The Florida Senate

Interim Project Report 2005-147 *November 2004*

Committee on Judiciary Senator Daniel Webster, Chair

SOVEREIGN IMMUNITY AND THE CLAIM BILL PROCESS

SUMMARY

In 1973 the Legislature enacted a broad waiver of the state's immunity from tort suits. Along with the waiver, the Legislature limited recoveries against the state and limited attorney's fees to 25 percent of the recoveries. However, debate continues, particularly over the scope of the sovereign immunity waiver, limitations on recovery, and compensation for attorneys and lobbyists involved in claims against the state. This interim project explores the evolution of the doctrine of sovereign immunity and identifies potential modifications of the state sovereign immunity waiver.

BACKGROUND

Doctrine of Sovereign Immunity: Overview

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. During English feudal times, the King was the sovereign. Today, for the purposes of this discussion, the term "sovereign" refers to Florida state agencies and subdivisions including local governments.

Section 13, Art. X, State Const., authorizes the Legislature to enact laws that permit suits against the state. The Legislature has, to some extent, permitted tort suits against the state and has limited the collectability of judgments against the state to $100,000 per person and $200,000 per incident. Damaged persons seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

[1] *Black's Law Dictionary* (8th ed. 2004)

Evolution of Doctrine

In medieval England "one could not sue the king in his own courts; hence the phrase 'the king can do no wrong.'"[2] 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.[3]

Although one could not sue the king, one could petition the king for relief.[4]

Florida Law

Under s. 2.01, F.S., Florida has adopted the common law of England as it existed on July 4, 1776.[5] This adoption of English common law included the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.[6]

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV, State Const. (1868).[7] The Legislature again was

[2] *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981).
[3] *Id.* (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).
[4] *Id.*
[5] English common law that is inconsistent with state or federal law is not included.
[6] *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).
[7] 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

expressly authorized to waive the state's sovereign immunity under s. 13, Art. X, State Const. (1968). Section 13, Art. X, State Const. (1968) states:

> Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

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."[8] The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.[9] The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.[10]

Statutory Waivers

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of the state's sovereign immunity.[11] The 1969 Legislature also adopted another law that provided for the repeal of s. 768.15, F.S., after a year in effect.[12] Section 768.15(1), F.S. (1969), states:

> The state, for itself and its counties, agencies, and instrumentalities, waives immunity for liability for the torts of officers, employees, or servants committed in the state. The state and its counties, agencies, and instrumentalities shall be liable in the same manner as a private individual, but no action may be brought under this section if the claim:
> (a) Arises out of the performance or the failure to perform a discretionary function;
> (b) Arises out of a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
> (c) Arises out of the issuance, denial, suspension, or revocation of, or by the failure to issue, deny, suspend, or revoke, a permit, license, certificate, approval, order, or similar authorization; or
> (d) Arises out of the collection or assessment of taxes.

No limitation on damages payable by the state and no limitation on attorney fees was included in the original statute.

No legislative history exists to explain why the Legislature adopted the general waiver of the state's sovereign immunity. Additionally, no legislative history exists to explain why the waiver of sovereign immunity had a temporary duration.

In 1973, the Legislature again adopted a law that acted as a general waiver to the state's sovereign immunity.[13] The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today. Section 768.28(1), F.S. (1973), states:

> In accordance with § 13, Art. X, state constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions 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 while acting within the scope of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

Under s. 768.28(5), F.S. (1973), the collectability of tort judgments against the state was limited to $50,000 per person and $100,000 per incident. Attorney fees were also limited to 25 percent of the proceeds of judgments against, or settlements with, the state.[14]

About the only legislative history of the adoption of s. 768.28, F.S. (1973), is a tape recording of a House Judiciary Committee meeting from April 12, 1973.[15] The tape recording documents a vigorous debate

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now existing or hereafter originating.

[8] *Cauley*, 403 So. 2d at note 5.

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

[10] *Id.*

[11] Chapter 69-116, L.O.F.

[12] Chapter 69-357, L.O.F.

[13] See ch. 73-313, L.O.F.

[14] Section 768.28(8), F.S. (1973).

[15] The tape recording is available from State Archives in box 161 of series 414.

among legislators as to whether a general waiver of the state's sovereign immunity should be adopted. Legislators also debated the appropriate financial limit of the state's liability. The various arguments raised in the debate can be paraphrased as follows:

- The doctrine that the king can do no wrong is the doctrine of dictatorships.
- A waiver of the state's sovereign immunity will reduce resources that could benefit the public as a whole.
- Legislative resources are wasted in the processing of small claim bills.
- Claims against the state should be processed by a court of claims.
- Persons injured by the state should be compensated in a manner similar to the workers' compensation system.
- Persons injured by the state and not compensated by the state may draw welfare and become wards of the state.[16]

In 1981, the Legislature increased the amount of damages that could be collected from the state to $100,000 per person and $200,000 per incident.[17] These limitations remain in effect today, more than 20 years after their adoption.

During a committee debate of the 1981 legislation, the proponents argued that the damage limitations needed to be increased because medical costs have increased.[18] Opponents of the legislation argued that the legislation would negatively impact local governments.[19] Attempts to raise the caps on damages to $300,000 per incident failed.[20] Attempts to amend the legislation to limit damages per person to $75,000 also failed.[21]

Claim Bill Process

Persons who wish to seek the payment of claims in excess of the statutory limits must have a state legislator introduce a claim bill in the Legislature. Once a claim bill is filed in the Senate, the bill is referenced to a Special Master and to various substantive committees. Committee attorneys who volunteer for additional duties are assigned to be Senate Special Masters. Recently, Senate claim bills that have a fiscal impact on state funds, as opposed to local funds, have not been assigned to a Senate Special Master and have been referenced only to the Committee on Rules and Calendar. During the 2004 Regular Session, all claim bills with an impact on state funds died in the Committee on Rules and Calendar.

In the House of Representatives, all claim bills are reviewed by a single Special Master. The House claim bills have been referenced first to the Judiciary Subcommittee on Claims, the Judiciary Committee, and then to one or two additional committees.

Senate and House Special Masters typically hold a joint hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages. The hearing is a *de novo* hearing, meaning that the Special Masters treat the subject of the hearing as if no decision was rendered by a court.[22] During the hearing, the Special Masters accept all relevant evidence. The Special Masters also typically ask claimants whether any condition exists, such as a history of drug abuse or a criminal record, that may cause the Legislature to decline to pass a claim bill. After the hearing, each Special Master writes a report describing the facts giving rise to the claim bill and setting forth conclusions of law as to whether each element of negligence was satisfied. The report includes a recommendation as to whether the Legislature should pass or reject the claim bill.

METHODOLOGY

Committee staff reviewed statutes, case law, and law journals from Florida and other states on sovereign immunity and tort claims against states and the federal government; researched the history of the state's sovereign immunity waiver; and sought input from persons familiar with the state's claim bill process.

[16] Because of the poor quality of the tape recording, the speakers could not be identified.
[17] See ch. 81-317, L.O.F.
[18] Tape recording of the Senate Committee on Finance, Taxation, and Claims, May 12, 1981, available at State Archives from box 199 of series 625.
[19] Tape recording of Senate floor debate on June 30, 1981, available at State Archives from box 66 of series 1238.
[20] *See* SB 895 (1981) as filed.
[21] Tape recording of Senate floor debate on June 30, 1981, available at State Archives from box 66 of series 1238.
[22] Senate Rule 4.81(3) and House Rule 5.7(a) (2002-2004).

FINDINGS

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 immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division, under s. 284.30, F.S., provides general liability insurance to state agencies up to $100,000 per person, $200,000 per incident under the sovereign immunity waiver.[23] The Division also settles and defends tort suits filed against the agencies. In FY 2002-2003, the Division paid $10,697,309 for the resolution of 1,445 claims.[24] Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles.[25] In FY 2002-2003, the Division paid $3,468,326 for the resolution of 612 automobile liability claims.[26]

Claims Satisfied under Sovereign Immunity Limits

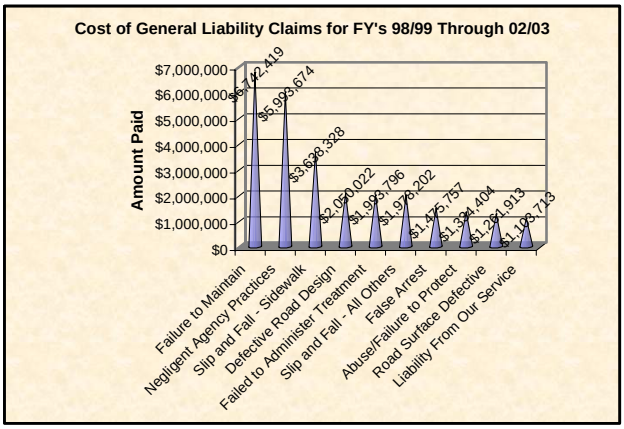
A recurring question in past debates on sovereign immunity legislation has been what percentage of claims are satisfied within the $100,000 per person, $200,000 per incident, caps on state liability.[27] For FY 2003-2004 the Division paid 1,186 general liability and auto liability claims for a total of $8,982,258.36. An analysis of data provided by the Division indicates that 16 claims at most were not satisfied under the sovereign immunity waiver during FY 2003-2004.

Accordingly, at least 98.7 percent of all claims against the state agencies for FY 2003-2004 were satisfied within the sovereign immunity limits. Data is unavailable to determine what percentage of claims against local governments are satisfied within sovereign immunity limits.

Types of Accidents Caused by the State

The Division categorizes the types of accidents caused by the state to determine which are the costliest and which occur the most frequently. This information could be used to help focus the state's efforts to reduce the risks to the public. However, the Division does not have clear definitions for the categories listed in the figures below. Figure 1 shows which type of accidents are the most costly to the state.

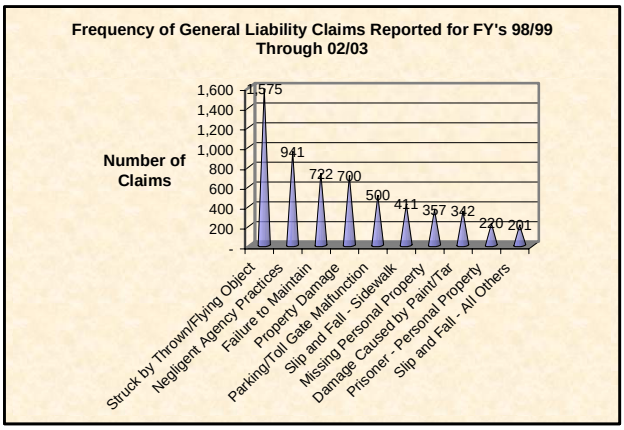
Figure 1



Adapted from *Division of Risk Management: Annual Report*, 34, January 1, 2004.

Figure 2 shows which accidents caused by the state occur most frequently.

Figure 2



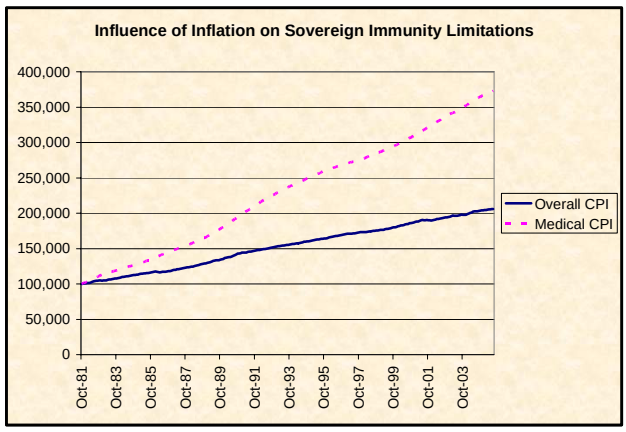
Adapted from *Division of Risk Management: Annual Report*, 34, January 1, 2004.

[23] The State of Florida, Division of Risk Management, *Annual Report*, January 1, 2004, p. 33.
[24] *Id.* at 18. The number of claims paid includes claims in which expenses were incurred but no funds were paid to a claimant. The cost of the claims includes expenses.
[25] *Id.* at 35.
[26] *Id.* at 18. The number of claims paid includes claims in which expenses were incurred but no funds were paid to a claimant. The cost of the claims includes expenses.
[27] *See* note 18 *supra*.

Inflation Adjusted Sovereign Immunity Limitations

Figure 3 below demonstrates how the $100,000 limitation on damages would have been adjusted if it was adjusted to keep pace with inflation. Specifically, the lower line shows what the $100,000 limitation on damages would have been if it was adjusted for changes to the consumer price index. The upper line shows what the $100,000 limitation would have been if it was adjusted for the medical care component of the consumer price index. Essentially, the upper line shows that the cost of medical care has increased faster than the cost of other goods and services.

Figure 3



This figure was created from data provided by the Office of Economic and Demographic Research.

Accordingly, for the $100,000 limitation on damages to be adjusted for inflation, the limitation on damages for December 2004 would have to be $204,287. For the $100,000 limitation on damages to be adjusted for the increased cost of medical care, the limitation on damages would have to be $366,702 in December 2004.

Justifications for and against Sovereign Immunity

Courts have discussed justifications both for and against sovereign immunity. Some of the justifications in support of sovereign immunity are as follows:

- the public treasury must be protected from excessive encroachments;
- orderly government administration would be disrupted if the state could be sued at the instance of every citizen;
- governmental decision-making requires flexibility and discretion; and
- separation of powers concerns prohibit the judicial branch from interfering with the discretionary functions of the legislative or executive branches.[28]

The following are some of the justifications in favor of a waiver of sovereign immunity:

- persons injured by the state should have a remedy;
- tortious conduct of government employees will be deterred; and
- the public's ability to make informed decisions about the conduct and efficiency of its government will be enhanced by bringing wrongful conduct to public attention.[29]

Interpretation of Sovereign Immunity Waiver

The Florida Supreme Court's interpretation of the sovereign immunity waiver in s. 768.28, F.S., was harshly criticized in *Judicial Tort Reform: Transforming Florida's Waiver of Sovereign Immunity Statute*, by Thomas A. Bustin and William N. Drake, Jr. According to the authors:

> Several decades of Florida Supreme Court decisions construing Florida's waiver statute have generated a body of case law so incoherent and confusing that there are no defined legal boundaries of governmental tort liability and there is no clear framework with which to analyze immunity.[30]

The following are specific criticisms of the Court's interpretation of s. 768.28, F.S.:

- The Court no longer strictly construes the provisions of s. 768.28, F.S., in favor of the state.[31] Statutes such as s. 768.28, F.S., which are in derogation of common law should be strictly construed.
- The Court does not use a private analog test like federal courts interpreting the Federal Tort Claims Act to determine whether the

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[28] Gerald T. Wetherington and Donald I. Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 FLA. L. REV. 1, 8 (1992).
[29] *Id.* at 28-29 (1992).
[30] Thomas A. Bustin and William N. Drake, Jr., *Judicial Tort Reform: Transforming Florida's Waiver of Sovereign Immunity Statute*, 32 STETSON L. REV. 469, 469-470 (2003).
[31] *Id.* at 476.

state is liable "to the same extent as a private individual under like circumstances."[32]

- The Court does not apply a clearly defined public duty doctrine.[33] "The doctrine recognizes that a public entity's liability to an individual may not be predicated upon the breach of a general duty to the public."[34] In accordance with this doctrine, police and fire protection functions may be immune from suit.[35]

The article concludes that:

> If the Court does not take the necessary remedial measures, the Legislature should enact express exemptions to the waiver statute, as legislatures have done in other states, and expressly define government conduct that will be shielded from ever-expanding-judicial scrutiny.[36]

The authors did not suggest any specific statutory exceptions to the sovereign immunity waiver.

During the 2004 Legislative Session, SB 608 would have restricted the scope of the state's sovereign immunity waiver.[37] The bill would have:

- Required courts to strictly construe the state's waiver of sovereign immunity.
- Required courts to use and apply tests used by federal courts in interpreting the Federal Tort Claims Act.
- Immunized discretionary government functions from liability.[38]
- Immunized claims resulting from legislation, licensing, permitting, the executive branch, enforcement of laws and protection of public safety, or fire inspections and fire suppression.

Attorney Fees

Under s. 768.28(8), F.S., attorney fees in tort actions against the state are limited to 25 percent of the recovery. Attorney fees under s. 768.28(8), F.S., may be small, however, when compared to contingency fees permitted under the Florida Bar Rules. Under rule 4-1.5(B), Florida Bar Rules, an attorney fee arrangement may permit an attorney to the following compensation before an answer is filed:

- 33 1/3 percent of any recover up to $1 million; plus
- 30 percent of any recovery between $1 million $2 million; plus
- 20 percent of any portion of the recovery exceeding $2 million.

After an answer is filed, an attorney may be permitted to the following:

- 40 percent of any recovery up to $1 million; plus
- 30 percent of any recovery between $1 million and $2 million; plus
- 20 percent of any recovery over $2 million.

An attorney may receive an additional 5 percent of the recovery after the institution of appellate proceedings.

Lobbyist Fees

Under s. 112.3217, F.S., lobbyists are prohibited from receiving contingency fees except for claim bills. All of the of claim bill lobbyists who were interviewed for this interim project stated that they were compensated on a contingency fee basis. Many states, however, prohibit lobbyists to be compensated by contingency fee.[39] However, the effect of a prohibition of contingency fee compensation on the number of claim bills filed or the size of appropriations is unknown.

Governor's Review of Claim Bills

Once a claim bill is passed by the Legislature, it is presented to the Governor for approval.[40] Before the current Governor chooses to sign or veto a bill, the bill is reviewed by his staff for compliance with his claim bill policy, which is reproduced below:

> Criteria for claims bills are set forth. Meeting all of these criteria is strongly recommended.
>
> - A bill should comply with the State of Florida, Legislative Claim Bill Manual, Revised for 2002.

[32] *Id.* at 501-504.
[33] *Id.* at 515.
[34] *Id* at 482.
[35] *Id.* at 475.
[36] *Id.* at 515.
[37] Senate Bill 608 did not have House companion, and it was never heard in committee.
[38] Courts have held that some discretionary government functions are immune from liability.
[39] *See, e.g.*, MISS. CODE ANN. s. 5-8-13(1); NEB. REV. STAT. s. 49-1492(1).
[40] Section 8, Art. III, State Const.

- A bill or a Special Master's Report, should demonstrate that all evidence including that discovered after settlement or jury trial has been considered.
- A bill should be heard in at least one committee of reference in both legislative chambers.
- A bill should be accompanied by at least one Special Master's Report, preferably from both legislative chambers.
- A bill should illustrate that the compensation amount for claimant is reasonable and commensurate to the damages incurred.
- A bill should have a comprehensive accounting of the payment. (e.g.: The bill should list attorney's fees, any lobbyist fees, and payment to the claimant). This accounting of payment should include:
    - a listing of attorney's and lobbyist's fees, inclusive of expenses. These costs should not exceed a combined total of 25% of judgment or settlement amount.
    - identification of the degree of financial hardship to the defendant(s).
    - identification of potential fiscal impact to the state, and it must be reviewed by the relevant state agency(ies).
- A bill of an amount that has been agreed upon by the parties (including Special Master(s)), will be reviewed from a perspective of favorable consideration.
- A bill containing an amount not agreed upon by all parties will be closely scrutinized.

The Governor's current review process evolved over the past several years because of complaints that lobbyist fees were reducing payments to claim bill claimants.[41] According to the Governor's staff, benefits to claimants were reduced by 25 percent for attorney fees, costs, and up to an additional 12 or 13 percent for lobbyist fees.[42]

As a response to the complaints, a letter, a Letter of Agreement, and a copy of the Governor's claim bill policy are delivered to claimants' representatives upon the passage of a claim bill. The letter states that the Governor's claim bill policy is intended:

> to ensure that the maximum benefit to the claimants involved in the claims bill cases is achieved.

The letter further directs the attorney for the claimant, the lobbyist for the claimant, and the claimant to sign the Letter of Agreement. The Letter of Agreement provides that the claimant will receive 75 percent of the proceeds of the claim bill and the sum of attorney fees, lobbyist fees, and costs may not exceed 25 percent of the claim bill proceeds. The letter concludes:

> Your failure to execute the Letter of Agreement may result in a veto of your client's claims bill(s).[43]

The Governor's authority to veto legislation is provided by s. 8(a), Art. III, State Const., which states in part:

> Every bill passed by the legislature shall be presented to the governor for approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation.

This provision permits the Governor to "exercise his veto power for any reason whatsoever."[44] As such, the Governor's Claim Bill Policy is likely constitutional.

Legislative Authority

The Legislature has broad authority to regulate tort claims against the state. In *Cauley v City of Jacksonville*, 403 So. 2d 379 (Fla. 1981), the Court found that the Legislature has the authority to cap recoveries under the state's sovereign immunity waiver. In *Ingraham v. Dade County School Board*, 450 So. 2d 847 (Fla. 1984), the Court upheld the 25-percent limitation on attorney fees. In *Gamble v. Wells*, 450 So. 2d 850, 852. (Fla. 1984), a claimant signed a 33 1/3 percent contingency fee agreement with an attorney for representation during the claim bill process. The Legislature ultimately passed a claim bill that appropriated $150,000 to the claimant.[45] The Legislature also limited the claimant's attorney's fees to $10,000.[46] The attorney, however, sought to enforce the contingency fee agreement.[47] The Court ultimately

[41] Interview with Monica Greer, Office of the Governor, September 9, 2004.
[42] *Id.*
[43] Cover letter for Letter of Agreement and the Governor's claim bill policy.
[44] *Brown v. Firestone*, 382 So. 2d 654, 668 (Fla. 1980).
[45] *Gamble v. Wells*, 450 So. 2d 850, 852 (Fla. 1984).
[46] *Id.*
[47] *Id.*

found that the Legislature has the authority to allow compensation, determine the amount of compensation, and determine the conditions to be placed on the appropriation.[48] Further, the Court stated that the Legislature was not bound by the provisions of the contingency fee contract.[49] Accordingly, the Legislature has clear authority to further regulate fees paid to attorneys or lobbyists involved in claims against the state.

Sovereign Immunity Law in Other States

Almost all states are subject to liability for damages caused by most tortuous conduct. The waivers in at least 15 states appear to be similar to Florida's and the Federal Tort Claims Act. Other states have enacted waivers of their sovereign immunity for broad categories of conduct such as the operation of motor vehicles and operation of hospitals and correctional facilities.[50] Almost all states that have waived their immunity from tort suits have enacted numerous exceptions to their liability such as damages caused by a quarantine or the use of an ignition interlock device, or the exercise of discretion on the part of a public officer.[51]

Additionally, most states rely heavily on their courts to adjudicate claims against the state. However, some states have created claims commissions, boards, or claims courts to help resolve claims against the state. None of these alternatives appear to have any clear advantage over the use of the courts. Nevertheless, the structure of alternative claim resolution forums could increase legislative oversight and control of claims against the state.

Like Florida, at least 30 states have caps on their liability for torts. Many states are like Florida and have caps on payments per person and per incident. The caps on state tort liability range from $10,000 per person in Arkansas to $1 million per person in Georgia and $5 million per incident in Indiana. Some states, however, have separate limitations for property damage and personal injury. A few states reduce damage awards by the amount of collateral sources of funds like life insurance received by a claimant. Further, a few states prohibit payments for pain and suffering.

Several states regulate attorney fees for tort claims against the state. In some of these states, reasonable attorney fees are determined by the court. In a few states, attorney fees are recoverable in addition to the judgment received.

The limits on attorney fees in Colorado, Hawaii, and Maryland are the most similar to Florida's. In Colorado, attorney fees are determined by the court but may not exceed $250,000. In Hawaii, attorney fees are determined by the court but may not exceed 25 percent of the recovery. In Maryland, attorney fees are limited to 20 percent of the recovery in settlements and 25 percent of the recovery in judgments.

RECOMMENDATIONS

Proponents of sovereign immunity have traditionally argued that state funds should be used to benefit the public as a whole. Opponents have argued that the state should compensate people for injuries received as a result of the state's negligence. No information has been found during the research for this interim project that would refute the fundamental arguments of either side of the sovereign immunity debate.

However, the Legislature, if dissatisfied with current practices, may wish make modifications to the sovereign immunity waiver as follows:

- adjust the limits on recoveries against the state for inflation;
- restrict the scope of or create additional exceptions to the sovereign immunity waiver;
- codify the Governor's claim bill policy or restrict attorney or lobbyist fees on a claim-bill-by-claim-bill basis; or
- direct courts to determine appropriate attorney fees.

[48] *Id.* at 853.
[49] *Id.* at 853.
[50] *See, e.g.,* COLO. REV. STAT. s. 24-10-106(1).
[51] *See, e.g.,* ALASKA STAT. s. 09.50.250(1) and DEL. CODE ANN. tit. 10, s. 4001.