

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 Governmental Oversight and Accountability

BILL: SB 472

INTRODUCER: Senator Brodeur

SUBJECT: Sovereign Immunity

DATE: January 26, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 472 increases the cap on the payment of judgments against government entities from \$200,000 to \$400,000 per individual, and from \$300,000 to \$600,000 per instance. The bill provides for the annual adjustment of the cap to reflect changes in the Consumer Price Index, beginning on July 1, 2025.

The bill allows government entities to settle a claim in any amount without the approval of a claim bill by the Legislature.

The bill removes the statute of limitations and statute of repose for civil actions against state entities where the plaintiff in a sexual battery matter was younger than 16 years old at the time of the injury.

The bill takes effect July 1, 2024, and applies to any claim that was not concluded by a final judgment or settlement before then.

II. Present Situation:

Sovereign immunity is “[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 no legal right as against the authority that makes the law on which the right depends.²

¹ BLACK’S LAW DICTIONARY (11th ed. 2019).

² *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

Article X, s. 13 of the Florida Constitution authorizes the Legislature to enact laws that permit suits against the state and its subdivisions, thereby waiving sovereign immunity. Currently, Florida law allows tort lawsuits against the state and its subdivisions³ for damages that result from the negligence of government employees acting in the scope of their employment, but limits payment of judgments to \$200,000 per person and \$300,000 per incident.⁴ Harmed persons who seek to recover amounts in excess of these limits may request that the Legislature enact a claim bill to recover the remainder of their court-awarded judgment.⁵

History of Florida Sovereign Immunity Law

Florida has adopted the common law of England as it existed on July 4, 1776.⁶ This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁷

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV of the 1868 Florida Constitution.⁸ When the Florida Constitution was amended in 1968, it again expressly authorized the Legislature to waive the state's sovereign immunity under s. 13, Art. X.⁹

Although the first general waiver of the state's sovereign immunity was not adopted until 1969, "one . . . could always petition for legislative relief by means of a claims bill."¹⁰ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.¹¹ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.¹²

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of sovereign immunity,¹³ which expired after one year.¹⁴ In 1973, the Legislature again adopted a law that waived the state's sovereign immunity.¹⁵ The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today.

³ Section 768.28(2), F.S., defines "state agencies or subdivisions" to include "executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority."

⁴ Section 768.28, F.S.

⁵ Section 768.28(5)(a), F.S.

⁶ Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.

⁷ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁸ Section 19, Art. VI, State Const. (1868), states: "Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating."

⁹ FLA. CONST. Art. X, s.13 states: "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

¹⁰ *Cauley*, 403 So. 2d at note 5.

¹¹ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

¹² *Id.*

¹³ Chapter 69-116, Laws of Fla.

¹⁴ Chapter 69-357, Laws of Fla.

¹⁵ Chapter 73-313, Laws of Fla.

Under s. 768.28(5), F.S. (1973), the state's ability to pay a tort judgment was limited to \$50,000 per person and \$100,000 per incident. In 1981, the Legislature increased the amount of damages that could be paid to \$100,000 per person and \$200,000 per incident.¹⁶ In 2010, the Legislature increased the limits to \$200,000 per person and \$300,000 per incident.¹⁷ Attorney fees have been limited to 25 percent of the proceeds of judgments or settlements since 1979.¹⁸

Statutory Waivers of Sovereign Immunity

Section 768.28(1), F.S., allows tort lawsuits to be filed 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”¹⁹

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident. Although a court may award a judgment in excess of these statutory limits, a claimant cannot collect more than provided for in statute without passage of a special claim bill passed by the legislature.²⁰

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 bad faith, malicious purpose, or wanton and willful disregard for human rights, safety, or property.²¹ 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.²²

Claim Bill Process

“A claim bill is not an action at law, but rather a legislative measure that directs the Chief Financial Officer of Florida, 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.”²³

Persons who wish to seek the payment of claims in excess of the statutory cap must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master, as well as to one or more committees, for review. Senate and House Special Masters

¹⁶ Chapter 81-317, Laws of Fla.

¹⁷ Chapter 2010-26, Laws of Fla.

¹⁸ Section 768.28(8), F.S.

¹⁹ *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.).

²⁰ *See, Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

²¹ Section 768.28(9)(a), F.S.

²² *Id.*

²³ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

typically hold a quasi-judicial, *de novo* hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.²⁴

The amount awarded by the Legislature in a claim bill 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.²⁵ “Unlike civil judgments, private relief acts are not obtainable by right upon the claimant’s proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace.”²⁶

The beneficiary of a claim bill recovers by its enactment, regardless of whether the governmental tortfeasor purchased liability insurance to pay an excess judgment.²⁷ However, where the governmental tortfeasor has liability insurance above the statutory cap, and the claimant receives compensation above that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.²⁸

The following table represents the annual summary of all claim bill activity in the Florida Legislature from 2019-2023:

Session Year	Total Claims Filed	Number of Claims that Became Law	Total Dollar Amount Claimed	Total Dollar Amount Paid
2019	19	5	\$30,209,967	\$4,000,000
2020	15	2	\$59,555,928.40	\$6,650,000
2021	13	2	\$46,099,864	\$2,800,000
2022	18	5	\$43,305,151	\$2,297,500
2023	16	8	\$54,120,900	\$20,112,000

Effect of Insurance Coverage on Damages Cap

A government entity may, without a claim bill, settle a claim against it for an amount above the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.²⁹

Cost of Florida’s Waiver of Sovereign Immunity

The exact cost of the state’s waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff’s offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver. Information documenting the cost of the sovereign

²⁴ See Fla. Senate R. 4.09(3) (2020-2024). See also, Florida Senate, *Legislative Claim Bill Manual*, 8-10 (Aug. 2023), available at <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf> (last visited Jan. 25, 2023).

²⁵ *Wagner*, 960 So. 2d at 788 (citing Kahn, *Legislative Claim Bills*, Fla. B. Journal (April 1988)).

²⁶ *United Servs. Auto. Ass’n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

²⁷ *Servs. Auto Ass'n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

²⁸ *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544, 548 (Fla. 4th DCA 2003), citing *Bonvento v. Bd. of Pub. Instruction*, 194 So.2d 605 (Fla. 1967).

²⁹ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to the amount of the sovereign immunity waiver.³⁰ The Division also settles and defends tort suits filed against the agencies.

In Fiscal Year 2021-22, the Division paid \$7,637,712 for the resolution of 2,080 general liability claims.³¹ Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2021-22, the Division paid \$6,691,380 for the resolution of 472 automobile liability claims.³²

Other Jurisdictions

At least 27 other state legislatures have placed monetary caps on recovery from actions in tort against their state or political subdivisions:

- Colorado: \$350,000 per person; \$990,000 per occurrence.³³
- Georgia: \$1 million per person; \$3 million per occurrence.³⁴
- Idaho: \$500,000 per occurrence, regardless of the number of people, unless the government is insured above the limit.³⁵
- Illinois: \$2,000,000.³⁶
- Indiana: \$700,000 per person; \$5 million per occurrence.³⁷
- Kansas: \$500,000 per occurrence.³⁸
- Louisiana: \$500,000 per occurrence.³⁹
- Maine: \$400,000 per occurrence.⁴⁰
- Maryland: \$400,000 per person; \$890,000 per occurrence.⁴¹
- Massachusetts: \$100,000.⁴²
- Minnesota: \$500,000 per person; \$1,500,000 per occurrence.⁴³
- Mississippi: \$500,000.⁴⁴
- Missouri: \$300,000 per person and \$2 million per occurrence.⁴⁵
- Montana: \$750,000 per claim and \$1.5 million per occurrence.⁴⁶

³⁰ Section 284.30, F.S.

³¹ Department of Financial Services, Division of Risk Management, *Fiscal Year 2022 Annual Report*, 8-9 (2022), available at https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2022---final.pdf?sfvrsn=59248690_2 (last visited Jan. 25, 2023).

³² *Id.*

³³ Colo. Rev. Stat. §24-10-114.

³⁴ Ga. Code §50-21-29(a)-(b)(1).

³⁵ Idaho Code §6-926.

³⁶ Ill. Ann. Stat. ch. 705, §505/8.

³⁷ Ind. Code §34-13-3-4.

³⁸ Kan. Stat. Ann. §75-6105.

³⁹ La. Rev. Stat. Ann. §13:5106.

⁴⁰ Me. Rev. Stat. Ann. tit. 14, §8105.

⁴¹ Md. State Government Code Ann. §12-104(a)(2).

⁴² Mass. Gen. Laws Ann. ch. 258, §2.

⁴³ Minn. Stat. Ann. §3.736(4).

⁴⁴ Miss. Code Ann. 11-46-15.

⁴⁵ Mo. Ann. Stat. §537.610.

⁴⁶ Mont. Code Ann. §2-9-108.

- New Hampshire: \$475,000 per claimant and \$3.75 million per occurrence.⁴⁷
- New Mexico: \$200,000 per claim of property damage; \$300,000 per claim of medical expenses; \$400,000 for claims other than property damages or medical expenses; all claims limited to \$750,000 per occurrence.⁴⁸
- North Carolina: \$1 million per occurrence.⁴⁹
- North Dakota: \$375,000 per person; \$1 million per occurrence.⁵⁰
- Oklahoma: \$125,000 per person, with higher limits for specific categories; \$1 million per occurrence.⁵¹
- Pennsylvania: \$250,000 per person; \$1 million per occurrence.⁵²
- Rhode Island: \$100,000.⁵³
- South Carolina: \$300,000 per person; \$600,000 per occurrence.⁵⁴
- Tennessee: \$300,000 per person; \$1 million per occurrence.⁵⁵
- Texas: \$250,000 per person; \$500,000 per occurrence (\$100,000 per claim of destruction of personal property).⁵⁶
- Utah: \$233,600 for property damage; \$583,900 for personal injury person; \$3 million per occurrence.⁵⁷
- Vermont: \$500,000 per person; \$2 million per occurrence.⁵⁸
- Virginia: \$100,000.⁵⁹

III. Effect of Proposed Changes:

The bill amends s. 786.28, F.S., to increase the limits of the waiver of sovereign immunity for a claim made against the state and its agencies and subdivisions from \$200,000 to \$400,000 per person, and from \$300,000 to \$600,000 per incident. Beginning July 1, 2025, the bill provides for the annual adjustment of the cap to reflect changes in the Consumer Price Index.

The bill allows the state and its agencies and subdivisions to settle a claim in any amount without approval of a claim bill by the Legislature. Under current law, amounts that exceed the sovereign immunity caps may be paid without approval of the Legislature only from the proceeds of an insurance policy.⁶⁰ Otherwise, payment for claims against the state may only be made in excess of the cap pursuant to an appropriation of funds from the State Treasury made as a result of a claims bill process.

⁴⁷ N.H. Rev. Stat. Ann. §541-B:14.

⁴⁸ N.M. Stat. Ann. §41-4-19.

⁴⁹ N.C. Gen. Stat. §143-299.2.

⁵⁰ N.D. Cent. Code S32-12.2-02.

⁵¹ Okla. Stat. tit. 51, §154.

⁵² Pa. Cons. Stat. Ann. Tit. 42, §8528.

⁵³ R.I. Gen. Laws §9-31-2.

⁵⁴ S.C. Code Ann. §15-78-120.

⁵⁵ Tenn. Code Ann. §9-8-307.

⁵⁶ Tex. Civ. Prac. & Rem. Code Ann. §101.023.

⁵⁷ Utah Code. Ann. §63G-7-604.

⁵⁸ Vt. Stat. Ann. tit. 12, §5601.

⁵⁹ Va. Code §8.01-195.3.

⁶⁰ “No claims bill is necessary if excess insurance is purchased and the plaintiffs find it necessary to proceed directly against the excess carrier.” *Hillsborough Co. v. Star Ins. Co.*, 847 F.3d 1296, 1306 (2017).

This provision therefore allows a local government to pay a settled amount in excess of the sovereign immunity caps out of its own coffers, or through its insurance coverage. It is unclear how this provision will apply to a state entity, which is limited in its ability to pay above the sovereign immunity caps without a legislative appropriation,⁶¹ despite the “notwithstanding” language of the bill on line 62.

Additionally, the bill prohibits an insurance company from placing any conditions on the payment of benefits on the enactment of a claim bill.⁶²

The bill removes the statute of limitations and statute of repose for civil actions against state entities where the plaintiff in a sexual battery matter was younger than 16 years old at the time of the injury.

The bill takes effect July 1, 2024, and applies to any claim that was not concluded by a final judgment or settlement before then.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce the counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article VII, s. 1(d) of the State Constitution prohibits funds from being drawn from the State Treasury except in pursuance of an appropriation made by law. Lines 62-67 of the bill grant the state and its agencies the authority to settle a claim or a judgment without further action by the legislature. If this grant of authority includes drawing fund from the

⁶¹ See discussion of FLA. CONST. art. VII, s. 1(d), *infra*.

⁶² This provision will likely prevent inclusion of contractual provisions that bar recovery for claimants pursuant to an insurance policy by, e.g., requiring the claimant to first go through the Legislative Claims Bill process before the insurance policy may be used for payment of a settlement. See, *Martin v. Nat’l. Union Fire Ins. Co. of Pittsburgh, Pa.*, 616 So.2d 1143, 1145 (Fla. 4th DCA 1993).

State Treasury to pay those settlements, then this provision may be in violation of the constitutional requirement.

Article I, s. 10 of the State Constitution prohibits laws that impair the obligations of existing contracts.⁶³ Because the bill bars insurance conditioned on the payment of a claim bill, the Legislature should specify that this provision applies to insurance contracts entered into or renewed on or after the effective date of the bill.

V. Fiscal Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may enable more individuals harmed by a state entity-tortfeasor to receive larger payments without the need to pursue a claim bill. The capacity for a larger reward without a claim bill may incentivize private attorneys to represent such claimants.

C. Government Sector Impact:

The increased cap on the payment of tort settlements and judgments by state entities increases the likelihood that state entities will spend more of their resources to satisfy tort claims. This may negatively impact funds for government services.

Additionally, the state and its subdivisions may experience an increase in insurance premiums for liability coverage, or their cost for self-insurance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 29.0081, 39.8297, 45.061, 110.504, 111.071, 119.15, 125.01015, 163.01, 190.043, 213.015, 252.36, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 288.9625, 322.13, 324.022, 337.19, 341.302, 351.03, 373.1395, 375.251, 379.2293, 381.0056, 393.075, 394.9085, 395.1055, 395.50, 401.425, 403.0862, 403.706, 409.175, 409.993, 415.1103, 420.504, 420.507, 455.221, 455.32, 456.009, 456.048, 456.076, 458.320, 459.0085, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,

⁶³ *Searcy, Denny, Scarola, Barhnart & Shipley, etc. v. State*, 209 So. 3d 1181, 1190 (Fla. 2017).

589.19, 616.242, 624.461, 624.462, 627.733, 627.7491, 723.0611, 741.316, 760.11, 766.1115, 766.112, 766.203, 766.207, 768.1315, 768.1335, 768.135, 768.1355, 768.1382, 768.295, 944.713, 946.5026, 946.514, 961.06, 984.09, 985.037, 1002.33, 1002.333, 1002.34, 1002.351, 1002.37, 1002.451, 1002.55, 1002.83, 1002.88, 1004.41, 1004.43, 1004.447, 1006.23, 1006.24, 1006.261.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
