BRIEFING

Florida TaxWatch

Reforming Florida's Claim Bill Process:

Balancing the Needs of Claimants with the Interests of Taxpayers

March 2013

Florida's claim bill process is in need of reform. This process—by which persons can petition the legislature for payment of tort claims against government—has received increased attention in recent years due to high profile cases and large awards. Representatives for both claimants and defendants perceive inequities in the system. The process has been criticized for being arbitrary, being too political and lobbyist-driven, and for lacking transparency, and these issues have led some legislators to routinely vote against claim bills in general.[1] It is also difficult for a contested local claim bill to make it through the legislature, although last year there was a significant $15 million exception to that norm.

As of the publication of this Briefing, there were 25 claim bills filed for the 2013 legislative session, requesting more than $50 million in damages, down from 2011's record of $140 million.

The Florida House of Representatives established a Select Committee on Claim Bills for the 2013 Session. The committee held four interim meetings in the run up to Session, hearing testimony from interested parties and discussing the process and possible options for change. Chairman James Grant plans to have a vote on a committee bill early in the session, with the goal of creating the best process in the nation.

It is a tall order, with opposing sides of the issue having very different ideas of what should be done. The need for claimants to be fairly compensated for injuries must be balanced with needs of local governments and the interests of the taxpayer.

The problem is not a case of a proliferation of claim bills. While the number of claim bills filed increased from 258 during 1990-1999 to 302 during 2000-2009,[2] this is still less than half of the 660 bills filed during the decade of the 1970s when the current system was established in law. The legislature only approves a minority of the claim bills filed (25 percent since 2000) and the number of passed bills is declining.[3]

There were 84 claim bills that became law during the 2000s, down from 136 during the 1990s. There have been 19 bills approved during the past three years.

1 Numerous media reports including Tampa Bay Times, "Florida Legislature approves 11 claim bills totaling nearly $40 million," March 12, 2012 and Tampa Tribune, "Failed claim bills revived in the Florida Legislature," December 18, 2011.

2 Not including companion bills

3 Data contained in this paragraph and the next are from the Annual Summary of All Claim Bill Activity in the Florida Legislature Since 1955, presented to the House Select Committee on Claim Bills, February 2013. Calculations by Florida TaxWatch.

However, awards have increased significantly. Last year, 11 claim bills were passed by the legislature, containing awards totaling $39.8 million.[4] This included the first two awards exceeding $10 million in history—$15.0 million and $10.75 million.

Overall, the claim bills filed during the last five years have requested an average of $2.9 million and the 35 bills that became law had average settlements of $2.4 million. These are nearly double the averages of the previous five years. (See table below) The last two years have seen two bills filed requesting more than $30 million in damages. The six highest awards in history approved by the legislature have occurred since 2000.

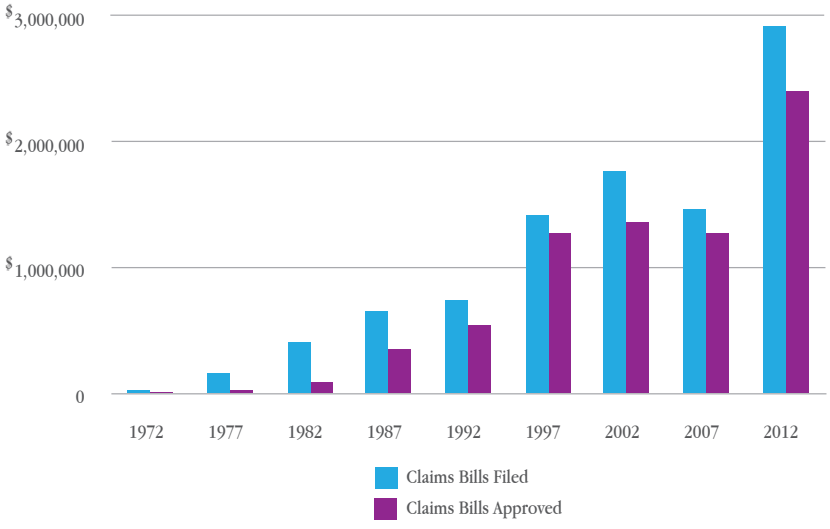
4 The Governor vetoed one bill worth $1.5 million

*Annual Summary of All Claim Bill Activity in the Florida Legislature Since 1989**

Session	Claims Filed	Total $ Claimed	Successful Claims	Actual $ Paid
1989	25	$26,443,994	7	$3,933,600
1990	27	$15,907,574	10	$7,838,013
1991	27	$24,812,666	17	$11,927,251
1992	21	$12,352,300	8	$3,930,606
1993	24	$26,534,354	11	$3,835,837
1994	29	$35,051,753	12	$10,756,502
1995	28	$30,489,004	21	$19,267,194
1996	25	$53,166,262	19	$45,661,085
1997[1]	17	$26,736,694	0	0
1998	33	$53,018,374	26	$28,640,492
1999	27	$27,409,526	12	$12,609,783
2000	19	$49,287,718	10	$17,077,500
2001	43	$82,585,784	2	$5,555,347
2002	40	$70,087,109	24	$35,544,884
2003	31	$41,177,709	12	$5,088,410
2004	24	$48,451,050	6	$9,444,937
2005	21	$29,430,496	1	$2,000,000
2006	27	$33,296,481	0	0
2007	35	$47,210,529	13	$23,667,881
2008	31	$97,660,955	11	$18,500,825
2009	31	$73,961,340	5	$17,700,000
2010	31	$83,087,940	6	$3,242,186
2011	41	$140,173,000	3	$3,650,000
2012	33	$85,968,378	10	$39,834,999

*Average Value of Claim bills Filed vs. Approved**

(five-year periods 1972 - 2012)



* Chart and table data from House Select Committee on Claim Bills, 2013.

Florida's Claim Bill Process

The doctrine of sovereign immunity protects governments from being sued and having to pay large liability settlements without their consent. Florida, like other states, has a process for persons to be compensated when they are harmed through the negligence or error of a public officer or entity.

Sovereign immunity extends to all subdivisions of the state, including counties, municipalities, local constitutional officers, and school boards. The Florida Constitution provides the legislature with the authority to waive the state's sovereign immunity.[5]

Claim bills are done through a waiver of sovereign immunity, allowing claimants and governments to settle up to capped amounts—currently $200,000 per person and $300,000 per incident. Claims may be settled in excess of the caps—up to the limits of insurance coverage—without further action by the legislature.[6] But for all other claims that exceed those capped amounts a claim bill—sometimes called a relief bill—must be filed with the Florida Legislature. Majority approval in both chambers of the legislature is required for passage.

Although the current statute governing waivers and the claim process[7] was not passed until 1973,[8] legislative claim bills have always been around.[9]

When the claim process statute was passed in 1973, the "vigorous" legislative debate focused on the argument that while the doctrine of sovereign immunity (that the king can do no wrong) is the doctrine of dictatorship, waiver of the state's sovereign immunity would reduce resources that could benefit the public as a whole.[10] The waiver was limited to $50,000 per person and $100,000 per incident. Attorney's fees were also limited to 25 percent of the proceeds.

The waiver limits were increased to $100,000 per person and $200,000 per incident in 1981[11] and stayed there for nearly thirty years. The 2010 Legislature increased the limits to their current level of $200,000 per person and $300,000 per incident (effective October 1, 2011).[12]

The current statute of limitations for claims against the state is four years after the cause for relief occurred.

Both House and Senate rules provide that claim bills will not be heard until all available administrative and judicial remedies have been exhausted, except when the parties have executed a written settlement agreement.[13] These settled claims make up the vast majority of local claim bills passed by the legislature.[14]

Once a claim bill is filed, it may be referred to a Special Master, as well as to one or more committees, for review. The Special Masters conduct a joint hearing to determine liability, proximate cause, and damages. The hearing is a *de novo* hearing, meaning that the Special Masters are not bound by jury verdicts or other previous stipulations.

5 Article X, Section 13, Florida Constitution,
6 Section 768.28 (5), Florida Statutes.
7 Section 768.28, Florida Statutes.
8 The first general waiver was enacted in 1969, but was allowed to sunset the following year.
9 The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833, authorizing payment to a person who worked on the first capitol building.
10 Florida Senate Committee on Judiciary, Interim Project Report 2005-147, "Sovereign Immunity and the Claim bill Process," November 2004.
11 Chapter 81-317, Laws of Florida.
12 Section 1, ch. 2010-26, Laws of Florida.
13 House Rule 5.6(c) and Senate Rule 4.81(6). This policy does not apply to a claim based on wrongful incarceration.
14 Discussion with House Select Committee on Claim Bills staff

The legislature is not bound by the recommendation of the Special Master and once a recommendation is made, the bill proceeds through each chamber's committee process and it is subject to the normal amendatory process. After final passage, the bill is either signed by the Governor, vetoed, or allowed to become law without his signature. If it becomes law, the government entity is required to pay the award pursuant to the terms of the law.

Claim Processes in Other States

Based on a telephone survey of the other 49 states by Florida TaxWatch and information compiled by the Florida House Select Committee on Claim Bills, it appears that there are probably as many different claim processes as there are states. Many states also have different processes for state and local governments. The TaxWatch survey focused on local claim processes and found that Florida's is at least fairly unique in the way it handles local claims. Although every state has adopted some waiver to its sovereign immunity, a minority has a claim bill process, and claim bills appear to be limited the state claims. Florida TaxWatch has found no evidence of other states requiring a claim bill when a local claim exceeds its waiver (survey responses are summarized in the Appendix).

Florida's waiver limits are among the lowest in the country. Although direct comparison is often difficult, only nine states appear to generally have lower caps than Florida. At least 15 states have completely waived immunity. At least 17 states have no caps for either state or local governments and 12 of those have no caps for both. Four states have state caps of at least $1 million per person and 13 states have state caps of at least $1 million per occurence. For locals, three states have caps of at least $1 million per person and seven have caps of at least $1 million per occurrence.

A number of states have established separate Claims Courts or use claims boards or commissions to hear claims.

At least five states, including Florida, have statutory caps on attorney fees and at least eight states, including Florida, allow governments to settle claims in excess of the caps up to insurance coverage.

Reform Issues and Options

Caps on Damages (Waiver Limits)

Florida's current sovereign immunity waiver limits are $200,000 per person and $300,000 per incident. Although they were increased in 2010, they are still among the lowest in the nation. In fact, 15 states have no per person limit and 27 states have no limit per occurrence. They are also below what they would be if they had been adjusted for inflation since they were enacted, or even since they were increased in 1981.[15]

Some have argued that caps should be increased because costs, especially medical costs, keep increasing and argue that this would allow more claims to be settled, thereby reducing the number of claim bills.

In addition to increasing caps, other options dealing with caps include indexing caps to inflation (regular CPI or Medical CPI) and differentiating caps for state and local governments, by category of liability, or by population of sovereign's jurisdiction (larger caps for larger counties, etc.)

Increasing caps would increase the cost of tort claims settled by state and local governments' risk management programs.[16] The higher caps could be viewed by claimants as increasing the floor on government liability, rather than the ceiling. Claimants who would have settled for the old (lower) cap amounts in order to avoid trial may now settle for the higher cap amounts.[17] The question is whether or not higher caps would result in fewer claim bills being filed. With the majority of claim bills in recent years exceeding $1 million,[18] it would likely take a significant increase in caps to significantly decrease claim bills.

Expedited Process for Settled Local Bills

Both House and Senate Rules provide that claim bills will not be heard until all available administrative and judicial remedies have been exhausted, except where the parties have executed a written settlement agreement.[19] Settled claim bills have a much higher rate of passage than contested claims, and some have questioned the need for legislative involvement at all in these cases.

Decisions affecting taxpayers should be made at the level of government closest to those governed. Increasing the ability of local governments to settle claims in the best interest of their citizens promotes that goal. Notwithstanding the current waiver caps, the legislature does have a role—as grantors of that waiver—in the oversight of local claims. However, there is certainly room for a more expedited process for these settled bills.

Representative Larry Metz presented such a process to the House Select Committee on Claim Bills[20]. In summary, settled local claims would be reviewed by the Special Master to ensure that a bona fide settlement exists, that the settlement does not require the expenditure of state funds, that the settlement ends all litigation and that the settlement would not materially impact the financial viability of the local entity. Those bills that meet these criteria would go to one committee meeting, where members would have a chance to object to the Special Master's findings. Those that clear that hurdle would then go to a Consent Calendar, where all bills are voted up or down at once.

15 While it appears the 1981 increase may have contributed to a decrease in the number of claim bills filed, it is too early to tell what effect the 2010 increase will have on the number of claim bills.
16 FY 2011 Annual Report of the State of Florida Division of Risk Management, and testimony before the House Select Committee on Claim Bills, February 18, 2013.
17 Florida House of Representatives Committee on Claims, Review of House and Senate Claim Bill Procedures, 2006.
18 Review of annual Detailed Claim Bill Reports, House Select Committee on Claim bills
19 House Rule 5.6(c) and Senate Rule 4.81(6).
20 Video of February 18, 2013 meeting of the Select Committee.

Another means to help local governments and claimants settle claims and avoid claim bills deals with insurance. Current law authorizes local entities to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they choose.[21] Claims may be settled in excess of the caps—up to the limits of insurance coverage—without further action by the legislature.[22] To increase claims settled by this method, help avoid large payments from government coffers, and provide more relief to persons with claims that exceed the waiver limit, requiring or incentivizing locals to carry insurance has been suggested.

Attorney and Lobbyist Fees

Florida law currently limits plaintiff attorney fees to 25 percent of the judgment or settlement of a claim bill. The sovereign's legal costs are not addressed. The courts have ruled that the legislature has broad authority over attorney's fees and can limit attorney's fees in a claim bill, even if the attorney had contracted for a higher amount. The legislature can—and often does—limit the fees in a particular claim bill to less than 25 percent.

Lobbyist fees are not restricted by state law and contingency fees are allowed. Lobbying for claim bills is the only type of lobbying activity for which contingency arrangements are allowed. In practice, the Legislature usually includes a limit on lobbyist fees, at least in recent years. In the last four years, only one of the 25 claim bills passed by the Legislature did not expressly limit lobbying fees. All 14 of the bills passed from 2009-2011 limited the total of attorney fees, lobbying fees and similar costs to 25 percent of the reward. Last year, the legislature further clamped down on these fees, usually limiting them to 15 percent of the first million and 10 percent for the remainder.[23]

Still, testimony before the select committee indicates there is interest in expressly limiting lobbying fees in statute.

There are several options regarding lobbyist fees:

- Disallow lobbyist fees;
- Limit lobbyist fees or include them in the 25 percent for attorney fees; and
- Disallow lobbyist contingency fees.

Sponsors of Local Claim Bills

While most local claim bills are sponsored by a legislator representing the district where the sovereign is located, any member can file any claim bill. There is an argument that the sponsor should be from the affected jurisdiction, as they would better know and more properly balance the needs of the local government and its citizens. Having a sponsor from another part of the state introducing legislation directing taxpayers outside of their district to pay a judgment could even raise questions of taxation without representation.

While this requirement could work for large, multi-member districts, care would need to be taken that persons from smaller counties are not frozen out of the process. If a person's lone representative was ideologically opposed to claim bills, the path to just compensation would be blocked.

21 Section 768.28 (16)(a), Florida Statutes.
22 Section 768.28 (5), Florida Statutes.
23 Review of all passed claim bills from 2009 to 2012 by Florida TaxWatch

Payment of Claim Bills

One of the most important claim bill reform issues is the avoidance of unjustifiably high claims. Judgments need to be based on the actual costs of necessary medical care in an attempt to make the injured party "whole." As many patients are aware, the amount of the costs billed by the medical provider is often not the actual amount paid by the patient and/or insurance. The judgment included in a claim bill can be based on costs that are higher than actual costs, for example when an agreement is reached with a doctor to receive payment after a claim is approved. Actual amounts paid for medical expenses could be made admissible at trial and in claim bill hearings.

The House Select Committee on Claim Bills should also further explore the effect that the new federal health care law—particularly the requirement that everyone must purchase health insurance—will have on the collateral source rule, which bars a jury from learning that the plaintiff has already received or will receive compensation for medical costs from other sources.[24]

Another suggested reform is to prohibit or limit non-economic damages. While punitive damages are not allowed in claim bills,[25] non-economic damages—including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life—are allowed. In contrast to economic damages such as medical costs and lost wages, awards for non-economic damages can be more arbitrary, and have the ability to produce very high judgments. Non-economic damages in medical malpractice cases are limited by law.[26]

Distribution of Proceeds

The need for future oversight of the use of settlement funds has been raised as an issue in claim bill reform. One proposal is requiring the recipient to provide the state with an annual accounting of the use of proceeds. Another idea is to place proceeds in a trust that will govern the release of funds to ensure they are being used as intended. The use of trust would also allow for "clawback" provisions, where proceeds would revert back to the government entity upon death of the claimant, or upon the finding that the proceeds are not being used as directed. Generally under current law, when a claimant dies, the settlement becomes part of the claimant's estate.

To allow for more local government budget flexibility, allowing the government entity to use periodic payments—instead of lump sum—and allowing the use of an annuity to provide future payments have been suggested.

24 Florida Justice Reform Institute, Patient Protection and Affordable Care Act: Impact on Claim bill, presentation to the House Select Committee on Claim Bills, February 4, 2013. The principle reason for the collateral source rule—a defendant should not benefit from a plaintiff's choice to be prudent and buy insurance—will be undermined when insurance coverage is mandatory. A injured person could even purchase insurance after the accident, since insurance cannot be denied due to a pre-existing condition.

25 Section 768.25 (5), Florida Statutes.
26 Section 766.118 (2), Florida Statutes.

Recommendations

There is broad consensus that the claim bill process in Florida can be improved, but there is certainly no consensus yet on what the reform should be. The Chairman of the House select Committee on Claim Bills, Rep. James Grant, has said the process is not predictable, transparent or equitable and that the goal of the Committee is to turn Florida's process into the nation's best.

The job of claim bill reform is a tough one. There must be a delicate balance between protecting the taxpayers and government budgets, preserving some legislative control and acknowledging the rights of local governments, all while ensuring a fair and accessible process for those injured by the negligence of governments.

The problem has not been a proliferation of claim bills filed or approved by the legislature. But as more high-cost settlements are approved, there is likely to be a growing call for ever-increasing awards. The size of awards must be controlled in order to avoid each new award setting a new precedent that leads to further escalation of the size of claims against the state and local governments and their taxpayers.

This system needs to become less arbitrary, with politics and lobbying playing less of a role in which claims get considered. While every person with a legitimate case has a right for their claim to be heard and resolved in an expeditious manner, the taxpayer also has the right to assurances that their money is not being spent capriciously and that settlements are not unnecessarily expensive.

To this end, Florida TaxWatch recommends:

- **An expedited process should be created for local claims that have already been settled.** If both parties have agreed to a settlement, those claims should be paid with limited legislative involvement. This could be accomplished by a process in which the legislature would have to act in order for a settled local claim bill to not be approved or to be amended. The House Select Committee on Claim Bills is considering an expedited process recommended by Rep. Larry Metz (discussed earlier).

- In order to help keep settlements fair but not excessive, **actual amounts paid for medical expenses should be made admissible at trial and in claim bill hearings.** In the case of future medical costs, "usual and customary" charges in the community should be used, not inflated billed charges.

- The legislature should **explore capping—not prohibiting—non-economic damages.** The amount of justifiable economic damages should not be capped, but the more arbitrary non-economic damages can lead to excessive awards.

- The legislature should also **explore requiring that the sponsor of a claim bill be from the jurisdiction where the incident took place or from where the claimant resides,** without unduly restricting access to the process. Requiring the sponsor to be from the jurisdiction where the incidence took place has been suggested, but not allowing for residency could result in an injured person not being able to bring a claim against an entity in another part of the state, due to the difficulty in finding a sponsor for whom

he is not a constituent. And while this should work for larger counties, claims occurring in smaller counties with perhaps only a couple of legislators could be exempted or treated on a regional basis. The geographic sponsor requirement may also require the Senate to reconsider its rule that it will not hear a House claim bill if it does not have a Senate companion.

- Attorneys fees are currently capped by law, lobbyist fees are not. In practice in recent years, the legislature has done a good job of **limiting attorney and lobbyist fees** and related costs in claim bills. The legislature should consider codifying the recent practice of combining these fees under one cap.
- To allow for more local government budget flexibility, government entities should be allowed to use **periodic—instead of lump sum—payments** and allowed to use an annuity to provide future payments. Placing awards in a trust and the use of clawback provisions should be considered only for funds to be used for future medical costs.

Appendix: Florida TaxWatch Survey on Local Claims Processes in Other States

Between December 2012 and February 2013, Florida TaxWatch surveyed all 49 other states about their laws governing claims against local governments. The responses are summarized below.

Alabama

A claim is forwarded to the legal department of the city or county and investigators check into the facts of the claim and send a report to the city or county attorney for review. They look at the evidence and make a determination on whether the city had any liability and if so, the claim would be reviewed for damages. If the city is deemed liable, the city would make an offer to resolve. If it couldn't be resolved, it would be litigated. Under state statute 11-47-190, local governments are limited to $100,000 per person, and $300,000 per claim, money that would come out of city or county coffers. There is no limit to the total amount of money paid out in the course of settling claims, so an unlimited number could be filed in a year and all would have to be resolved even if they had to spend years on the docket and there would also be no limit on the total payouts.[1]

Alaska

Under state statute Title 9 AS 09 there are no limits on claims. There is no claim bill system.[2]

Arizona

Under statute 12-823 there is no limit on liability claims either per person or per occurrence. Under Statute 41-621(N) settlements exceeding $25,000 must be approved by the Department of Administration and the Attorney General. Settlements exceeding $50,000 must be approved by the Department of Administration, Attorney General and the joint legislative budget committee. The settlement of liability claims is solely the authority the Department of Administration, Attorney General and the joint legislative budget committee.[3]

Arkansas

All cities in Arkansas have tort immunity and most cities participate in the Arkansas Municipal League for their insurance coverage. State law requires cities to only carry insurance on their vehicles; everything else is subject to tort immunity. For example, if a person is killed by a rock hurled from a city public works lawn mower, the city could raise tort immunity to avoid liability. Payments covered by the Arkansas Municipal League are limited to $25,000 for bodily injury or death to one person, in any one incident and $50,000 for bodily injury or death to two or more persons in any one incident and $25,000 for destruction of property in any one incident. There is no limit to the number of payouts over a set period of time.[4]

California

There are no limits on damages per individual or occurrence. There is no claim bill system. A state statute allows large claims to be paid off over time.[5]

Colorado

In Colorado, a state statute sets liability limits at $150,000 per individual and $600,000 per occurrence for each of the state's political subdivisions. This limit holds, regardless of what a jury might award. There is no claim bill process, but the political subdivisions do have the statutory option of floating a bond or raising taxes to pay claims.[6]

Connecticut

In Connecticut, there is no state statute that covers claims against municipalities, nor does the state legislature have a claim bill system. Each city sets up its own system for dealing with claims. In Hartford, a person files a claim form with the city corporation counsel and the matter is investigated. There is no cap; the city must find a way to pay any judgment. The general liability limit is $1.5 million per occurrence with a $5 million aggregate (maximum annual). So if the city pays out more than $5 million in a given year, it would exceed its insurance limits. The city would do whatever it has to do to pay a judgment that exceeds coverage.[7]

1 Bassett, Jerry, Director of Legislative Reference Services, State of Alabama (2012, December 19). Telephone interview.
2 Weiss, Pam, Assistant Municipal Attorney for the City of Anchorage (2013, February 15). Telephone Interview.
3 Eiserman, Cindy, Risk Manager for the City of Tucson (2013, February 15). Telephone Interview.
4 Chavis, Kim, Deputy City Attorney, City of Little Rock (2012, December 31). Telephone interview.
5 Chapman, Sheri, Sr. Deputy City Attorney for the City of Sacramento (2013, February 19). Telephone Interview.
6 McMillin, Devron, Sr. Financial Management Analyst for Risk Management for City of Denver (2013, February 14). Telephone Interview.
7 Van Norden, L. John, Deputy Corporation Counsel, City of Hartford (2012, January 15). Telephone Interview

Delaware

In Delaware each city sets its own policies regarding legal claims and sovereign immunity and there is limited influence from the state. Wilmington, the state's largest city, is self-insured and sets a 2-year time limit for filing claims against the city. It sets a cap on damages of $300,000 per person, $300,000 per occurrence and $300,000 for property damage. The city has no waiver of sovereign immunity in certain areas.[8]

Georgia

Claims are handled by the local entities—the city or county government. The state does not get involved and they can't be appealed to state. The suit is filed against the city or county government by an attorney and claim is served upon city or county attorney's office. There is no limit on damages and all are resolved, either by settlement or litigation. Claim bills are filed through the appropriate city or county channels and only involve the state if there is a tangential connection. An example of this would be if there was an accident involving a city or county vehicle, but one of the issues was a design flaw in a state road. The money paid in a claim would come entirely from local coffers, not from the state, no matter the amount.[9]

Hawaii

There is no cap on liability limits for governmental entities of Hawaii. Attorney fees are capped at 25% of the award. At state level claims settled by attorney general for more than $10,000 must be approved by the state legislature. In some cities, the city council must approve any settlement exceeding $5,000.[10]

Idaho

All government entities in Idaho fall under the Idaho Tort Claims Act (Title 6 chapter 9). It limits the liability of the entity to $500,000 per individual and $500,000 per occurrence regardless of the number of claimants, unless the entity has purchased liability coverage in excess of said limit. Most large cities in Idaho are self-insured, while many smaller entities are covered by the Idaho Counties Risk Management Program (ICRMP) which was formed in 1985. ICRMP is now the primary source of property and casualty loss protection for Idaho local governments including counties, cities and special purpose districts. There is no claim bill system in Idaho.[11]

Illinois

In Illinois, there are no state statutory limits for claims filed against political subdivisions. There is no claim bill procedure involving the state legislature but every municipality is required to get approval by its governing board when it is required to pay out a settlement. If there is a trial and a verdict, it doesn't have to be approved by the council because it is an order of the court. By state law, a municipality can float a bond or raise taxes to pay a claim.[12]

Indiana

State statute 34-13-3 sets limits of $700,000 per individual and $5,000,000 per occurrence. There is no claim bill system.[13]

Iowa

In Iowa, an individual has 2 years to file an injury claim and 5 years to file a property damage claim. The individual must fill in a claim form with the legal department of the city. Liability varies among cities, depending on size. Des Moines is self-insured for the first $2 million of any liability claim. Its legal department would determine if the city had any liability and then deal with it accordingly. Under chapter 670 of the Iowa Code, the state of Iowa specifically identifies 15 categories of claims that have immunity from liability in all Iowa political subdivisions. Examples include any claim in connection with the assessment or collection of taxes and any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection. If the claim doesn't fall into one of those 15 categories, then there is no immunity. If a political subdivision purchases insurance, that would then cover the liability associated with any one of those 15

8 Ramirez, Norma, Claims Supervisor, Risk Management Division, City of Wilmington (2013, January 10). Telephone Interview.
9 Monk, Jessica, Claims Advisory Board, State of Georgia (2012, December 18). Telephone interview.
10 Braun, Beverly, Risk Manager for the City and County of Honolulu (2013, February 25). Telephone Interview.
11 Muir, Scott, Assistant City Attorney for the City of Boise (2013, January 17). Telephone Interview.
12 Cullen, Mark, Corporation Counsel, City of Springfield (2013, February 19). Telephone Interview.
13 Garrison, Beth, Deputy Chief, Corporation Counsel for the City of Indianapolis (2013, February 15). Telephone Interview.

categories of activities, then the city automatically waives its immunity, unless it preserves the immunity in the insurance policy. This is unique to Iowa. It took years to educate insurance carriers who dealt with the city on that issue. They are used to the idea that you would waive immunity as opposed to have to preserve it. Also, political subdivisions in the state of Iowa are granted governmental immunity from punitive damages.[14]

Kansas

In Kansas, the Kansas Tort Claims Act (Chapter 75-6101 and 6113) caps negligence actions at $500,000 per in individual and also caps at $500,000 per occurrence. This holds true for all cities in the state. The statute of limitations for filing a claim is two years. There is no provision for awarding more than that cap, even if a jury awards more. The Tort Claims Act does allow for a tax hike or the use of general obligation bonds to pay claims. There is no limit on the number of claims or the amount of payments that may be made in a fiscal year and there is no claim bill system.[15]

Kentucky

In Kentucky, claim bills are first handled by insurance coordinators who fill in electronic forms and send them to a claims administrator as well as the city claims manager. An outside adjusting company under RFP contract handles the claim. The claim is investigated and liability determined and if payment is owed it is made by the adjusting company which has authority of up to $10,000. If more, it goes to the city claims manager for approval. If the manager denies the claim, the claimant may then choose to litigate. The city has sovereign immunity, so citizens don't sue the government, they sue the employee as the negligent party and the city has to cover the cost of any settlement. Typically, the city has a self-insured retention level of $2 million and then $5 million over that which is provided by what is called an "excess carrier." The maximum payout would be $7 million which is $2 million by the city and $5 million by the excess carrier fund. In the case of a judgment in excess of $7 million, the city would be responsible for funding the difference.[16]

Louisiana

In Louisiana a person fills in claim form and Risk Management Department investigates and a third party administrator decides whether to reject or settle a claim. If no settlement is reached, the matter goes to litigation. There is no state statute governing compensation limits on legal claims against municipalities. Entities may set their own limits on claims and those limits may be set by their insurers if the entity is not self-insured. There are no claim bills in Louisiana.[17]

Maine

The Maine Tort Claims act (Title 14 chapter 741) covers all claims in the state of Maine. Many cities are members of the Maine Municipal Association (MMA) which serves as a property and casualty pool. Cities may set their own deductibles. Portland pays the MMA to process its claims and has a $200,000 deductible per incident. Portland pays every claim that comes through unless it's over $200,000. The MMA covers up to $400,000. If a jury awards an amount in excess of $400,000 the city would have to come up with the extra money on its own, possibly through increased taxes. Maine has no system similar to claim bills.[18]

Maryland

All Maryland cities follow a state law called the "Tort Claims Act." A person has to give notice of claim by certified mail within 180 days. The cities are self-insured and do their own investigation. The city then makes the decision on whether to make a settlement offer. Cities in Maryland are protected by sovereign immunity but it can be waived and the cap on damages is set at $200,000 per person and $500,000 per occurrence. This cap is not flexible, so even if a jury or judge awards a higher amount, it would not be honored. There are no limits to total payouts in the course of a year.[19]

Massachusetts

The Massachusetts Tort Claims Act governs claims under Massachusetts General Law (Chapters 258 and 84). The liability limit for any political subdivision is $100,000 per claimant, a hard and

14 Scieszinski, Dan, claims adjuster, City of Des Moines & Schultz, Mark, Risk Manager, City of Des Moines, (2013, January 10). Telephone Interviews.
15 Dickgrafe, Sharon, Chief Deputy, City Attorney's Office, City of Wichita, (2013, January 18). Telephone Interview.
16 Sweeney, Tom, Claims Manager, City of Lexington, (2013, January 1). Telephone interview.
17 McKenna, Mike, Risk Manager, City of New Orleans, (2013, February 8). Telephone interview.
18 Tucker, Terri, Executive Legal Assistant for the Corporation Counsel Office of Portland, (2013, January 17). Telephone Interview
19 Heinrich, Kurt, Deputy Chief, Claims and Litigation Section, City of Baltimore, (2013, January 9). Telephone Interview

fast cap, regardless of how much a jury might award. There is no claim bill system in this state.

Michigan

No state statute governs claim limits and there is no state mandate that a political entity have a claims provision for settlement of disputes. Political entities may set their own caps or in the case of some, including Detroit, deal with claims on a case by case base. There is no claim bill system.[20]

Minnesota

State statute 466 addresses claims in governmental entities. It imposes limits of $500,000 per individual and $1, 500,000 per occurrence. Many smaller cities and counties belong to the pools League of Minnesota Counties Insurance Trust and League of Minnesota Cities Insurance Trust. There is no claim bill system in the state.[21]

Mississippi

Cities and counties can buy into the Tort Claims Board. But if they don't, the Boards of Supervisors at the city and county level deal with and vote on whether to settle or litigate the claim. Among the more common claims are those involving workers compensation, accidents or employment issues. There are no limits on the amount of the claim. None of these claims would involve the state or the state legislature. The claim would be paid by the local jurisdiction or its insurer.[22]

Missouri

In Missouri, individuals have up to five years to file a claim against the city. Once a claim is filed, the city investigates and if the claim is determined to have merit, a settlement offer is made. If a settlement cannot be reached, the matter moves on to litigation. The limit of compensation for an individual claimant depends on the size of the entity involved in the claim. In St. Louis it is approximately $500,000 per individual, with a limit of $2.5 million per incident. The money in any payout comes directly from the taxpayers of the city.[23]

Montana

Montana Statute 2-9-108 covers claims payouts of $750,000 per individual and $1.5 million per occurrence. Statute 2-9-301 covers the process of filing claims. Montana has a structure in its code that allows for the creation of interlocal cooperative agreements among various political subdivisions. Nearly all of the municipalities and cities in Montana have pooled together under the Montana Municipal Interlocal Authority (MMIA). It is a risk management resource and is described as self-insurance structure for all of the participating municipalities. Claims that go to MMIA are processed and then denied, settled or litigated. If a jury awards more than the state limits, it is meaningless, because the cap is hard and fast. Every legislative session there are arguments to raise caps. At the state level there have been circumstances where the legislature has had to approve settlement payments in large scale litigation involving the state, but there haven't been instances of this happening with political subdivisions.[24]

Nebraska

In Nebraska, individuals file claims with the city clerk. The individual has one year from the date of the incident to file the claim and two years from the date of the incident to bring a lawsuit. The city has six months to investigate the claim and if it fails to make a decision in that time the person is free to withdraw the claim and file a lawsuit. There is a limit of $1 million per person and $5 million per occurrence in tort claims and by Nebraska law, tort claims go to a court. There is no jury. This is the same in all cities in the state. Even if the court awards more than $1 million, the person would still get $1 million. If the city is self-insured, as in the case of Omaha and Lincoln (all other cities in Nebraska have private insurers), the money comes from what is known as the "judgment fund." The judgment fund is part of the city budget and contains money designated for payment of judgments against the city and for litigation expenses. If this money is not used up in one year, it carries over to the next year. If judgments exceed

20 Barbee, Frank, Supervising Assistant Corporation Counsel for City of Detroit, (2013, February 14). Telephone Interview.
21 Bodensteiner, Sandra, Claims Manager of Risk Management Dept. for City of St. Paul, (2013, February 15). Telephone Interview.
22 Pizzetta, Harold, Mississippi Assistant Attorney General, (2012, December 19). Telephone interview.
23 McDonald, Tom, Attorney for the City of St. Louis, (2013, January 7). Telephone Interview.
24 Hindoien, Jeff, City Attorney for the City of Helena, (2013, January 14). Telephone interview.

what is in the fund, the council can transfer appropriations from another fund into the judgment fund. By state statute, if a judgment is awarded in excess of the amount the city has available to pay it, a special tax is to be assessed to raise the sufficient funds to pay the judgment.[25]

Nevada

Nevada Revised Statute 41.035 sets a limit of $100,000 on damages per claimant for all political subdivisions. No amount will be paid above that amount, regardless of whatever a jury might award, however the claimant may also recover costs and interest. No punitive damages are awarded and there is no claim bill system in Nevada. The Nevada legislature requires that municipalities either carry an adequate amount of insurance or be self-insured. Some smaller municipalities buy into a statewide pool.[26]

New Hampshire

After being filed, the claim would go to a third party claims administrator for processing and they would decide whether to reject it or make a settlement offer. If offer is rejected, it would go to litigation. The cap on municipal damages is $275,000 per individual and $925,000 per occurrence. The cap is firm regardless of how much a jury may award except for factors such as extreme negligence. Some smaller cities belong to a pool called the "New Hampshire Municipal Association" and they pool their money to deal with claims. There is no claim bills system in New Hampshire, but some political entities have the option of floating a bond to raise the money to pay a claim.[27]

New Jersey

Under Title 59 of the New Jersey Statutes there are no limits for claims filed against municipalities. No punitive damages are allowed in cases involving a municipality or municipal employee unless the employee shows gross negligence. Many municipalities belong to joint insurance funds for liability coverage.[28]

New Mexico

The New Mexico Tort Claims Act limits city liability to $200,000 for property claims, $300,000 for medical expenses and $400,000 for other claims. There is a limit of $750,000 for all claims other than medically-related expenses arising out of a single occurrence. Individuals have 90 days to file a notice of a tort claim and then have and then have 2 years to file a claim and 3 years if it's a civil rights claim. Some cities, such as Albuquerque, are self-insured but buy some policies for other areas. Many of the state's municipalities belong to the New Mexico Municipal League which offers an insurance pool. Most of the counties belong to the NM Association of Counties and participate in their pool.[29]

New York

There are no limits on claims made against a political subdivision. Local claims are heard in city court, or, depending on the amount, could be heard in the state supreme court. There is no claim bill system. State claims are heard in a special Claims Court.[30]

North Carolina

Claims procedures are the same for municipalities throughout the state, except for different levels of insurance. A municipality is self-insured for the first million dollars of coverage and there may be excess coverage above that. A third party administrator reviews the claims and determines whether they are legitimate and what the costs are. If the city is at fault and the claimant is not agreeable to the settlement offer, the claimant can appeal the decision. The appeals process has three levels and starts with the Risk Manager, then city attorney's office and then the city council. If the claimant is still not satisfied they may sue the city. There are no limits to total payouts in the course of a year. Price Waterhouse is retained as an actuary to determine how much money the city should hold in reserve for claims.[31]

North Dakota

In 1994, the North Dakota Supreme Court

25 Lee, Rosemarie, Assistant City Attorney, Claims Division for the City of Omaha & Mumgaard, Tom, Deputy City Attorney for the City of Omaha, (2013, January 9). Telephone Interview.
26 Campbell, Jack, Risk Manager for the City of Reno, (2013, February 13). Telephone Interview.
27 Ntaplis, Harry, Risk Manager, City of Manchester (2013, February 7). Telephone interview.
28 Kissane, Kathleen, Account manager for Qual-Lynx, a third party claims administrator (2013, February 28). Telephone Interview.
29 Ennen, Peter, Risk Manager, City of Albuquerque (2013, January 14). Telephone Interview.
30 Eichner, Jeffrey, Municipal Attorney, City of Rochester (2013, February 19). Telephone Interview.
31 Paren, Dennis, Risk Manager, City of Raleigh (2012, December 27). Telephone interview.

abolished the concept of sovereign Immunity and the legislature put in statutes with regard to governmental liability and the claims process. An individual has three years to file a claim with the City Attorney's office that looks at it and passes it on to their insurer, the not-for-profit North Dakota Insurance Reserve Fund (NDIRF). NDIRF oversees nearly all of the state's political subdivisions, which includes cities, counties, townships, park districts, school districts, and water resource districts. The statutory liability is $250,000 per individual and $500,000 per occurrence. The pool level of coverage, or policy limit, is $2,000,000. It would be used for awards in excess of the statutory liability. There is no limit to the number of claims that can be paid in the course of a year. North Dakota has the "Judgment Levy" so if there was a huge judgment against a city it would have the ability to issue a bond and/or raise property taxes to pay the judgment.[32]

Ohio

In Ohio, the political subdivision responds to claims by sending a claims packet asking for information on the claim. Insurance the benefits must be disclosed to the court, and the amount of the benefits shall be deducted from any award recovered by the claimant. If city police or fire is on an emergency CALL, they are immune from liability. There is a limit of $250,000 in negligence situations for actual damages, but that amount can be exceeded and a political entity may be liable for any amount a jury may award. Damages and settlements come out of city's General Fund (from income taxes collected at city level). In Columbus and some other cities, there is a process somewhat similar to the state legislative claims process in Florida, but on the city level. The Claims Division has authority to settle a claim of up to $20,000. Claims over $20,000 must go to the city council which decides whether that amount of money should be paid to settle that claim.[33]

Oklahoma

All Oklahoma cities adhere to state statute 51 OS 151. Within one year of the occurrence a person must file a notice of tort claim and the city has 90 days to investigate it in which the person can't file a lawsuit. After 90 days if not approved, it is deemed denied and the person has 180 days to file a lawsuit. The most the city can be liable for is $175,000 per person, $1 million per occurrence and $25,000 for property damage. The only difference is civil rights cases in which liability is based on a violation of the U.S. constitution because the governmental tort claims act doesn't apply to the federal civil rights claims.[34]

Oregon

In Oregon, the law sets limits for local claims at $600,000 per person and $1.2 million per occurrence. The law provides for increases each year on July 1 through 2015, peaking at $666,700/$1,333,300 in 2015. These limits apply to all of the state's cities. The larger cities tend to be self-insured, while the smaller cities belong to an insurance pool. The caps apply regardless of how much a jury might award.[35]

Pennsylvania

In Pennsylvania, a state statute covers local agencies (cities, school districts, etc.) with regard to claims. A person has six months in which to file a claim and the Risk Management Unit does the investigation and determines whether to dismiss or settle the claim. All claims are handled by city attorneys. Claims below $50,000 go to compulsory arbitration and are heard before a three-attorney panel. If either side objects to the decision there is an appeal period and an actual jury trial would take place. Claims above $50,000 are put on a trial track and usually take place within two years. In Pennsylvania there is a $500,000 cap on damages per incident, regardless of the number of claimants involved.[36]

32 Whitman, Charlie, City Attorney, City of Bismarck (2013, January 10). Telephone Interview

33 Weidman, Nancy L., Section Chief, Claims Division of City Attorney's Office, City of Columbus (2013, February 6, 2013). Telephone Interview.

34 Smith, Richard, Litigation Division Head, City Attorney's Office, City of Oklahoma City (2013, January 8). Telephone Interview.

35 Stairiker, Mark, Risk Manager, City of Portland (2013, February 1). Telephone Interview.

36 Prajzner, Norman, Chief Deputy of the Law Department of the City of Philadelphia (2013, January 15). Telephone Interview.

Rhode Island

A person files a claim with the city clerk's office where it's recorded and presented to the city council. If the person doesn't receive satisfaction within 40 days they're free to file suit. Under state statute (Chapter 45), the statutory limit is $100,000 per person, regardless of how many individuals may be involved in an incident. Voters recently voted to keep the limit at $100,000. The money comes from city revenues.[37]

South Carolina

City claim bills in South Carolina are governed by South Carolina state law—the Tort Claims Act—which states a person must file a verified claim in writing with the public entity within two years of the incident. The Insurance Reserve Fund is the insurance company for all of the state's municipalities. The city files claims with the Insurance Reserve Fund which investigates and makes determinations on claims over $250. Anything under $250, is considered a small claim and the municipality investigates and determines whether or not there is liability and if so, they are responsible for payment. If the city rejects a citizen's small claim, that person can ask for a review by a small claims committee or they can file in small claims court. On the larger claims, the Insurance Reserve Fund pays out the rest, or if they choose to litigate, the insurer would assign an attorney to represent the city. State law sets tort limits at $300,000 per person and $600,000 per incident. The only way a person could get more is if there was gross negligence involved. In that case the responsibility to the insurer would be capped at $300,000/$600,000 and the rest would come out of the municipality. There is a time frame of 180 days for the city or insurance reserve fund has to respond to a claim.[38]

South Dakota

In South Dakota, nearly all cities, counties and municipalities are insured with the South Dakota Public Assurance Alliance pool. It covers liability in a wide number of areas, including even "employee dishonesty." A person has 180 days to file a claim against the city and it goes to the Risk Management office and to the insurance carrier for the city. Limits: General Liability is $1 million per individual and $1 million per individual involved in an occurrence and $2 million aggregate and auto is $1 million and umbrella (excess liability coverage) is $4million.[39]

Tennessee

In Tennessee, cities maintain a Tort Liability Fund, administered by the City Attorney. A Claims manager investigates the claim to determine if the city is liable. If the city is not liable the claim is denied and the person has the right to pursue the claim in state court, subject to a one-year statute of limitations. Under the Tort Liability Act, claims against governmental entities for negligence or other claims that are authorized by the Act are heard only by a judge. There are no jury trials in Tennessee local claim bill cases. If the city is deemed liable, an effort would be made to resolve the claim. The Tennessee Governmental Tort Liability Act specifies when local governments can be held liable. A claim is limited to $300,000 and $700,000 for multiple claims in a single incident. Property damage claims are limited to $100,000.[40]

Texas

Under section 101.023 of the Texas Civil Practice & Remedies Code, liability is limited to $250,000 per individual and $500,000 per occurrence. There is no claim bill system. The Texas Municipal League insures small Texas cities that can't afford to self-insure.[41]

Utah

Utah has the Governmental Immunity Act (Title 63G Chapter 7) which governs limits, who can self-insure and other claim provisions. Claims are investigated and either settled or rejected and then are often litigated. The maximum for property damage from a government entity is $269,700, and for bodily injury to one person the maximum amount of recovery is $674,000, and $2,308,400 person. These limits are adjusted every two years based on the Consumer Price Index. To exceed the cap, a person may petition the legislature and a body composed of representatives of the

37 Mulcahy, Sharon, spokeswoman for the City of Providence (2013, February 12). Telephone Interview.
38 Borden, Janice, Asst. Corporation Counsel, City of Charleston & Cathy McCabe, City Attorney, City of Spartanburg (2012, December 27). Telephone Interviews.
39 L'Esperance, Keith, Risk Manager, City of Rapid City (2013, January 11). Telephone Interview.
40 Fritz, Kenneth, Assistant City Attorney, City of Chattanooga (2012, December 28). Telephone Interview.
41 Major, Cheryl, Claims Investigator, Law Department, City of Austin (2013, February 19). Telephone Interview.

governor's office, the legislature, and attorney general's office. They review the cases and on a case-by-case basis the legislature can increase the amounts that are paid out. This is said to be rarely done.[42]

Vermont

In Vermont, the state allows municipalities to limit their exposure. More than 300 Vermont municipalities are insured through the Vermont League of Cities and Towns Property and Casualty Intermunicipal Fund. Individual municipalities set their own limits for claims.

Some cities, such as Burlington, are authorized by city charter to raise taxes in an emergency situation, without authorization by the voters, to raise funds to cover the emergency.[43]

Virginia

A person has six months to pursue a claim against a town or municipal corporation by sending a letter to the city attorney, mayor or chief executive officer. If the city is self-insured, it has an in-house risk management staff which uses a third party contractor that investigates the claim and once they obtain all the information (usually within 30 days) they make a recommendation to the risk management staff which decides whether they agree. The claim is then denied or accepted and paid. There is no cap on liability for municipalities or cities. Cities in Virginia are either self-insured, or contract out private insurance.[44]

Washington

In Washington, there are no state statutory limits for claims filed against political subdivisions. There is a three year statute of limitations for filing claims and a mandatory sixty day waiting period before filing a suit. Although the state doesn't set limits on liability, the individual cities may do so. Most of the smaller political subdivisions in Washington belong to the insurance pool known as the Washington Cities Insurance Authority. There is no claim bill equivalent in Washington, which is a comparative negligence state, meaning a person may be anywhere from zero percent at fault to 100% at fault. Additionally, no punitive damages may be filed against political subdivisions.[45]

West Virginia

There are no limits on economic damages and non-economic damages are capped at $500,000. There is no claim bill system at the local level, but at the state level a Court of Claims hears claims against the state for monetary damages and awards are made subject to final approval by the legislature.[46]

Wisconsin

Under state statute, local liability in all Wisconsin political subdivisions is set at $50,000, except in the case of motor vehicle in which the cap is $250,000. All claims must be filed with city clerk. Some cities belong to insurance pool.[47]

Wyoming

The Wyoming Governmental Claims Act sets forth the claims procedures and limitations period applicable to money damage claims for all entities in the state. The claimant has two years to present notice of a claim and once that claim is filed, the claimant has one year in which to file suit. Tort limits are set at $250,000 per person and $500,000 per occurrence. This limit is fixed across the state. Cities across Wyoming vary in how they how they deal with claims, but all are bound by the state statutes. Many cities use a risk retention pool or the Local Government Liability Pool.[48]

42 Rowley, Jeff, City Risk Manager, City of Salt Lake City (2013, February 8). Telephone interview.
43 Bergman, Gene, Assistant City Attorney, City of Burlington (2031, January 17). Telephone Interview.
44 McAndrews, George, Assistant City Attorney, City of Alexandria (2013, January 7). Telephone Interview.
45 Quiggle, Dee, Claims Manager for the City of Seattle (2013, February 11). Telephone Interview.
46 Burton, Brent, Assistant City Attorney for the City of Morgantown (2013, February 20). Telephone Interview.
47 Bentley, Kay, Administrative Services Supervisor, Risk Management Division, City of Madison (2013, February 12). Telephone Interview & Veum, Eric, Risk Manager for City of Madison, (2013, February 13). Telephone Interview.
48 Barr, Reed, Risk Manager for City of Casper (2013, January 11) Telephone Interview.

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