

HB 1705

COMMITTEE ON GOVERNMENTAL OPERATIONS

BILL # \_\_\_\_\_ PCB #31 \_\_\_\_\_ OTHER COMMITTEE OF REFERENCE \_\_\_\_\_

SPONSOR(S) Governmental Operations Committee \_\_\_\_\_  
SIMILAR/COMPANION BILLS \_\_\_\_\_

RELATING TO: Public Employees \_\_\_\_\_

May 2, 1980

I. SUMMARY

A. Present Situation

The Florida Supreme Court recently held that subsection (9) of Section 768.29, Florida Statutes, (1975), did not prevent a state officer, employee or agent from being made a party defendant in an action for injuries or damages suffered as the result of an act, event, or omission of action in the scope of his employment. Moreover, the court held, that the employee would be personally liable for that portion of a judgment rendered against him which exceeded the state's liability limits.

While this case was pending, the 1979 Legislature passed SB 474, which amended subsection (9) of Section 768.29, Florida Statutes, in an attempt to clearly prevent personal liability of public employees. Although the Supreme Court did not address the 1979 legislation, there is some concern in light of their recent opinion, that the 1979 legislation does not in fact achieve the results intended, to wit: no personal liability for employees acting within the scope of their employment.

B. Probable Effect of Proposed Changes

No officer, employee, or agent of the state or its subdivisions could be held personally liable or named as a party defendant in any action for any injuries or damages suffered as a result of any act, event, or omission of action in the scope of his employment. Provided, however, the state or its subdivisions, would not be liable for the acts or omissions of an officer, employee or agent, committed in bad faith or with malicious purpose or outside the scope of his employment.

Any agency of the state, county, municipality, political subdivision, the legislature or the judiciary would be authorized to provide an attorney to defend any civil actions arising from a complaint for damages or injury, suffered as a result of any act or omission of any of its officers, employees or agents.

II. PRIVATE SECTOR/STATE/LOCAL FISCAL IMPACT

III. COMMENTS

The need for such a clear statement preventing personal liability of public employees for damages or injuries suffered as a result of an act, event or omission of action occasioned within the scope of their employment is evidenced by the Florida Supreme Court's statement that the "absence of an explicit prohibition against suing public employees for their torts suggests that none was intended."

IV. AMENDMENTS

PREPARED BY Carol M. Browner

STAFF DIRECTOR *RJM*

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## HOUSE BILL 1705

The Florida Police Benevolent Association believes that the Sovereign Immunity bill is a good bill, and urges you to vote in favor of HB 1705. The bill's purpose is to retain and codify the liability of a state, county, municipality, or school board and its employees for injuries or damages suffered as a result of any act or omission on the part of its employees while acting in the scope of his employment.

### WHY IS THE BILL NECESSARY?

The Florida Supreme Court has recently held in the absence of an explicit prohibition against suing public employees for their torts, none can be implied. Thus, the Court removed the long recognized personal immunity from public employees while acting in the performance of their duties.

### WHAT DOES THE BILL DO?

It returns the personal immunity to public employees except for acts of an employee which are: (1) outside the scope of employment, or (2) willful or committed in bad faith or reckless disregard of human life.

### WHY SHOULD PUBLIC EMPLOYEES RECEIVE THIS PROTECTION?

Private industry generally carries large amounts of liability insurance covering its employees' acts or omissions during the performance of their duties. On the other hand, since the state and its subdivisions have only waived their sovereign immunity to a limited extent (\$50,000/\$400,000) the insurance coverage of these public entities is limited to these amounts. Thus, unlike private industry which covers claims against its employees, public employees are now responsible for awards in excess of the statutory amounts.

### WHAT WILL OCCUR IF THE BILL IS NOT PASSED?

The public employer will have to incur substantially increased costs of liability insurance for its employees; the public employees will have to bear the cost of liability insurance; or the public employer will have to face the refusal of its employees to perform certain duties for fear of incurring personal liability; for example, teachers' refusal to administer discipline or supervise extra curricular activities; public health doctors' refusal to treat patients; or police officers' refusal to make arrests or enter high-speed chases.



REVISED: May 22, 1980 MK  
DATE: May 20, 1980

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. MKBecia TB	Overstreet	1. G.O.	Fav/2 Amend
2. _____	_____	2. W&M	_____
3. _____	_____	3. _____	_____

SUBJECT: Sovereign Immunity

BILL No. AND SPONSOR:  
SB 1285 by  
Senator Dunn

I. SUMMARY:

A. Present Situation:

Section 768.28, F.S., relating to the waiver of sovereign immunity in tort actions, provides that no employee of the state or its subdivisions shall be held personally liable in tort for a final judgment which has been rendered against him for injuries or damages suffered as a result of an act committed in the scope of his employment, unless he acted in bad faith, with malicious purpose, or in wanton and willful disregard of human rights, safety, or property.

The Florida Supreme Court in District School Board of Lake County, et al., v. Talmadge, No. 53,716 (Fla., Feb. 14, 1980), held that: "...a state employee may be made a party defendant in an action for personal injuries allegedly occasioned by the employee's negligence while acting in the scope of his employment." The Court also found that an employee may be personally liable for amounts in excess of the limits imposed by s. 768.28, F.S.

B. Effect of Proposed Changes:

Section 768.28, F.S., would be amended to provide that an employee would neither be personally liable in tort nor be named as a party defendant. The exclusive remedy for injuries or damages would be by action against the governmental entity, unless the employee acted in bad faith, with malicious purpose, or in wanton and willful disregard of human rights, safety, or property. The state and its subdivisions would not be liable in tort if the employee acted outside the course and scope of his employment or acted as described above.

Chapter 111, F.S., Public Officers; General Provisions, would specifically authorize counties, municipalities, political subdivisions, and state agencies to provide an attorney to defend such civil actions and, if excluded from participation in the Insurance Risk Management Trust Fund, to use available funds to pay any final judgment. The authority to use available funds to pay a final judgment would be specifically granted to the executive departments, the judicial branch, and the Legislature, if excluded from participation in the Insurance Risk Management Trust Fund.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Persons injured or damaged by the act of an employee would be limited to action against the governmental entity and could receive up to \$50,000 per person and \$100,000 per incident. Employees could not be held personally liable or named as a party defendant. This fiscal impact cannot be quantified because factors such as the frequency with which actions would be brought, the amount of damages which would be sought, and the ultimate resolution of the cases are not possible to foresee.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst: Becia  
Staff Director: Overstreet  
Subject: Sovereign Immunity

Bill No. And Sponsor:  
SB 1285 by  
Senator Dunn

B. Government:

Mr. James Beardon, Director of the Division of Risk Management, Department of Insurance, stated that the bill should result in a cost savings since suits against employees would be eliminated and the department would not have to defend them. Mr. Beardon was unable to quantify the savings because the frequency, size, and resolution of these cases cannot be predicted.

III. COMMENTS:

While this bill would resolve the problem of employees being personally liable for their acts after the bill becomes a law, if the Court uses the version of s. 768.28, F.S., which was in effect at the time the tort occurred, employees would remain liable for their acts prior to the effective date.

Similar to HB 1705, which is now on the House calendar.

IV. AMENDMENTS:

#1 by Governmental Operations:

Provides that the provisions of the bill will apply to all actions pending on the effective date. Provides severability.

#2 by Governmental Operations:

Title amendment for #1.

COMMITTEE ON GOVERNMENTAL OPERATIONS

BILL # HB 1705 OTHER COMMITTEE OF REFERENCE

SPONSOR(S) Governmental Opera-  
tions Committee SIMILAR/COMPANION BILLS

RELATING TO: Public Employees

May 2, 1980

I. SUMMARY

A. Present Situation

The Florida Supreme Court recently held that subsection (9) of Section 768.29, Florida Statutes, (1975), did not prevent a state officer, employee or agent from being made a party defendant in an action for injuries or damages suffered as the result of an act, event, or omission of action in the scope of his employment. Moreover, the court held, that the employee would be personally liable for that portion of a judgment rendered against him which exceeded the state's liability limits.

While this case was pending, the 1979 Legislature passed SB 474, which amended subsection (9) of Section 768.29, Florida Statutes, in an attempt to clearly prevent personal liability of public employees. Although the Supreme Court did not address the 1979 legislation, there is some concern in light of their recent opinion, that the 1979 legislation does not in fact achieve the results intended, to wit: no personal liability for employees acting within the scope of their employment.

B. Probable Effect of Proposed Changes

No officer, employee, or agent of the state or its subdivisions could be held personally liable or named as a party defendant in any action for any injuries or damages suffered as a result of any act, event, or omission of action in the scope of his employment. Provided, however, the state or its subdivisions, would not be liable for the acts or omissions of an officer, employee or agent, committed in bad faith or with malicious purpose or outside the scope of his employment.

Any agency of the state, county, municipality, political subdivision, the legislature or the judiciary would be authorized to provide an attorney to defend any civil actions arising from a complaint for damages or injury, suffered as a result of any act or omission of any of its officers, employees or agents.

II. PRIVATE SECTOR/STATE/LOCAL FISCAL IMPACT

III. COMMENTS

The need for such a clear statement preventing personal liability of public employees for damages or injuries suffered as a result of an act, event or omission of action occasioned within the scope of their employment is evidenced by the Florida Supreme Court's statement that the "absence of an explicit prohibition against suing public employees for their torts suggests that none was intended."

IV. AMENDMENTS

PREPARED BY Carol M. Browner

STAFF DIRECTOR *RAM*

BILL ACTION REPORT

(C3-75: File with Secretary of Senate)

(S) ~~(XX)~~ BILL NO. 1285

COMMITTEE ON GOVERNMENTAL OPERATIONS

DATE May 22, 1980

Date Reported May 22, 1980

TIME 2 p.m. - 5 p.m.

FINAL ACTION:

PLACE Room H

X Favorably with 2 amendments

OTHER COMMITTEE REFERENCES:  
(In order shown)

         Favorably with Committee Substitute

         Ways & Means

         Unfavorably

OTHER:          Temporarily Passed

         Reconsidered

THE VOTE WAS:

         Not Considered

Senator Hair chairing

FINAL BILL VOTE	SENATORS	Amend # 1		Amend # 2							
		Dunn		Dunn							
Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
✓	GORMAN, BILL										
✓	HAIR, MATTOX, V.CH.										
✓	HENDERSON, WARREN S.										
	MAXWELL, CLARK										
	MYERS, KENNETH										
WITHOUT OBJECTION OF THOSE PRESENT	✓ NEAL, PATRICK K.										
	✓ SCARBOROUGH, DAN										
	✓ THOMAS, PAT										
	✓ WILLIAMSON, GEORGE										
✓	DUNN, EDGAR M. JR., CH.										
		WITHOUT OBJECTION	WITHOUT OBJECTION								
X	TOTAL	X		X							
Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

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(Attach additional page if necessary)

Please Complete:    The key sponsor appeared            ( X )    Senator Dunn  
                             A Senator appeared                                    (     )  
                             Sponsor's aide appeared                                (     )  
                             Other appearance                                        (     )