

1 A bill to be entitled
2 An act relating to sovereign immunity; amending s.
3 11.02, F.S.; conforming provisions; amending s.
4 11.045, F.S.; providing requirements for lobbyists of
5 claim bills; amending s. 11.047, F.S.; conforming
6 provisions; amending s. 11.065, F.S.; removing a
7 limitation on presenting a claim to the Legislature;
8 limiting the ability to file a claim bill; amending s.
9 766.1115, F.S.; conforming a cross-reference; amending
10 s. 768.28, F.S.; naming the section the "Florida Fair
11 Claims Act"; revising requirements relating to waiver
12 of sovereign immunity; conforming provisions;
13 requiring a judge to determine damages; providing that
14 certain damages be placed into trust; providing for
15 distribution of damages in trust upon the death of a
16 claimant; providing for periodic payment of damages;
17 providing a definition; authorizing political
18 subdivisions to insure for certain amounts to avoid a
19 claim bill; providing requirements with respect to
20 such insurance; prohibiting a claim bill under certain
21 conditions; providing a remedy against insurers who
22 act in bad faith; authorizing counties to purchase
23 umbrella policies to insure certain municipalities;
24 raising caps on damages for awards against local
25 governments; providing for settlement above the cap on

26 | damages; providing for annual adjustment to the cap on
27 | damages against local governments; providing for
28 | severability; providing for applicability; providing
29 | an effective date.

30 |

31 | WHEREAS, Florida has adopted the common law of England as
32 | it existed on July 4, 1776, including the doctrine of sovereign
33 | immunity, and

34 | WHEREAS, all states provide some waiver to its sovereign
35 | immunity, including Florida, and

36 | WHEREAS, at least fourteen states have no limits on damages
37 | for authorized lawsuits against local governments, and of the
38 | states that do have such limits, Florida's limits are lower than
39 | at least half of those states, and

40 | WHEREAS, it appears that no other state has a claim bill
41 | process at the state level for excess tort settlements and
42 | judgments against local governments, and

43 | WHEREAS, decisions affecting the spending of local funds
44 | are best made by the legislative bodies of local governments and
45 | decisions affecting the spending of state funds are best made by
46 | the Legislature, and

47 | WHEREAS, parties injured by negligent acts of officers,
48 | employees, and agents of government entities are entitled to
49 | fair compensation for their injuries, and

50 WHEREAS, such parties who are not fairly compensated often
 51 must rely on state and federal funded health care programs for
 52 their medical care, and

53 WHEREAS, it is the intention of the Legislature to have
 54 tort claims against local governments resolved by the
 55 responsible local government to the greatest extent practicable,
 56 and

57 WHEREAS, The Legislature recognizes the financial
 58 constraints facing state and local governments and that some
 59 sensible restrictions must be placed on lawsuits against such
 60 governments, NOW, THEREFORE,

61

62 Be It Enacted by the Legislature of the State of Florida:

63

64 Section 1. Section 11.02, Florida Statutes, is amended to
 65 read:

66 11.02 Notice of special or local legislation or certain
 67 claim bills ~~relief acts~~.—The notice required to obtain special
 68 or local legislation or any claim bill ~~relief act~~ specified in
 69 s. 11.065(2) ~~s. 11.065~~ shall be by publishing the identical
 70 notice in each county involved in some newspaper as defined in
 71 chapter 50 published in or circulated throughout the county or
 72 counties where the matter or thing to be affected by such
 73 legislation shall be situated one time at least 30 days before
 74 introduction of the proposed law into the Legislature or, there

75 | being no newspaper circulated throughout or published in the
 76 | county, by posting for at least 30 days at not less than three
 77 | public places in the county or each of the counties, one of
 78 | which places shall be at the courthouse in the county or
 79 | counties where the matter or thing to be affected by such
 80 | legislation shall be situated. Notice of special or local
 81 | legislation shall state the substance of the contemplated law,
 82 | as required by s. 10, Art. III of the State Constitution. Notice
 83 | of any claim bill ~~relief act~~ specified in s. 11.065(2) ~~s. 11.065~~
 84 | shall state the name of the claimant, the nature of the injury
 85 | or loss for which the claim is made, and the amount of the claim
 86 | being sought against the affected political subdivision
 87 | ~~municipality's revenue-sharing trust fund.~~

88 | Section 2. Subsection (10) is added to section 11.045,
 89 | Florida Statutes, to read:

90 | 11.045 Lobbying before the Legislature; registration and
 91 | reporting; exemptions; penalties.—

92 | (10) (a) Each lobbyist lobbying a claim bill must disclose
 93 | his or her interest and participation to the President of the
 94 | Senate and the Speaker of the House of Representatives prior to
 95 | lobbying such claim bill. Such disclosure must be in writing and
 96 | state the name of the principal retaining the lobbyist.

97 | (b) A lobbyist may not represent more than one client on a
 98 | claim bill without written permission from each client. A copy
 99 | of the written permission from the clients must be included in

100 the disclosure required under paragraph (a).

101 (c) A lobbyist may not lobby a claim bill for a client
 102 that has an adverse position to a previous client of the
 103 lobbyist without written permission from each client. A copy of
 104 the written permission from the clients must be included in the
 105 disclosure required under paragraph (a).

106 (d) Any attorney lobbying on behalf of a client, a law
 107 firm, or for themselves, any of which has a pecuniary interest
 108 in the claim bill, shall be deemed a lobbyist as defined in this
 109 section and s. 112.3215 and shall register and comply with all
 110 requirements of this section and s. 112.3215.

111 (e) Violations of this subsection shall be investigated
 112 and punished pursuant to subsection (7).

113 Section 3. Subsection (2) of section 11.047, Florida
 114 Statutes, is amended to read:

115 11.047 Contingency fees; prohibitions; penalties.—

116 (2) No person may, in whole or in part, pay, give, or
 117 receive, or agree to pay, give, or receive, a contingency fee.
 118 However, this subsection does not apply to claim ~~claims~~ bills.

119 Section 4. Section 11.065, Florida Statutes, is amended to
 120 read:

121 11.065 Claim bills ~~Claims against state; limitations;~~
 122 notice.—

123 (1) ~~No claims against the state shall be presented to the~~
 124 ~~Legislature more than 4 years after the cause for relief~~

125 ~~accrued. Any claim presented after this time of limitation shall~~
126 ~~be void and unenforceable.~~

127 ~~(2)~~ All claim bills passed by relief acts of the
128 Legislature shall be for payment in full. No further claims for
129 relief shall be submitted to the Legislature in the future.

130 (2) ~~(3)~~ Notice shall be given as provided in s. 11.02 prior
131 to the introduction of any claim bill relief act which provides
132 for the payment of the claim from funds of a political
133 subdivision scheduled for distribution to a municipality from
134 the revenue sharing trust fund for municipalities.

135 (3) (a) Provided that interest on the amount sought in any
136 claim bill whose proceeds are paid exclusively from the treasury
137 of a local governmental entity begins to accrue once the claim
138 bill is timely filed in the Legislature, such claim bill must be
139 sponsored by a member of the local legislative delegation that
140 is the principal location of local governmental entity. However,
141 such claim bill does not require consideration by the delegation
142 as a whole in the same manner as a local bill.

143 (b) In any instance in which the local legislative
144 delegation consists of only a single member of either the Senate
145 or the House of Representatives, a claim bill otherwise meeting
146 the requirements of paragraph (a) may be sponsored by a member
147 who represents a district adjoining the district of that single
148 member.

149 Section 5. Paragraph (b) of subsection (12) of section

150 766.1115, Florida Statutes, is amended to read:

151 766.1115 Health care providers; creation of agency
152 relationship with governmental contractors.-

153 (12) APPLICABILITY.-This section applies to incidents
154 occurring on or after April 17, 1992. This section does not:

155 (b) Apply to any affiliation agreement or other contract
156 that is subject to s. 768.28(10)(e) ~~s. 768.28(10)(f)~~.

157 Section 6. Section 768.28, Florida Statutes, is amended to
158 read:

159 768.28 Florida Fair Claims Act; waiver of sovereign
160 immunity in tort actions; recovery limits; limitation on
161 attorney fees; statute of limitations; exclusions;
162 indemnification; risk management programs.-

163 (1)(a) This section may be referred to as the "Florida
164 Fair Claims Act."

165 (b) In accordance with s. 13, Art. X of the State
166 Constitution, the state, for itself and for its agencies and ~~or~~
167 political subdivisions, hereby waives sovereign immunity for
168 liability for torts, but only to the extent specified in this
169 section ~~act~~. Actions at law against the state or any of its
170 agencies or political subdivisions to recover damages in tort
171 for money damages against the state or its agencies or political
172 subdivisions for injury or loss of property, personal injury, or
173 death caused by the negligent or wrongful act or omission of any
174 employee of the agency or political subdivision while acting

175 within the scope of the employee's office or employment under
176 circumstances in which the state or such agency or political
177 subdivision, if a private person, would be liable to the
178 claimant, in accordance with the general laws of this state, may
179 be prosecuted subject to the limitations specified in this
180 section ~~act~~.

181 (c) Any such action authorized by this section may be
182 brought in the county where the property in litigation is
183 located or, if the affected agency or political subdivision has
184 an office in such county for the transaction of its customary
185 business, where the cause of action accrued. However, any such
186 action against a state university board of trustees shall be
187 brought in the county in which that university's main campus is
188 located or in the county in which the cause of action accrued if
189 the university maintains therein a substantial presence for the
190 transaction of its customary business.

191 (d) Unless waived by all parties, any action authorized by
192 this section shall be tried by a jury as to liability issues,
193 including breach of duty, causation, and comparative fault. Upon
194 a finding of liability by the jury, a separate bench trial shall
195 be held by the judge to determine the amount of damages.

196 (e) Any award of past damages shall be paid to the
197 claimant within 30 days of a final judgment or exhaustion of
198 appeals, whichever occurs later.

199 (f)1. Except as provided in paragraph (g), any award of

200 future medical damages shall be paid into a special needs trust
201 for that purpose.

202 2. All other awards for future damages, such as lost wages
203 or pain and suffering, shall also be paid into a trust and
204 distributed to the claimant from the trust annually. Such
205 distribution of other awards for future damages from the trust
206 shall be made pursuant to the final order of the judge. The
207 judge's order shall order the distribution based on the
208 calculations made in awarding such damages and as they come due.

209 3. Trusts created pursuant to subparagraphs 1. and 2. may
210 be funded over time by the state agency or political subdivision
211 through the purchase of an annuity as approved by the judge.

212 4. Other than future lost wages, any unspent funds
213 remaining in trust upon the death of the claimant paid by the
214 state agency or political subdivision pursuant to the underlying
215 judgment shall revert back to that state agency or political
216 subdivision.

217 (g) Any award of future damages may be made in periodic
218 payments upon request of the state agency or political
219 subdivision and approval of the judge that the claimant will not
220 suffer a substantial hardship as a result of the periodic
221 payments. Periodic payments will be due as ordered by the judge
222 and as the need is anticipated for the claimant.

223 (2)(a) As used in this section ~~act~~, "state agency ~~agencies~~
224 ~~or subdivisions~~" includes ~~include~~ the executive departments, the

225 Legislature, the judicial branch (including public defenders),
 226 and the independent establishments of the state, including state
 227 university boards of trustees, ~~;~~ ~~counties and municipalities;~~ and
 228 corporations primarily acting as instrumentalities or agencies
 229 of the state, ~~counties, or municipalities, including the Florida~~
 230 ~~Space Authority.~~

231 (b) As used in this section, "political subdivision"
 232 includes counties, municipalities, special tax school districts,
 233 special road and bridge districts, hospital districts, all other
 234 districts in this state, and corporations primarily acting as
 235 instrumentalities or agencies of political subdivisions,
 236 including Space Florida.

237 (3) Except for a political subdivision ~~municipality and~~
 238 ~~the Florida Space Authority,~~ the affected agency ~~or subdivision~~
 239 may, at its discretion, request the assistance of the Department
 240 of Financial Services in the consideration, adjustment, and
 241 settlement of any claim under this section ~~act~~.

242 (4) Subject to the provisions of this section, any state
 243 agency or political subdivision has ~~shall have~~ the right to
 244 appeal any award, ~~compromise, settlement,~~ or determination to
 245 the court of appropriate jurisdiction.

246 (5) (a) The state and its agencies and political
 247 subdivisions are ~~shall be~~ liable for tort claims in the same
 248 manner and to the same extent as a private individual under like
 249 circumstances, but liability shall not include punitive damages

250 or interest for the period before judgment.

251 (b) Except for political subdivisions that are not insured
252 or self-insured in the amounts set forth in subsection (17) (a),
253 neither the state nor its agencies or political subdivisions
254 shall be liable to pay a claim or a judgment by any one person
255 which exceeds the sum of \$200,000 or any claim or judgment, or
256 portions thereof, which, when totaled with all other claims or
257 judgments paid by the state or its agencies or political
258 subdivisions arising out of the same incident or occurrence,
259 exceeds the sum of \$300,000. However, a judgment or judgments
260 may be claimed and rendered in excess of these amounts and may
261 be settled and paid pursuant to this section ~~act~~ up to \$200,000
262 or \$300,000, as the case may be; and that portion of the
263 judgment that exceeds these amounts may be reported to the
264 Legislature, but may be paid in part or in whole only by further
265 act of the Legislature. Notwithstanding the limited waiver of
266 sovereign immunity provided herein, the state or an agency or
267 political subdivision ~~thereof~~ may agree, within the limits of
268 insurance coverage provided, to settle a claim made or a
269 judgment rendered against it without further action by the
270 Legislature, but the state or agency or political subdivision
271 ~~thereof~~ shall not be deemed to have waived any defense of
272 sovereign immunity or to have increased the limits of its
273 liability as a result of its obtaining insurance coverage for
274 tortious acts in excess of the \$200,000 or \$300,000 waiver

275 | provided in this paragraph ~~above~~.

276 | (c) A political subdivision that is insured or self-
277 | insured in the amounts set forth in subsection (17) (a), is not
278 | liable to pay a claim or a judgment by any one person which
279 | exceeds the sum of \$1 million or any claim or judgment, or
280 | portions thereof, which, when totaled with all other claims or
281 | judgments paid by the political subdivision arising out of the
282 | same incident or occurrence, exceeds the sum of \$1.5 million.
283 | However, a judgment or judgments may be claimed and rendered in
284 | excess of these amounts and may be settled and paid pursuant to
285 | this section up to \$1 million or \$1.5 million as the case may
286 | be; and that portion of the judgment that exceeds these amounts
287 | may be reported to the Legislature, but may be paid in part or
288 | in whole only by further act of the Legislature. Notwithstanding
289 | the limited waiver of sovereign immunity provided herein, a
290 | political subdivision may agree to settle a claim made or a
291 | judgment rendered against it without further action by the
292 | Legislature, but the political subdivision is not deemed to have
293 | waived any defense of sovereign immunity or to have increased
294 | the limits of its liability as a result of obtaining insurance
295 | coverage for tortious acts in excess of the \$1 million or \$1.5
296 | million waiver provided in this paragraph.

297 | (d) The limitations of liability set forth in paragraph
298 | (c) shall be adjusted on July 1 of each year based on any
299 | increase or decrease from the most recent year available as set

300 in the Consumer Price Index for the Southeastern United States
301 published by the Bureau of Labor Statistics of the United States
302 Department of Labor.

303 (e) The limitations of liability set forth in this
304 subsection shall apply to the state and its agencies and
305 political subdivisions whether or not the state or its agencies
306 or political subdivisions possessed sovereign immunity before
307 July 1, 1974.

308 (6) (a) An action may not be instituted on a claim against
309 the state or one of its agencies or political subdivisions
310 unless the claimant presents the claim in writing to the
311 appropriate agency, and also, except as to any claim against a
312 political subdivision ~~municipality or the Florida Space~~
313 ~~Authority~~, presents such claim in writing to the Department of
314 Financial Services, within 3 years after such claim accrues and
315 the Department of Financial Services or the appropriate agency
316 denies the claim in writing; except that, if:

317 1. Such claim is for contribution pursuant to s. 768.31,
318 it must be so presented within 6 months after the judgment
319 against the tortfeasor seeking contribution has become final by
320 lapse of time for appeal or after appellate review or, if there
321 is no such judgment, within 6 months after the tortfeasor
322 seeking contribution has either discharged the common liability
323 by payment or agreed, while the action is pending against her or
324 him, to discharge the common liability; or

325 2. Such action is for wrongful death, the claimant must
326 present the claim in writing to the appropriate agency or
327 political subdivision and the Department of Financial Services,
328 if applicable, within 2 years after the claim accrues.

329 (b) For purposes of this section, the requirements of
330 notice to the appropriate agency or political subdivision and
331 the Department of Financial Services, if applicable, and denial
332 of the claim pursuant to paragraph (a) are conditions precedent
333 to maintaining an action but shall not be deemed to be elements
334 of the cause of action and shall not affect the date on which
335 the cause of action accrues.

336 (c) The claimant shall also provide to the agency or
337 political subdivision and the Department of Financial Services,
338 if applicable, the claimant's date and place of birth and social
339 security number if the claimant is an individual, or a federal
340 identification number if the claimant is not an individual. The
341 claimant shall also state the case style, tribunal, the nature
342 and amount of all adjudicated penalties, fines, fees, victim
343 restitution fund, and other judgments in excess of \$200, whether
344 imposed by a civil, criminal, or administrative tribunal, owed
345 by the claimant to the state, its agency, officer or political
346 subdivision. If there exists no prior adjudicated unpaid claim
347 in excess of \$200, the claimant shall so state.

348 (d) For purposes of this section, complete, accurate, and
349 timely compliance with the requirements of paragraph (c) shall

350 occur prior to settlement payment, close of discovery or
351 commencement of trial, whichever is sooner; provided the ability
352 to plead setoff is not precluded by the delay. This setoff shall
353 apply only against that part of the settlement or judgment
354 payable to the claimant, minus claimant's reasonable attorney's
355 fees and costs. Incomplete or inaccurate disclosure of unpaid
356 adjudicated claims due the state, its agency, officer, or
357 political subdivision, may be excused by the court upon a
358 showing by the preponderance of the evidence of the claimant's
359 lack of knowledge of an adjudicated claim and reasonable inquiry
360 by, or on behalf of, the claimant to obtain the information from
361 public records. Unless the appropriate agency or political
362 subdivision had actual notice of the information required to be
363 disclosed by paragraph (c) in time to assert a setoff, an
364 unexcused failure to disclose shall, upon hearing and order of
365 court, cause the claimant to be liable for double the original
366 undisclosed judgment and, upon further motion, the court shall
367 enter judgment for the agency or political subdivision in that
368 amount. Except as provided otherwise in this subsection, the
369 failure of the Department of Financial Services or the
370 appropriate agency or political subdivision to make final
371 disposition of a claim within 6 months after it is filed shall
372 be deemed a final denial of the claim for purposes of this
373 section. For purposes of this subsection, in medical malpractice
374 actions and in wrongful death actions, the failure of the

375 Department of Financial Services or the appropriate agency or
376 political subdivision to make final disposition of a claim
377 within 90 days after it is filed shall be deemed a final denial
378 of the claim. The statute of limitations for medical malpractice
379 actions and wrongful death actions is tolled for the period of
380 time taken by the Department of Financial Services or the
381 appropriate agency or political subdivision to deny the claim.
382 The provisions of this subsection do not apply to such claims as
383 may be asserted by counterclaim pursuant to s. 768.14.

384 (7) In actions brought pursuant to this section, process
385 shall be served upon the head of the agency concerned and also,
386 except as to a defendant political subdivision ~~municipality or~~
387 ~~the Florida Space Authority,~~ upon the Department of Financial
388 Services, ~~and the department,~~ or the agency, or political
389 subdivision concerned shall have 30 days within which to plead
390 thereto.

391 (8) No attorney may charge, demand, receive, or collect,
392 for services rendered, fees in excess of 25 percent of any
393 judgment or settlement.

394 (9) (a) No officer, employee, or agent of the state or of
395 any of its political subdivisions shall be held personally
396 liable in tort or named as a party defendant in any action for
397 any injury or damage suffered as a result of any act, event, or
398 omission of action in the scope of her or his employment or
399 function, unless such officer, employee, or agent acted in bad

400 faith or with malicious purpose or in a manner exhibiting wanton
401 and willful disregard of human rights, safety, or property.
402 However, such officer, employee, or agent shall be considered an
403 adverse witness in a tort action for any injury or damage
404 suffered as a result of any act, event, or omission of action in
405 the scope of her or his employment or function. The exclusive
406 remedy for injury or damage suffered as a result of an act,
407 event, or omission of an officer, employee, or agent of the
408 state or any of its political subdivisions or constitutional
409 officers shall be by action against the governmental entity, or
410 the head of such entity in her or his official capacity, or the
411 constitutional officer of which the officer, employee, or agent
412 is an employee, unless such act or omission was committed in bad
413 faith or with malicious purpose or in a manner exhibiting wanton
414 and willful disregard of human rights, safety, or property. The
415 state or its political subdivisions shall not be liable in tort
416 for the acts or omissions of an officer, employee, or agent
417 committed while acting outside the course and scope of her or
418 his employment or committed in bad faith or with malicious
419 purpose or in a manner exhibiting wanton and willful disregard
420 of human rights, safety, or property.

421 (b) As used in this subsection, the term:

- 422 1. "Employee" includes any volunteer firefighter.
423 2. "Officer, employee, or agent" includes, but is not
424 limited to, any health care provider when providing services

425 pursuant to s. 766.1115; any nonprofit independent college or
426 university located and chartered in this state which owns or
427 operates an accredited medical school, and its employees or
428 agents, when providing patient services pursuant to paragraph
429 (10)(e) ~~(10)(f)~~; and any public defender or her or his employee
430 or agent, including, among others, an assistant public defender
431 and an investigator.

432 (c) For purposes of the waiver of sovereign immunity only,
433 a member of the Florida National Guard is not acting within the
434 scope of state employment when performing duty under the
435 provisions of Title 10 or Title 32 of the United States Code or
436 other applicable federal law; and neither the state nor any
437 individual may be named in any action under this chapter arising
438 from the performance of such federal duty.

439 (d) The employing agency of a law enforcement officer as
440 defined in s. 943.10 is not liable for injury, death, or
441 property damage effected or caused by a person fleeing from a
442 law enforcement officer in a motor vehicle if:

443 1. The pursuit is conducted in a manner that does not
444 involve conduct by the officer which is so reckless or wanting
445 in care as to constitute disregard of human life, human rights,
446 safety, or the property of another;

447 2. At the time the law enforcement officer initiates the
448 pursuit, the officer reasonably believes that the person fleeing
449 has committed a forcible felony as defined in s. 776.08; and

450 3. The pursuit is conducted by the officer pursuant to a
451 written policy governing high-speed pursuit adopted by the
452 employing agency. The policy must contain specific procedures
453 concerning the proper method to initiate and terminate high-
454 speed pursuit. The law enforcement officer must have received
455 instructional training from the employing agency on the written
456 policy governing high-speed pursuit.

457 (10) (a) 1. Health care providers or vendors, or any of
458 their employees or agents, that have contractually agreed to act
459 as agents of the Department of Corrections to provide health
460 care services to inmates of the state correctional system shall
461 be considered agents of the State of Florida, Department of
462 Corrections, for the purposes of this section, while acting
463 within the scope of and pursuant to guidelines established in
464 said contract or by rule. The contracts shall provide for the
465 indemnification of the state by the agent for any liabilities
466 incurred up to the limits set out in this chapter.

467 2. ~~(b)~~ This paragraph ~~subsection~~ shall not be construed as
468 designating persons providing contracted health care services to
469 inmates as employees or agents of the state for the purposes of
470 chapter 440.

471 (b) ~~(e)~~ For purposes of this section, regional poison
472 control centers created in accordance with s. 395.1027 and
473 coordinated and supervised under the Division of Children's
474 Medical Services Prevention and Intervention of the Department

475 of Health, or any of their employees or agents, shall be
476 considered agents of the State of Florida, Department of Health.
477 Any contracts with poison control centers must provide, to the
478 extent permitted by law, for the indemnification of the state by
479 the agency for any liabilities incurred up to the limits set out
480 in this chapter.

481 (c)~~(d)~~ For the purposes of this section, operators,
482 dispatchers, and providers of security for rail services and
483 rail facility maintenance providers in the South Florida Rail
484 Corridor, or any of their employees or agents, performing such
485 services under contract with and on behalf of the South Florida
486 Regional Transportation Authority or the Department of
487 Transportation shall be considered agents of the state while
488 acting within the scope of and pursuant to guidelines
489 established in said contract or by rule.

490 (d)~~(e)~~ For purposes of this section, a professional firm
491 that provides monitoring and inspection services of the work
492 required for state roadway, bridge, or other transportation
493 facility construction projects, or any of the firm's employees
494 performing such services, shall be considered agents of the
495 Department of Transportation while acting within the scope of
496 the firm's contract with the Department of Transportation to
497 ensure that the project is constructed in conformity with the
498 project's plans, specifications, and contract provisions. Any
499 contract between the professional firm and the state, to the

500 extent permitted by law, shall provide for the indemnification
501 of the department for any liability, including reasonable
502 attorney's fees, incurred up to the limits set out in this
503 chapter to the extent caused by the negligence of the firm or
504 its employees. This paragraph shall not be construed as
505 designating persons who provide monitoring and inspection
506 services as employees or agents of the state for purposes of
507 chapter 440. This paragraph is not applicable to the
508 professional firm or its employees if involved in an accident
509 while operating a motor vehicle. This paragraph is not
510 applicable to a firm engaged by the Department of Transportation
511 for the design or construction of a state roadway, bridge, or
512 other transportation facility construction project or to its
513 employees, agents, or subcontractors.

514 (e)~~(f)~~ For purposes of this section, any nonprofit
515 independent college or university located and chartered in this
516 state which owns or operates an accredited medical school, or
517 any of its employees or agents, and which has agreed in an
518 affiliation agreement or other contract to provide, or permit
519 its employees or agents to provide, patient services as agents
520 of a teaching hospital, is considered an agent of the teaching
521 hospital while acting within the scope of and pursuant to
522 guidelines established in the affiliation agreement or other
523 contract. To the extent allowed by law, the contract must
524 provide for the indemnification of the teaching hospital, up to

525 | the limits set out in this chapter, by the agent for any
526 | liability incurred which was caused by the negligence of the
527 | college or university or its employees or agents. The contract
528 | must also provide that those limited portions of the college,
529 | university, or medical school which are directly providing
530 | services pursuant to the contract and which are considered an
531 | agent of the teaching hospital for purposes of this section are
532 | deemed to be acting on behalf of a public agency as defined in
533 | s. 119.011(2).

534 | 1. For purposes of this paragraph, the term:

535 | a. "Employee or agent" means an officer, employee, agent,
536 | or servant of a nonprofit independent college or university
537 | located and chartered in this state which owns or operates an
538 | accredited medical school, including, but not limited to, the
539 | faculty of the medical school, any health care practitioner or
540 | licensee as defined in s. 456.001 for which the college or
541 | university is vicariously liable, and the staff or
542 | administrators of the medical school.

543 | b. "Patient services" mean:

544 | (I) Comprehensive health care services as defined in s.
545 | 641.19, including any related administrative service, provided
546 | to patients in a teaching hospital;

547 | (II) Training and supervision of interns, residents, and
548 | fellows providing patient services in a teaching hospital; or

549 | (III) Training and supervision of medical students in a

550 teaching hospital.

551 c. "Teaching hospital" means a teaching hospital as
552 defined in s. 408.07 which is owned or operated by the state, a
553 county or municipality, a public health trust, a special taxing
554 district, a governmental entity having health care
555 responsibilities, or a not-for-profit entity that operates such
556 facility as an agent of the state, or a political subdivision of
557 the state, under a lease or other contract.

558 2. The teaching hospital or the medical school, or its
559 employees or agents, must provide notice to each patient, or the
560 patient's legal representative, that the college or university
561 that owns or operates the medical school and the employees or
562 agents of that college or university are acting as agents of the
563 teaching hospital and that the exclusive remedy for injury or
564 damage suffered as the result of any act or omission of the
565 teaching hospital, the college or university that owns or
566 operates the medical school, or the employees or agents of the
567 college or university, while acting within the scope of duties
568 pursuant to the affiliation agreement or other contract with a
569 teaching hospital, is by commencement of an action pursuant to
570 the provisions of this section. This notice requirement may be
571 met by posting the notice in a place conspicuous to all persons.

572 3. This paragraph does not designate any employee
573 providing contracted patient services in a teaching hospital as
574 an employee or agent of the state for purposes of chapter 440.

575 (11) (a) Providers or vendors, or any of their employees or
576 agents, that have contractually agreed to act on behalf of the
577 state as agents of the Department of Juvenile Justice to provide
578 services to children in need of services, families in need of
579 services, or juvenile offenders are, solely with respect to such
580 services, agents of the state for purposes of this section while
581 acting within the scope of and pursuant to guidelines
582 established in the contract or by rule. A contract must provide
583 for the indemnification of the state by the agent for any
584 liabilities incurred up to the limits set out in this section
585 ~~chapter~~.

586 (b) This subsection does not designate a person who
587 provides contracted services to juvenile offenders as an
588 employee or agent of the state for purposes of chapter 440.

589 (12) (a) A health care practitioner, as defined in s.
590 456.001(4), who has contractually agreed to act as an agent of a
591 state university board of trustees to provide medical services
592 to a student athlete for participation in or as a result of
593 intercollegiate athletics, to include team practices, training,
594 and competitions, shall be considered an agent of the respective
595 state university board of trustees, for the purposes of this
596 section, while acting within the scope of and pursuant to
597 guidelines established in that contract. The contracts shall
598 provide for the indemnification of the state by the agent for
599 any liabilities incurred up to the limits set out in this

600 chapter.

601 (b) This subsection shall not be construed as designating
 602 persons providing contracted health care services to athletes as
 603 employees or agents of a state university board of trustees for
 604 the purposes of chapter 440.

605 (13) Laws allowing the state or its agencies or political
 606 subdivisions to buy insurance are still in force and effect and
 607 are not restricted in any way by the terms of this section ~~act~~.

608 (14) Every claim against the state or one of its agencies
 609 or political subdivisions for damages for a negligent or
 610 wrongful act or omission pursuant to this section shall be
 611 forever barred unless the civil action is commenced by filing a
 612 complaint in the court of appropriate jurisdiction within 4
 613 years after such claim accrues; except that an action for
 614 contribution must be commenced within the limitations provided
 615 in s. 768.31(4), and an action for damages arising from medical
 616 malpractice or wrongful death must be commenced within the
 617 limitations for such actions in s. 95.11(4).

618 (15) No action may be brought against the state or any of
 619 its agencies or political subdivisions by anyone who unlawfully
 620 participates in a riot, unlawful assembly, public demonstration,
 621 mob violence, or civil disobedience if the claim arises out of
 622 such riot, unlawful assembly, public demonstration, mob
 623 violence, or civil disobedience. Nothing in this section ~~act~~
 624 shall abridge traditional immunities pertaining to statements

625 made in court.

626 (16) (a) The state and its agencies and political
627 subdivisions are authorized to be self-insured, to enter into
628 risk management programs, or to purchase liability insurance for
629 whatever coverage they may choose, or to have any combination
630 thereof, in anticipation of any claim, judgment, and claim
631 ~~claims~~ bill which they may be liable to pay pursuant to this
632 section. Agencies or political subdivisions, and sheriffs, that
633 are subject to homogeneous risks may purchase insurance jointly
634 or may join together as self-insurers to provide other means of
635 protection against tort claims, any charter provisions or laws
636 to the contrary notwithstanding.

637 (b) Claims files maintained by any risk management program
638 administered by the state, its agencies, and its political
639 subdivisions are confidential and exempt from the provisions of
640 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
641 until termination of all litigation and settlement of all claims
642 arising out of the same incident, although portions of the
643 claims files may remain exempt, as otherwise provided by law.
644 Claims files records may be released to other governmental
645 agencies upon written request and demonstration of need; such
646 records held by the receiving agency remain confidential and
647 exempt as provided for in this paragraph.

648 (c) Portions of meetings and proceedings conducted
649 pursuant to any risk management program administered by the

650 state, its agencies, or its political subdivisions, which relate
651 solely to the evaluation of claims filed with the risk
652 management program or which relate solely to offers of
653 compromise of claims filed with the risk management program are
654 exempt from the provisions of s. 286.011 and s. 24(b), Art. I of
655 the State Constitution. Until termination of all litigation and
656 settlement of all claims arising out of the same incident,
657 persons privy to discussions pertinent to the evaluation of a
658 filed claim shall not be subject to subpoena in any
659 administrative or civil proceeding with regard to the content of
660 those discussions.

661 (d) Minutes of the meetings and proceedings of any risk
662 management program administered by the state, its agencies, or
663 its political subdivisions, which relate solely to the
664 evaluation of claims filed with the risk management program or
665 which relate solely to offers of compromise of claims filed with
666 the risk management program are exempt from the provisions of s.
667 119.07(1) and s. 24(a), Art. I of the State Constitution until
668 termination of all litigation and settlement of all claims
669 arising out of the same incident.

670 (17) (a) A political subdivision may purchase insurance or
671 self-insure to cover liabilities under this section:

672 1. In an amount equal to \$5 million to pay a claim or
673 judgment by any one person or \$7.5 million to cover the total
674 claims or judgments arising out of the same incident or

675 occurrence.

676 2. In an amount equal to \$10 million to pay a claim or
677 judgment by any one person or \$15 million to cover the total
678 claims or judgments arising out of the same incident or
679 occurrence.

680 (b)1. Insurance purchased pursuant to paragraph (a) must
681 pay for covered liabilities up to the policy limits and not be
682 contingent upon further act of the Legislature.

683 2. Self-insurance maintained pursuant to paragraph (a)
684 must require that, within 45 days after receipt of the notice of
685 loss from the claimant, the lesser of the amount the claimant is
686 willing to accept or the policy limits is deposited into a
687 contingent liability account and held there pending the
688 resolution of the related litigation.

689 (c) Notwithstanding other provisions of this section, a
690 political subdivision that purchases insurance or self-insures
691 in compliance with paragraph (a) is only liable for its
692 deductible under the policy and is not liable for any judgments
693 in excess of the limits of such policy. A party injured by a
694 tort covered by such a policy may not seek payment from the
695 insured beyond the insurance coverage for such tort and any
696 claim for relief related to such tort submitted to the
697 Legislature in the future shall be treated by the Legislature:

698 1. As a local claim bill, if the political subdivision was
699 insured or self-insured in compliance with subparagraph (a)1. on
700 the date the claim arose.

701 2. As a claim bill against the state to be paid from state
702 funds, if the political subdivision was insured or self-insured
703 in compliance with subparagraph (a)2. on the date the claim
704 arose.

705 (d) A county may purchase an umbrella policy that, in
706 addition to insuring the county, offers insurance to
707 municipalities within the county; however, a municipality is not
708 required to be insured by such umbrella policy purchased by a
709 county. The county shall charge on a pro-rata basis the
710 municipalities that choose to be insured by the umbrella policy.

711 (e) Notwithstanding paragraph (c), a party injured as a
712 result of a tort covered by this subsection may pursue a
713 judgment in excess of the policy limits if the insurer is found
714 to have acted in bad faith in meeting its obligations under its
715 policy with the political subdivision. ~~This section, as amended~~
716 ~~by chapter 81-317, Laws of Florida, shall apply only to causes~~
717 ~~of actions which accrue on or after October 1, 1981.~~

718 (18) No provision of this section, or of any other section
719 of the Florida Statutes, whether read separately or in
720 conjunction with any other provision, shall be construed to
721 waive the immunity of the state or any of its agencies from suit
722 in federal court, as such immunity is guaranteed by the Eleventh

723 Amendment to the Constitution of the United States, unless such
724 waiver is explicitly and definitely stated to be a waiver of the
725 immunity of the state and its agencies from suit in federal
726 court. This subsection shall not be construed to mean that the
727 state has at any time previously waived, by implication, its
728 immunity, or that of any of its agencies, from suit in federal
729 court through any statute in existence prior to June 24, 1984.

730 (19) Neither the state nor any agency or political
731 subdivision of the state waives any defense of sovereign
732 immunity, or increases the limits of its liability, upon
733 entering into a contractual relationship with another agency or
734 political subdivision of the state. Such a contract must not
735 contain any provision that requires one party to indemnify or
736 insure the other party for the other party's negligence or to
737 assume any liability for the other party's negligence. This does
738 not preclude a party from requiring a nongovernmental entity to
739 provide such indemnification or insurance. The restrictions of
740 this subsection do not prevent a regional water supply authority
741 from indemnifying and assuming the liabilities of its member
742 governments for obligations arising from past acts or omissions
743 at or with property acquired from a member government by the
744 authority and arising from the acts or omissions of the
745 authority in performing activities contemplated by an interlocal
746 agreement. Such indemnification may not be considered to
747 increase or otherwise waive the limits of liability to third-

748 party claimants established by this section.

749 (20) Every political subdivision ~~municipality~~, and any
 750 agency thereof, is authorized to undertake to indemnify those
 751 employees that are exposed to personal liability pursuant to the
 752 Clean Air Act Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq.,
 753 and all rules and regulations adopted to implement that act, for
 754 acts performed within the course and scope of their employment
 755 with the political subdivision ~~municipality~~ or its agency,
 756 including but not limited to indemnification pertaining to the
 757 holding, transfer, or disposition of allowances allocated to the
 758 political subdivision's ~~municipality's~~ or its agency's electric
 759 generating units, and the monitoring, submission, certification,
 760 and compliance with permits, permit applications, records,
 761 compliance plans, and reports for those units, when such acts
 762 are performed within the course and scope of their employment
 763 with the political subdivision ~~municipality~~ or its agency. The
 764 authority to indemnify under this section covers every act by an
 765 employee when such act is performed within the course and scope
 766 of her or his employment with the political subdivision
 767 ~~municipality~~ or its agency, but does not cover any act of
 768 willful misconduct or any intentional or knowing violation of
 769 any law by the employee. The authority to indemnify under this
 770 section includes, but is not limited to, the authority to pay
 771 any fine and provide legal representation in any action.

772 Section 7. If any provision of this act or the application

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773 thereof to any person or circumstance is held invalid, the
774 invalidity does not affect other provisions or applications of
775 the act which can be given effect without the invalid provision
776 or application, and to this end the provisions of this act are
777 declared severable.

778 Section 8. The amendments made by this act to s. 768.28,
779 Florida Statutes, apply to causes of action filed on or after
780 October 1, 2017.

781 Section 9. This act shall take effect October 1, 2017.