



damages which exceed the recovery cap. Further, where the state is involved in a discretionary or planning-level function, no liability is imposed. Discretionary functions include areas such as licensing, legislating, judicial decision-making, permitting, inspecting, designing public improvements, and other types of high-level planning. See *Trianon Park Condominium Ass'n v. City of Hialeah*, 468 So.2d 912 (Fla.1985) and *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010 (Fla.1979).

A state agency or subdivision may, however, agree within the limits of insurance coverage, to settle a claim against them without action by the Legislature. This payment based on insurance coverage is not deemed to be a waiver of sovereign immunity. In addition, if a state agency or subdivision holds liability insurance in excess of the \$100,000 and \$200,000 liability caps, the state agency or subdivision is not considered to have waived the defense of sovereign immunity for damages that exceed the liability caps of s. 768.28, F.S.

### III. Effect of Proposed Changes:

The modification or extension not to exceed 25 years of a lease for an improved leasehold with an appraised value over \$20 million may be negotiated rather than competitively bid by the board of county commissioners.

The bill adds a subparagraph (c) to s. 125.34(1), F.S., to allow counties to agree to hold harmless and indemnify any party to a lease, including a party involved in financing the real property or an airport or seaport facility against damages to third parties, up to the limits of the counties' insurance coverage. The indemnification does not waive a sovereign immunity defense or apply to damages resulting from the willful misconduct of the indemnified parties. In addition, the indemnification of third parties by the county may only occur where the county finds that the transaction serves a paramount public purpose.

For liability claims or judgments in excess of the sovereign immunity cap of \$100,000 per person, \$200,000 per incident, a county could either pay the claim up to the limits of its insurance coverage or claim the defense of sovereign immunity. If the defense of sovereign immunity is claimed, the Legislature would have to approve the counties payment to the lessee of any amount that exceeds \$100,000 per person, \$200,000 per incident.

The indemnification provisions of the bill apply to any lease of real property by a county, in addition to leases involving airport or seaport facilities.

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could benefit the lessees of real property, airport and seaport facilities who are indemnified by a county against damages to third parties.

C. Government Sector Impact:

The bill may provide more flexibility to counties in negotiating leases with parties for the operation of airport and port facilities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.