ASSESSMENT OF THE LIKELY ECONOMIC IMPACT OF HB 1/SB 484: PART II

LOSS OF SOVEREIGN IMMUNITY FOR LOCAL GOVERNMENTS

REPORT BY:
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Introduction

This study presents an assessment of the likely economic impact to Floridians were the legislation presented in HB1/SB484 (now PCS for HB1) to become law. The bill is far-ranging in its impacts, and the following paragraphs lay out the likely effects of the loss of sovereign immunity and the loss of budget control for local governments proposed in the bill. A previous analysis presented the fiscal impacts of new and expanded criminal offenses. However, the likely economic impacts of the bill, if passed, are not limited to these costs and will include substantial costs to taxpayers via increased incarceration expense and to protesters due to expanded definitions of public disorder and to increased criminal sentences for such activities. For example, the proposed exemption from civil liability for counter-protesters provides a perverse incentive that will likely encourage property damage during public protests.

The following analysis and opinions are the responsibility of Rick Harper, Ph.D. and do not necessarily represent the opinions of the project sponsor.[1]

Executive Summary

If implemented, the law will provide a waiver of sovereign immunity for tort claims arising from a riot or unlawful assembly if the governing body of a municipality interferes with law enforcement's ability to provide reasonable police protection. Further, the bill creates a process by which the state attorney of the judicial circuit in which a municipality is located, or an objecting member of the municipality's governing body may appeal a funding reduction to the operating budget of the municipal law enforcement agency to the Administration Commission. As proposed in HB 1/SB 484 and substitute bills, these provisions would have substantial negative impacts on local government authorities' control over their budgets and on their financial risk profiles. These will result in higher budgetary outlays that will need to be financed via higher taxes to residents or via cuts in other valuable public services.

Key Findings

* The waiver of sovereign immunity will shift the risk perspective of local government, encouraging them to ban gatherings more aggressively since the gain to local budgets from bed taxes and local option sales tax revenue could be more than wiped out by an expensive personal injury or property damage claim.

* Even as Florida touts the attractiveness to being open for business while other states remain closed due to the pandemic, this bill may well cause increased caution for municipal governments and additional expense to insure against lawsuits.

* These provisions will clearly increase the budget risk to local governments and to taxpayers via their property taxes and other categories of local government revenue. While the changes may have the potential to help hold down homeowners and business property insurance due to less risk of damage as municipal governments either shut down large gatherings, or require gatherings to be privately insured, or implement more intensive policing. Such benefits may come at the expense of the volume of tourism activities, and thus to Florida businesses' ability to create jobs for Florida residents.

* The reduced ability to control law enforcement budget provisions may be costly. Florida has been able to cut state and local spending on police by 2.1 percent in the 2008 – 2017 period at the same time as such spending increased

by 5.1 percent nationally. This spending reduction is put at risk by the law enforcement spending provisions of the new bill.

* The unlimited liability provided by the waiver of sovereign immunity, combined with the much greater ease of challenging any proposed decrease in law enforcement budgets, has the risk of driving local government spending and law enforcement spending ever higher.

Changes to municipal budgeting and administrative authority

Currently, sovereign immunity caps damages owed by local government entities to any one person at $200,000 or $300,000.[2] The proposed changes mean that local governments, if found to have intentionally obstructed or interfered with the ability of the municipal law enforcement agency to provide reasonable protection during a riot or unlawful assembly, would be civilly liable for unlimited damages, including punitive damages, arising from personal injury, wrongful death, or property damage proximately caused by the agency's failure to provide reasonable law enforcement protection.

Currently, municipalities have broad discretion in setting their own local budgets based on the specific needs of their communities. Each municipality has its own budgeting process and procedures for its elected officials regarding preparing, presenting, and ultimately approving a proposed budget. The proposed law would create an appeal process for any reductions in law enforcement funding thereby removing authority from the elected local officials to determine their own budget needs and instead empower the Governor's Executive Office to make the ultimate determination. This decision would not be reviewable by local officials, and thus would encourage challenges to local budget authority and create perverse incentives for local governments to provide potentially unnecessary funding for law enforcement in order to avoid appeals.

Taken together, the encouragement offered for the appeal of any law enforcement budget cut, along with the waiver of sovereign immunity in activities related to riots or unlawful assemblies, will shift the risk perspective of local government. Today, in some jurisdictions, local governments will not allow special events to occur unless the sponsoring group provides a certificate of insurance and a hold harmless agreement to protect the municipality from lawsuits.[3] The proposed law would increase that tendency. However, some gatherings may not be amenable to insurance purchases.

While legislative leaders state that the intent of the bill is to quell violent political protest and protect communities while allowing peaceful political protest, the bill's overly broad definitions will likely generate unintended consequences. With a new definition of "riot" as pertaining to anyone who participates in a public gathering involving three or more people that turns violent, it seems clear that the raucous 2021 Miami Beach Spring Break gatherings would meet that definition. The plaintiff's bar would be quick to remind business and property owners that they are able to sue local government for any and all property damage that might have been prevented by more aggressive regulation and policing. While Floridians unanimously agree that peaceful spring break celebrations would be a good thing for tourism and revenue purposes, the changed risk calculus would tell local governments to ban the gatherings entirely since the gain to local budgets from bed taxes and local option sales tax revenue could be more than wiped out by an expensive personal injury claim.

Waiver of sovereign immunity

Shifting liability onto local government will clearly increase their cost of insurance and may lower their bond ratings, thus increasing their cost of borrowing. Ample evidence suggests that increased financial risk, such as that which would come with elimination of the $200,000 cap on damages expenditures to be paid in any single incident, will result in deterioration in bond ratings.[4]

At least some of the cost of rioting or civil commotion is typically covered by homeowners and business property insurance policies. However, much of the damage experienced during protests cannot be recovered from individual protesters, and those expenses must thus be shared across insurance ratepayers and insurance company shareholders. The proposed new policy will over time shift those types of expenses off Florida insurance ratepayers and onto Florida's taxpayers.

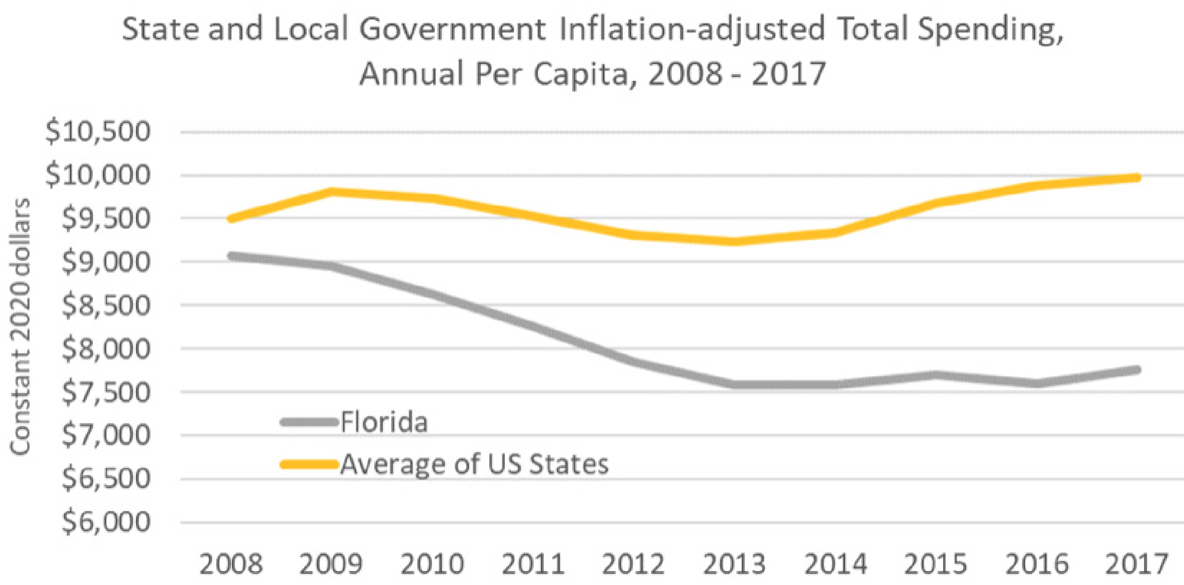
To avoid financial risk, County Commissioners and City Councils will ensure that law enforcement budgets and public policy shifts toward prevention of public gatherings of any type, as any type of violence between three or more people could be termed a riot, and any subsequent claims for damages could be pursued against the municipal authority. Local governments, recognizing their potential liability exposure, will reconsider the value of welcoming spring break crowds, Super Bowl tailgaters, Bike Week crowds, and Mardi Gras street festivals. Even as Florida touts the attractiveness to being open for business while other states remain closed due to the pandemic, this bill may well cause increased caution for municipal governments and additional expense to insure against lawsuits.

These provisions will clearly increase the budget risk to local governments and to taxpayers via their property taxes and other categories of local government revenue. On the benefit side, the change may have the potential to help hold down homeowners and business property insurance due to less risk of damage as municipal governments either shut down large gatherings, or require gatherings to be privately insured, or implement more intensive policing. Such benefits may come at the expense of the volume of tourism activities, and thus to Florida businesses' ability to create jobs for Florida residents.

Deterioration in Florida's hard-won fiscal gains

The Florida legislature has worked successfully to bring the taxpayer burden of financing state and local expenditures down in recent years. In 2008, 27 of the 50 states that had lower per capita expenditures on state and local government than Florida.[5] In that year, Florida per capita spending was 4.4 percent lower than the average across all states. However, Florida has made progress in shrinking the size of government. In inflation-adjusted terms, Florida's per capita state and local spending was 14.6 percent lower in 2017 (the most recent data year) than it was at the high-water mark in 2008, while the 50-state national average rose 5 percent over the same period. Florida's per capita 2017 state and local government total spending was also 22.3 percent lower than the 2017 average across all states, with only Idaho, Arizona, Georgia, and Tennessee spending less.

However, per inhabitant state and local spending on police has been consistently higher in Florida than in other states. Florida ranks 8th highest in the most recent year in per capita police expenditures, and this is the only one of the seven budget categories tracked by the Tax Policy Center in which Florida per capita spending is higher than the national average.[6] In 2008, Florida's per capita state and local government spending on police ranked 5th among the 50 states and was 23.8 percent higher than the national average. By

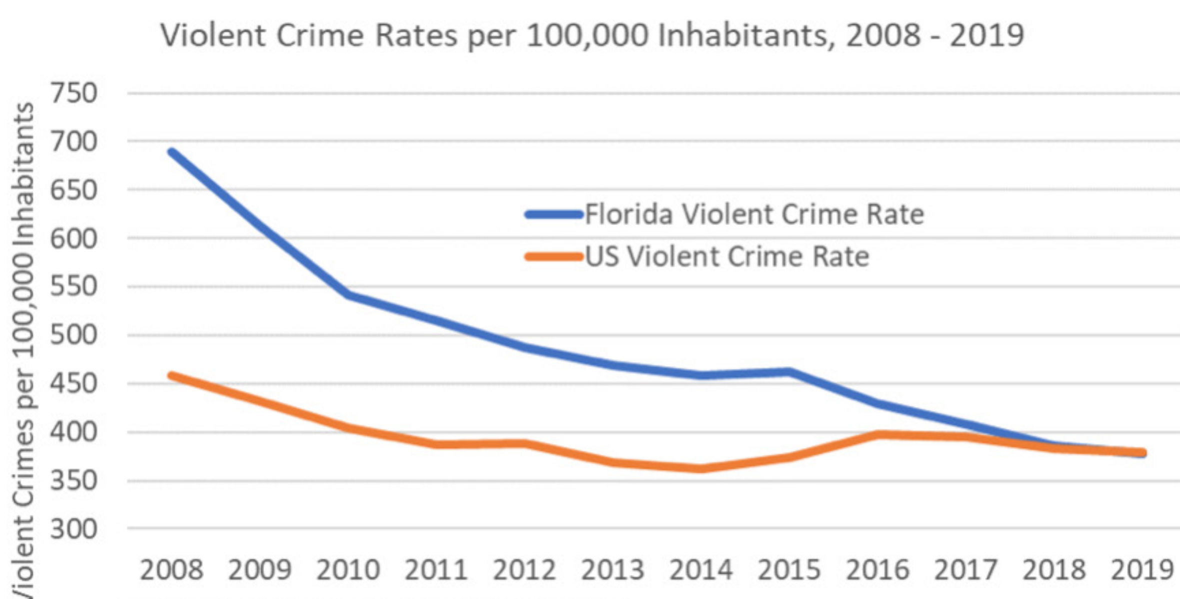


Source: Tax Policy Center (Urban Institute, Brooking Institution), 2020

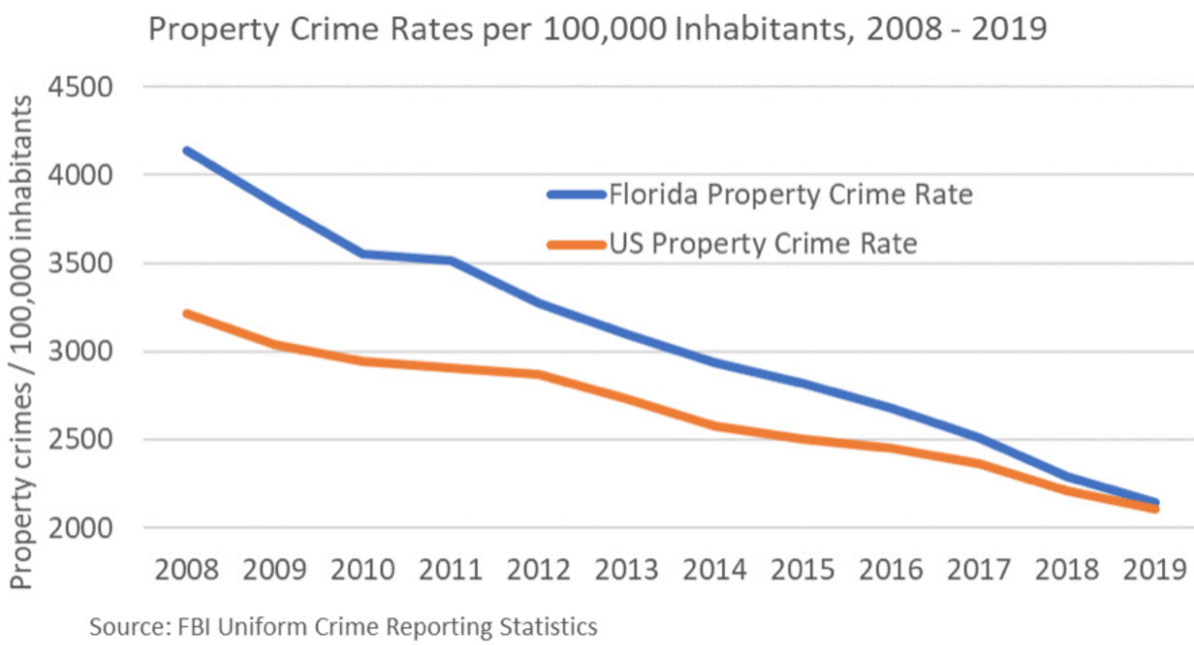
2017, Florida spent only 13.3 percent more than the national average.[7]

This high spending was perhaps necessary 13 years ago. In 2008, Florida' violent crime rate at 688.9 per 100,000 inhabitants was 57.5 percent above the national average (excluding Florida) of 437.4 per 100,000 inhabitants, and Florida at 4,140.8 property crimes per 100,000 inhabitants was 31.5 percent above the national average (excluding Florida) of 3,148.9 per 100,000 inhabitants.[8]

By 2019, however, Florida's violent crime rate had fallen by 45.1 percent, from 688.9 per 100,000 to 378.4 per 100,000. This was much larger than the fall for the U.S. overall (excluding Florida) which fell from 437.4 per 100,000 to 377.9 per 100,000, for a fall of 13.6 percent. Florida's fall in property crimes from



Source: FBI Uniform Crime Reporting Statistics



2008 – 2019 was even more pronounced. While the U.S. property crime rate fell from 3,148.9 per 100,000 inhabitants in 2008 to 2,102 per 100,000 in 2019, or a fall of 33.2 percent, Florida's rate fell from 4,140.8 to 2,145.7 per 100,000 over the same period, or a drop of 48.2 percent. Thus, Florida's violent and property crime rates were 57 percent and 31.5 percent higher, respectively, than the national rates in 2008. By 2019, those differentials had dropped to .1 and 2.1 percent for violent and property crimes, respectively.

The state's substantial improvement in crime statistics combined with lower Florida police spending relative to the national average is what is at risk with HB 1. Inflation-adjusted spending on police by state and local government decreased by 2.1 percent in Florida, while increasing by 5.1 percent across the 50 states. But in Florida, violent crime fell by 45 percent from 2008 - 2019, and property crime by 48 percent. The additional dollars that Floridians will need to allocate to police under the new bill are dollars that could have instead been devoted to uses such as education, where Florida is consistently among the lowest. The unlimited liability provided by the waiver of sovereign immunity, combined with the much greater ease of challenging any proposed decrease in law enforcement budgets, has the risk of driving law enforcement spending ever higher.

Conclusion

Florida spending on law enforcement is already higher than the national average and high relative to every other type of state and local government spending that we do. Crime has fallen dramatically relative to national averages over the last dozen years, and state and local government spending on police has also fallen, albeit somewhat less. It is this beneficial downward spending trend that is at risk with HB 1.[9]

The elimination of the sovereign liability cap would encourage local governments to 1) increase spending on law enforcement and likely reverse this downward trend in per capita law enforcement government spending, and 2) retreat from hosting large-scale gathering events that attract tourism, like spring break festivities and Super Bowl tailgate events. These effects mean that the distribution of costs associated with protests to the State, the taxpayers, and the individuals arrested in connection will change. This is true even though Florida today spends well below the national per-person averages on state and local government services.

Just as Floridians will suffer economic damages as a result due to higher taxes and lower incomes due to the proposed increases in incarceration of HB 1, the bill's sovereign immunity provisions will increase local expenditures on law enforcement while also posing risks to gatherings that are key to Florida's tourism economy.

In summary, economic analysis suggested that loss of sovereign immunity, difficultly of lowering law enforcement spending even as crime rates drop, along with the expanded and upgraded criminality proposed by HB1 and its related bills will be unlikely to achieve a public safety solution that improves the well-being of Floridians. Instead, the bill, if passed and signed into law, will impose costs to the taxpayer and to Floridians generally that far exceed the possible benefits of the increased sanctions. Given Florida's falling crime rate and falling spending on prisons of the past decade and the subsequent benefits to Florida taxpayers, HB 1 appears to be a solution in search of a problem.

About the author

Rick Harper received his BA in Economics from Guilford College in 1978, and an MA in 1986 and a PhD in 1989, both in Economics from Duke University. Rick worked as a professional economist from 1980 – 1984 at Research Triangle Institute in Research Triangle Park, NC, and at the University of West Florida (UWF) from 1989 until retiring in 2017. From 1996 – 2011 (except sabbatical and other time away) he served as Director of UWF's Haas Center for Business Research and Economic Development, conducting numerous studies of the local, regional, and state economies and economic sectors. He served as the Senior Policy Advisor for Economic Affairs for the Florida Senate from 2012 until 2014 and as the economic expert for the State of Florida from inception until completion in its economic damages litigation with BP.

Endnotes

[1] In March 2021, the Florida Campaign for Criminal Justice Reform (CCJR), contracted with Economic Consulting Services, Inc. for an independent assessment of the likely economic impacts of HB 1 /SB 484. This study is the result of that assessment.

[2] F.S. 768.28(5) provides "...Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $300,000." If additional damage amounts were to be awarded, they could not be collected without specific approval of the Florida Legislature via the claims bill process.

[3] https://www.omag.org/news/2020/3/9/special-events-and-use-of-facilities-exposure

[4] See, e.g., George Palumbro and Mark Zaporowski (2012) note "...the existence of tax limits reduces the perception of credit quality while expenditure limits raise credit ratings." We see the waiver of sovereign immunity will function as a removal of expenditure limits. In "Determinants of municipal bond ratings for general-purpose governments: An empirical analysis," Public Budgeting and Finance, Summer 2012, pps 86 – 102.

[5] Per capita spending data for 2004 to 2017 are available from the Tax Policy Center: https://www.taxpolicycenter.org/statistics/state-and-local-general-expenditures-capita.

[6] US Census Bureau, Annual Survey of State and Local Government Finances, 1977 – 2017. Compiled by the Urban-Brookings Tax Policy Center. Washington, DC.

[7] The most recent crime statistics are from the FBI UCR data and are for 2019, while the most recent year for the Tax Policy Center spending data is 2017. Those categories include the violent crimes of murder, nonnegligent manslaughter, rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft. In 2019, Florida less than half a standard deviation away from the mean value in all categories, and a tenth of a standard deviation in overall violent crime, and in property crime.

[8] Crime rates calculated using annual data by state from the FBI Uniform Crime Reporting (UCR) database. See e.g., https://www2.fbi.gov/ucr/cius2008/data/table_05.html

[9] Early evidence suggests that crime rates rose in 2020, but have stayed well below historical averages.