities, and institutions so that
they may remain viable and continue to contribute to the state.

(2) As used in this section, the term:

(a) "Business entity" has the same meaning as provided in
s. 606.03. The term also includes a charitable organization as
declared in s. 496.404 and a corporation not for profit as
defined in s. 617.01401.

(b) "COVID-19-related claim" means a civil liability claim
against a person, including a natural person, a business entity,
a governmental entity, or a religious institution which arises
from or is related to COVID-19, otherwise known as the novel
coronavirus. The term includes any such claim for damages,
injury, or death. Any such claim, no matter how denominated, is
a COVID-19-related claim for purposes of this section. The term
does not include a claim against an educational institution or a
healthcare provider, regardless of whether the healthcare
provider meets one or more of the definitions in this
subsection.

(c) "Educational institution" means a school, including a
preschool, elementary school, middle school, junior high school,
secondary school, career center, or postsecondary school, whether public or nonpublic.

(d) “Governmental entity” means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies that are subject to chapter 286.

(e) “Healthcare provider” means:

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in the state or services to health care providers in the state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.

3. A federally qualified health center as defined in 42 U.S.C. s. 1396d(l)(2)(B), as that definition exists on the effective date of this act.

4. Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic pursuant to any federal or state order, declaration, or waiver.

5. A health care practitioner as defined in s. 456.001.

6. A health care professional licensed under part IV of chapter 468.

7. A home health aide as defined in s. 400.462(15).

(f) “Religious institution” has the same meaning as provided in s. 496.404.

(3) In a civil action based on a COVID-19-related claim:
(a) The complaint must be pled with particularity.

(b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in the state which attests to the physician’s belief, within a reasonable degree of medical certainty, that the plaintiff’s COVID-19-related damages, injury, or death occurred as a result of the defendant’s acts or omissions.

(c) The court must determine, as a matter of law, whether:

1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.

2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.

   a. During this stage of the proceeding, admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.

   b. If the court determines that the defendant made such a good faith effort, the defendant is immune from civil liability.

   c. If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the action. However, absent at least gross negligence proven by clear and convincing evidence, the defendant is not liable for any act or omission relating to a COVID-19-related claim.

(d) The burden of proof is upon the plaintiff to demonstrate that the defendant did not make a good faith effort under subparagraph (c)2.

(4) A civil action for a COVID-19-related claim must be
commenced within 1 year after the cause of action accrues. However, a plaintiff whose cause of action for a COVID-19-related claim accrued before the effective date of this act must commence such action within 1 year of the effective date of this act.

(5) This section shall apply retroactively. However, this section shall not apply in a civil action against a particularly named defendant which is commenced before the effective date of this act.

Section 2. Section 768.39, Florida Statutes, is created to read:

768.39 Immunity for educational institutions for actions related to the COVID-19 pandemic.—

(1) For the purposes of this section, the term “educational institution” has the same meaning as in s. 768.38(2).

(2) Any educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 may not be held liable for, and shall be immune from, any civil damages, equitable relief, or other remedies relating to such actions. Reasonably necessary actions include, but are not limited to, any of the following:

(a) Shifting in-person instruction to online or remote instruction for any period of time while a state of emergency was declared for this state for the COVID-19 pandemic;

(b) Closing or modifying the provision of residential housing, dining, or other facilities on the campus of the educational institution; or

(c) Pausing or modifying ancillary student activities and
services available through the educational institution while a
state of emergency was declared for this state for the COVID-19
pandemic.

(3) The provision of in-person or on-campus education and
related services is deemed to have been impossible for
educational institutions to provide for any period of time in
which such institutions took reasonably necessary actions
described in subsection (2) to protect students, staff, and
educators in response to the COVID-19 pandemic. As a result of
the various governmental orders and the need of educational
institutions to protect their communities, the reasonably
necessary actions described in subsection (2) are deemed to have
been justified.

(4) If any aspect of the immunity under subsection (2) is
limited by a court or by operation of law from applying to
certain types of claims or causes of action, the immunity under
this section must still be provided to the fullest extent
authorized by law to any other types of claims or causes of
action.

(5) This section shall apply retroactively to causes of
actions accruing on or before March 9, 2020.

Section 3. If any provision of this act or its application
to any person or circumstance is held invalid, the invalidity
does not affect other provisions or applications of the act
which can be given effect without the invalid provision or
application, and to this end the provisions of this act are
severable.

Section 4. This act shall take effect upon becoming a law.
And the title is amended as follows:

Delete lines 8 - 9

and insert:

providing a statute of limitations; providing retroactive applicability; creating s. 768.39, F.S.; defining the term “educational institution”; providing that educational institutions that have taken certain actions may not be held liable for and are immune from civil damages, equitable relief, or other remedies; specifying that the provision of in-person or on-campus education and related services is deemed impossible during a specified timeframe; specifying that certain actions are deemed to have been justified; providing construction; providing retroactive applicability; providing severability;