CUA-06 SOVEREIGN IMMUNITY—COMMUNITY TRANSPORTATION COORDINATORS

STAFF ANALYSIS

PROPOSAL INFORMATION			
SUBMITTING COUNTY:	Marion County		
SPONSOR CONTACT:	Matt Cretul, Legislative Manager; matthew.cretul@marionfl.org; (352) 817-3139		
FAC COMMITTEE:	Community & Urban Affairs	**CROSS-CLAIMS:**	None identified
FAC STAFF:	J. Scala	**DATE:**	September 22, 2026

This staff analysis is based on the proposal as submitted and does not reflect an adopted position of the Florida Association of Counties.

POLICY PROPOSAL:

FAC supports legislation that would clarify 768.28 F.S. to allow sovereign immunity caps to extend to state-designated Community Transportation Coordinators when operating public transportation.

I. SUMMARY:

Marion County asks FAC to support amending s. 768.28, F.S., so that state-designated Community Transportation Coordinators (CTCs) operating public transit fall within the statute's sovereign immunity caps.

Section 768.28 does not name CTCs, but the Attorney General has twice opined (AGO 99-05; AGO 2003-21) that nongovernmental CTCs already qualify as instrumentalities of the state, a conclusion resting on advisory opinions and a case-by-case control test rather than statute. Marion's submission is similar to a 2026 vehicle, CS/SB 828 (Leek), that cleared one Senate committee 6–2 and died, but narrows the class to nonprofit CTCs and adds a gross-negligence standard found in no existing agent paragraph.

The proposal reaches roughly 25 predominantly rural counties served by nonprofit CTCs, imposes no county cost or mandate, and is protective of home rule.

II. PRESENT SITUATION:

Article X, s. 13, Fla. Const., permits waiver of sovereign immunity by general law; s. 768.28(1), F.S., waives it for tort claims against "state agencies or subdivisions." Payment of any claim or judgment is capped at $200,000 per person and $300,000 per incident, with any excess payable only by claim bill (s. 768.28(5)(a)). The caps date to ch. 2010-26, Laws of Fla.; the 2026 increase (HB 145) was vetoed.

Private entities reach the statute two ways. Under s. 768.28(2), “corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities” are themselves state agencies or subdivisions; the question turns, entity by entity, on governmental control over day-to-day operations (Shands Teaching Hosp. v. Lee, 478 So. 2d 77 (Fla. 1st DCA 1985); Keck v. Eminisor, 104 So. 3d 359 (Fla. 2012)). Under subsections (10)–(12), the Legislature designates enumerated private contractors agents of the state or a named agency. An agent may not be named or held personally liable for acts within the scope of its function absent bad faith, malicious purpose, or wanton and willful disregard; the exclusive remedy is a capped action against the governmental entity (s. 768.28(9)(a)).

The Transportation Disadvantaged (TD) program (ch. 427, pt. I) is administered by the Commission for the Transportation Disadvantaged, housed in FDOT but functionally independent, with two county managers or administrators among its 11 members (s. 427.012). The local planning agency recommends one CTC per service area, subject to Commission approval (ss. 427.013(11), 427.015(2)); the CTC bears “full responsibility for the delivery of transportation services for the transportation disadvantaged” (s. 427.0155(8)). Staff’s tabulation of the Commission’s current designation list shows private nonprofit CTCs in approximately 25 counties, predominantly rural and fiscally constrained; one for-profit CTC (MV Transportation, Alachua); and governmental CTCs in roughly 40 (two designations, Escambia and Jackson, remain unconfirmed by organization type). Marion Senior Services, Inc. (MSS) is Marion’s CTC.

Under s. 427.013(9)(b), Commission rule requires every CTC to ensure liability insurance of at least $200,000 per person and $300,000 per incident, “which are comparable to section 768.28(5), F.S., limits,” and to “indemnify and hold harmless the Local, State, and Federal governments and their entities, departments, and the Commission” for liabilities arising from CTC or operator negligence (Rule 41-2.006(1), F.A.C.). No statute or rule addresses a nongovernmental CTC’s own s. 768.28 status. The Attorney General has twice answered that question for the Commission. AGO 99-05 (Feb. 5, 1999) concluded that nongovernmental CTCs, for-profit or nonprofit, exercising ch. 427, pt. I, powers are “acting primarily as an instrumentality of the state” and may claim s. 768.28 protection; AGO 2003-21 (May 12, 2003) reaffirmed that conclusion and declined to extend it to a CTC’s subcontracted operators. The opinions are advisory; no statute or reported appellate decision confirms a CTC’s status, and they address ch. 427 duties rather than a CTC’s general-public fixed-route service. The submission states that MSS “does not enjoy the protection of §768.28”; the Attorney General has taken the contrary view, and MSS’s actual exposure depends on how a court would apply the control test to its agreements and operations.

III. EFFECT OF THE PROPOSAL:

The proposal adds paragraph (m) to s. 768.28(10) making a not-for-profit entity operating as a state-designated CTC an agent of the state while providing public transit services within the scope of its contract or rule, with “public transit” defined by s. 341.031(6) (privately owned systems and paratransit included) and “gross negligence”

by s. 768.72(2)(b). Under s. 768.28(9)(a), a covered CTC could not be named or held liable for ordinary negligence; the exclusive remedy would run against the governmental principal, capped at $200,000/$300,000, with the excess payable only by claim bill. For the covered class this replaces the entity-by-entity control test with a statutory designation, but through the subsection (10) agent route, under which the state becomes the defendant and the CTC's exposure runs through indemnification, rather than the subsection (2) instrumentality route of AGO 99-05, under which the CTC is itself the capped defendant.

A drafted vehicle exists. CS/SB 828 (2026) would have deemed "a contractor or any of its employees or agents providing public transit services under a contract with a state agency or subdivision" an agent of the state "while acting within the scope of and pursuant to guidelines established in such contract or by rule," defining "public transit" by s. 341.031(6); similar HB 581 (2026) placed its language at (10)(m). Marion's draft tracks the Senate committee substitute but diverges in four respects that are committee decisions or drafting items, not conclusions:

- Class. Nonprofit CTCs only — excluding the one for-profit CTC (Alachua), subcontracted operators (consistent with the Senate substitute and AGO 2003-21), and private operators counties contract with directly for fixed-route or ADA paratransit service, all of which the 2026 vehicle reached. Options: as submitted, all nongovernmental CTCs, or the 2026 class.
- Liability standard. The sentence limiting CTC liability to gross or culpable negligence has no counterpart in subsections (10)–(12), which cap recovery without changing the negligence standard, and overlaps the s. 768.28(9)(a) shield; two thresholds for one entity invite competing readings, and the "culpably negligent" definition largely duplicates the gross-negligence definition already incorporated. Options: retain, or conform to the subsection (10) pattern.
- Principal and indemnification. The draft names "the state" but not the agency against which the exclusive remedy runs (the Commission, FDOT, or a purchasing agency), and omits the indemnification clause found in every contractor paragraph but (10)(d); Rule 41-2.006(1) requires indemnification by rule; a statutory clause would fix it independent of rulemaking.
- Covered activity and antecedent. "Such contract" has no antecedent; the Commission memorandum of agreement (s. 427.0155(6)) or a local funding agreement should be named. Because s. 341.031(6) "public transit" is broader than the coordinated TD system, the draft covers a CTC's general-public fixed-route service, which the Attorney General opinions did not address.

IV. COUNTY IMPACT:

- Must do: nothing; no duty, report, or cost is imposed on any local government.
- May do: counties funding a nonprofit CTC through local match or service contracts may continue to rely on it where uncapped exposure would otherwise threaten its viability, as the submission describes. Governmental CTCs already hold s. 768.28 protection and are unaffected.

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- Can no longer do: not applicable to counties; residents injured by a covered CTC's ordinary negligence would have recovery capped at $200,000/$300,000 absent a claim bill.
- Must prepare for: drafting that keeps county exposure unchanged. Because the draft names the state as principal, counties would not become the entity against which the exclusive remedy runs; the filed version of SB 828 (2026) instead made contractors agents of the "state, agency, or subdivision for which they provide public transit services," placing county-contracted operators' capped liability on the contracting county.
- Scope: effectively a class — the approximately 25 predominantly rural, fiscally constrained counties whose CTC is a private nonprofit, Marion the most populous among them. No preemption; county authority is unchanged.

Protective of Home Rule: Yes — no preemption or duty is imposed on counties, the local CTC recommendation and funding role is intact, and the proposal supports continuity of a county-supported safety-net service.

V. FISCAL IMPACT:

- No effect on county or state revenues.
- County expenditures: none direct. A county providing local match to a nonprofit CTC could avoid the cost of replacement service if the CTC discontinued operations, as the submission posits for MSS; the Impact Statement is "N/A," and MSS's coverage limits and premiums are not in the record.
- State expenditures: as nominal defendant the state could incur defense costs and capped judgments, shifted back to the CTC and its insurer by Rule 41-2.006(1) or a statutory indemnification clause; Senate staff found all fiscal effects of CS/SB 828 (2026) indeterminate.
- Injured parties: recovery for ordinary negligence limited to the caps absent a claim bill, a negative effect the Senate analysis identified.

Unfunded Mandate (Art. VII, s. 18, Fla. Const.): No — the proposal requires no county or municipal expenditure or action and reduces no local revenue-raising authority; it imposes no mandate on municipalities or other counties.

VI. LEGISLATIVE & FAC HISTORY:

- 2026: CS/SB 828 (Leek) was reported favorably by Senate Transportation, 6–2 (Feb. 10), and died in Judiciary at sine die (Mar. 13); similar HB 581 (Busatta) died unheard in the House Civil Justice & Claims Subcommittee. The submission cites neither.
- 2026 caps: HB 145 (McFarland) passed the House 104–7, was amended in the Senate to $350,000/$500,000 and passed 36–0, passed the House as amended 108–1, and was vetoed June 30, 2026; a 2025 predecessor (CS/HB 301) passed the House and died in the Senate.
- Trajectory: the transit-contractor concept is one session old, drew one hearing with two dissents, and was not heard in the House.

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- Enacted precedent: South Florida Rail Corridor operators under SFRTA or FDOT contract (s. 768.28(10)(d)) and FDOT construction inspection firms, with an express motor-vehicle-accident exclusion ((10)(e)), are the transportation contractors already designated state agents.
- Past FAC statements: none located in the 2024–25 or 2026 Legislative Action Plans on sovereign immunity or transportation disadvantaged services.
- *[Confirm against the SharePoint statements index — Year—PP—Title.]*
- Guiding Principles (draft consolidated set): Community & Urban Affairs, Transportation A supports “state transportation funding and authority” that “reach every mode within the state and local system”; Health, Safety & Justice, Human Services B names “transportation disadvantaged services” among county-supported safety-net programs and “opposes policies that shift health and human service costs or responsibilities to counties.” No principle addresses tort liability.
- *[Confirm GP citations against the adopted 2026–27 set.]*
- BoCC action: the Marion County BoCC has voted to support the proposal, as stated in the submission.

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