HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 277   Statutes of Limitations
SPONSOR(S): Civil Justice Subcommittee; Goodson
TIED BILLS: None   **IDEN./SIM. BILLS:** SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Billmeier	Bond
2) Government Operations Subcommittee	11 Y, 1 N	Thompson	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

A statute of limitations is a time period after which no legal case can be brought relating to an injury or wrong. Current law provides that the statute of limitations for a wrongful death action against the state or one of its political subdivisions is four years; but, the statute of limitations for a wrongful death action brought against a person is two years.

This bill changes the statute of limitations in a wrongful death action brought against the state or one of its agencies or subdivisions from four years to two years.

This bill does not appear to have a fiscal impact on state or local governments.

The bill is effective July 1, 2011, applying to causes of action accruing on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

<u>Wrongful Death Actions</u>

Sections 768.16-768.26, F.S., comprise the "Florida Wrongful Death Act" ("Wrongful Death Act"). The Wrongful Death Act provides that when a death is caused by negligence, wrongful act, default, or breach of contract, the person responsible is liable for damages.[1] The action may be brought by the decedent's personal representative and recovery is for the benefit of the decedent's estate and survivors.[2] Damages recoverable under the Wrongful Death Act include:

- The person who paid medical and funeral expenses may recover those expenses;
- Each survivor may recover the value of lost support and services;
- Each survivor may recover the value of future support and services;
- A spouse may recover for lost companionship and protection and for mental pain and suffering;
- Minor children, and all children if there is no surviving spouse, may recover for lost companionship, instruction, and guidance and for mental pain and suffering;
- Each parent of a deceased minor child may recover for mental pain and suffering;
- Each parent of a deceased adult child may recover for mental pain and suffering if there are no other survivors; and
- The decedent's estate may recover lost earnings.[3]

<u>Statutes of Limitations</u>

A statute of limitations is a time period after which no legal case can be brought relating to an injury or wrong. Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 30 days to 20 years. Section 95.11(4)(d), F.S., provides that actions for wrongful death must be commenced within two years of the death from when the cause of action accrues.[4] This is usually the date of the decedent's death.

Section 768.28, F.S., provides for tort actions against the state and its subdivisions. Section 768.28(14), F.S., creates special limitations periods for actions against the state and its subdivisions. It provides:

> Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

In *Beard v. Hambrick*, 396 So. 2d 708 (Fla. 1981), the Florida Supreme Court ruled that the four year statute of limitations contained in s. 768.28, F.S., is applicable to actions against political subdivisions of the state rather than the two year statute of limitations relating to wrongful death actions in s. 95.11, F.S.

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[1] *See* s. 768.19, F.S.
[2] *See* s. 768.20, F.S.
[3] *See* s. 768.21, F.S.
[4] Section 95.031, F.S., provides that the statute of limitations begins to run from the time that the cause of action accrues and provides that the cause of action accrues once the last element constituting the cause of action occurs.

Effect of Proposed Changes

This bill provides that the two year statute of limitations at s. 95.11(4), F.S., applies to wrongful death actions brought against the state or one of its agencies or political subdivisions instead of the four year statute of limitations provision contained in s. 768.28, F.S.

This bill takes effect on July 1, 2011, and applies to causes of action accruing on or after that date.

B. SECTION DIRECTORY:

Section 1: Amends s. 768.28, F.S., reducing the time period applicable to actions brought against the state or its agencies or subdivisions for wrongful death, from four to two years.

Section 2: Provides that the bill takes effect July 1, 2011, and shall apply to causes of action accruing on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2011, the Civil Justice Subcommittee adopted an amendment relating to the effective date. The bill was reported favorably as a committee substitute.