

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 472

INTRODUCER: Rules Committee; Appropriations Committee; Governmental Oversight and Accountability Committee; and Senator Brodeur and others

SUBJECT: Suits Against the Government

DATE: February 27, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>
3.	<u>Harmsen</u>	<u>Twogood</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 472 increases the cap on the payment of judgments against government entities from \$200,000 to \$300,000 per individual, and from \$300,000 to \$500,000 per instance. The bill provides for the annual adjustment of the cap to reflect changes in the Consumer Price Index, beginning on July 1, 2029, recalculated every five years thereafter, and is not to exceed three percent for any adjustment.

The bill allows local government entities to settle a claim in any amount without the approval of a claim bill by the Legislature. If a state agency agrees to settle a claim or has a judgment rendered against it, the State agency may pay the amount in excess of the waiver of sovereign immunity and any insurance coverage, only by seeking excess payment from the Legislature through a claim bill.

The bill reduces from 3 years to 18 months the time allotted for pre-suit notice to the state, its agency, or a subdivision thereof, and also reduces the duration that entity has to review the notice from 6 months to 4 months.

The bill removes the statute of limitations and statute of repose for civil actions against state entities where the plaintiff in a sexual battery matter was younger than 16 years old at the time of the injury. The bill also reduces the statute of limitations for a negligence claim against the State, its agency, or a subdivision thereof from 4 years to 2 years.

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments. *See* Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2024, and applies to any claim that accrues on or after this date

II. Present Situation:

Presuit Procedures for a Claim against the Government

Before a claimant files a lawsuit against a government entity, the claimant must present the claim in writing to the government entity within a time period prescribed by law, which is generally 3 years.¹ If the claim is brought against the State, the claimant must also present the claim to the Department of Financial Services (DFS). The government entity generally then has 6-months to review the claim. If the government entity does not dispose of the claim within that 6-month period, the claimant may generally proceed with the lawsuit.²

Sovereign Immunity

Sovereign immunity is “[a] government’s immunity from being sued in its own courts without its consent.”³ The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.⁴

Article X, s. 13 of the Florida Constitution authorizes the Legislature to enact laws that permit suits against the State and its subdivisions, thereby waiving sovereign immunity. Currently, Florida law allows tort lawsuits against the State and its subdivisions⁵ for damages that result from the negligence of government employees acting in the scope of their employment, but limits payment of judgments to \$200,000 per person and \$300,000 per incident.⁶ This liability exists only where a private person would be liable for the same conduct.⁷ Harmed persons who seek to recover amounts in excess of these limits may request that the Legislature enact a claim bill to appropriate the remainder of their court-awarded judgment.⁸ Article VII, s. 1(d) of the State Constitution prohibits funds from being drawn from the State Treasury except in pursuance

¹ *See* s. 768.28(6)(a), F.S.

² *See* s. 768.28(6)(d), F.S.

³ BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴ *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

⁵ Section 768.28(2), F.S., defines “state agencies or subdivisions” to include “executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.”

⁶ Section 768.28, F.S.

⁷ Section 768.28(1), F.S.

⁸ Section 768.28(5)(a), F.S. *See also*, s. 11.066, F.S., which states that state agencies are not required to pay monetary damages under a court’s judgment except pursuant to an appropriation made by law.

of an appropriation made by law. However, local governments and municipalities are not subject to this provision, and therefore may appropriate their local funds according to their processes.

History of Florida Sovereign Immunity Law

Florida has adopted the common law of England as it existed on July 4, 1776.⁹ This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.¹⁰

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV of the 1868 Florida Constitution.¹¹ When the Florida Constitution was amended in 1968, it again expressly authorized the Legislature to waive the State's sovereign immunity under s. 13, Art. X.¹²

Although the first general waiver of the State's sovereign immunity was not adopted until 1969, "one . . . could always petition for legislative relief by means of a claims bill."¹³ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.¹⁴ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.¹⁵

The 1969 Legislature enacted s. 768.15, F.S., the State's first general waiver of sovereign immunity,¹⁶ which expired after one year.¹⁷ In 1973, the Legislature again adopted a law that waived the State's sovereign immunity.¹⁸ The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today.

Under s. 768.28(5), F.S. (1973), the State's ability to pay a tort judgment was limited to \$50,000 per person and \$100,000 per incident. In 1981, the Legislature increased the amount of damages that could be paid to \$100,000 per person and \$200,000 per incident.¹⁹ In 2010, the Legislature increased the limits to \$200,000 per person and \$300,000 per incident.²⁰ Attorney fees have been limited to 25 percent of the proceeds of judgments or settlements since 1979.²¹

⁹ Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.

¹⁰ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

¹¹ FLA. CONST. Art. IV, Section 19 (1868), states: "Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating."

¹² FLA. CONST. Art. X, s. 13 states: "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

¹³ *Cauley*, 403 So. 2d at note 5.

¹⁴ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April 1988).

¹⁵ *Id.*

¹⁶ Chapter 69-116, Laws of Fla.

¹⁷ Chapter 69-357, Laws of Fla.

¹⁸ Chapter 73-313, Laws of Fla.

¹⁹ Chapter 81-317, Laws of Fla.

²⁰ Chapter 2010-26, Laws of Fla.

²¹ Section 768.28(8), F.S.

Statutory Waivers of Sovereign Immunity

Section 768.28(1), F.S., allows tort lawsuits to be filed against the State and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment”²²

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident. Although a court may award a judgment in excess of these statutory limits, a claimant cannot collect more than provided for in statute without passage of a special claim bill passed by the legislature.²³

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment unless the damages result from the employee’s bad faith, malicious purpose, or wanton and willful disregard for human rights, safety, or property.²⁴ A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.²⁵

Damages and Liability Caps

Generally, damages are of two kinds: compensatory and punitive. Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible. They arise from actual and indirect pecuniary loss. Punitive damages are the payment that a defendant is ordered to pay on top of compensatory damages and are often awarded when compensatory damages are deemed insufficient.²⁶ Punitive damages are designed to punish defendants whose conduct is considered grossly negligent or intentional.²⁷ Section 768.28, F.S., does not allow for the recovery of punitive damages, but only for the recovery of compensatory damages.

The liability caps in s. 768.28(5), F.S., of \$200,000 per person and \$300,000 per incident, apply to “all of the elements of the monetary award to a plaintiff against a sovereignly immune entity.” In other words, a plaintiff’s entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S.

²² *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

²³ *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

²⁴ Section 768.28(9)(a), F.S.

²⁵ *Id.*

²⁶ Investopedia.com, *What are Punitive Damages?*, <https://www.investopedia.com/terms/p/punitive-damages.asp#:~:text=Punitive%20damages%20are%20legal%20recompense,considered%20grossly%20negligent%20or%20intentional> (last visited Feb. 14, 2024).

²⁷ *Id.*

Claim Bill Process

“A claim bill is not an action at law, but rather a legislative measure that directs the Chief Financial Officer of Florida, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.”²⁸

Persons who wish to seek the payment of claims in excess of the statutory cap must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master,²⁹ as well as to one or more legislative committees, for review. Senate and House Special Masters typically hold a quasi-judicial, *de novo*³⁰ hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.³¹

The amount awarded by the Legislature in a claim bill is based on the Legislature’s concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.³² “Unlike civil judgments, private relief acts are not obtainable by right upon the claimant’s proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace.”³³

The beneficiary of a claim bill recovers by its enactment, regardless of whether the governmental tortfeasor purchased liability insurance to pay an excess judgment.³⁴ However, where the governmental tortfeasor has liability insurance above the statutory cap, and the claimant receives compensation above that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.³⁵

²⁸ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

²⁹ The Florida Bar defines a Special Master as “adjuncts of the court who exercise limited judicial authority and appointed by the court to perform specific tasks.” The Florida Bar Journal, *Utilizing “Special Masters” in Florida: Unanswered Questions, Practical Considerations, and the Order of Appointment*, Vol. 18, No. 9 (Oct. 2007), p.12, <https://www.floridabar.org/the-florida-bar-journal/utilizing-special-masters-in-florida-unanswered-questions-practical-considerations-and-the-order-of-appointment/> (last visited Feb. 8, 2024). See also, Cornell Law School, Legal Information Institute, *Special Master*, https://www.law.cornell.edu/wex/special_master (last visited Feb. 8, 2024).

³⁰ *De novo* meaning anew; afresh; a second time. BLACK’S LAW DICTIONARY, (8th Ed. 2004), <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf> (last visited Feb. 8, 2024).

³¹ See Fla. Senate R. 4.09(3) (2020-2024). See also, Florida Senate, *Legislative Claim Bill Manual*, 8-10 (Aug. 2023), available at <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf> (last visited Feb. 16, 2023).

³² *Wagner*, 960 So. 2d at 788 (citing Kahn, *Legislative Claim Bills*, Fla. B. Journal (April 1988)).

³³ *United Servs. Auto. Ass’n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

³⁴ *Servs. Auto Ass’n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

³⁵ *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544, 548 (Fla. 4th DCA 2003), citing *Bonvento v. Bd. of Pub. Instruction*, 194 So. 2d 605 (Fla. 1967).

The following table represents the annual summary of all claim bill activity in the Florida Legislature from 2019-2023:

Session Year	Total Claims Filed	Number of Claims that Became Law	Total Dollar Amount Claimed	Total Dollar Amount Paid
2019	19	5	\$30,209,967	\$4,000,000
2020	15	2	\$59,555,928	\$6,650,000
2021	13	2	\$46,099,864	\$2,800,000
2022	18	5	\$43,305,151	\$2,297,500
2023	16	8	\$54,120,900	\$20,112,000

Division of Risk Management

Effect of Insurance Coverage on Damages Cap

A government entity may, without a claim bill, settle a claim against it for an amount above the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.³⁶

Pre-Suit Notice and Statutes of Liability for Claims Against the State

A claimant must provide the State notice of his or her claim within specific notice periods prior to his or her attempt to file a civil action against the State in court.³⁷ Generally, a claimant must give pre-suit notice of his or her intent to institute a claim against the state or one of its agencies within 3 years after the claim accrues.³⁸ However, claims based on a claim on wrongful death must be presented to the State within 2 years after the claim accrues.³⁹ Claims for contribution based on a joint and severable claim made pursuant to s. 768.31, F.S., must be presented within 6 months after either the underlying judgment is made final, a claimant makes a payment based on a settlement, or a claimant takes some other action that constitutes an attempt to discharge the common liability.⁴⁰ The State must make a final determination whether to deny or settle the claim before the claimant may bring a civil action in court—the State must issue this determination within 6 months after its receipt of the claimant’s pre-suit notice, or else the claim is automatically deemed denied, and the claimant may then move forward with a civil action.⁴¹ A shorter, 90-day review period applies to medical malpractice and wrongful death actions; the claimant’s statute of limitations for filing a civil action based on these specific underlying claims is tolled during the State’s review.⁴²

A claimant that seeks damages pursuant to s. 768.28, F.S., must file an action based on the state’s negligent or wrongful act or omission within 4 years after the claim accrues. However, a

³⁶ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

³⁷ Section 768.28(6)(b), F.S.

³⁸ Section 768.28(6)(a), F.S. This pre-suit notice requirement does not apply to claims against a municipality, county, or the Florida Space Authority.

³⁹ Section 768.28(6)(a)2., F.S.

⁴⁰ Section 768.28(6)(a)1., F.S.

⁴¹ Section 768.28(6)(d), F.S.

⁴² *Id.*

separate statute of limitation applies where the claimant seeks contribution for damages or for a matter involving medical malpractice or wrongful death.⁴³

Sexual Battery on a Person Under 16

Section 95.11, F.S., provides statutes of limitation for various types of civil actions. In 2010, the Legislature amended s. 95.11, F.S., to remove any statute of limitations applying to a civil action against a private entity for sexual battery if the victim was under 16 at the time of the crime.⁴⁴ The Legislature provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.⁴⁵

Cost of Florida's Waiver of Sovereign Immunity

The exact cost of the State's waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff's offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver. Information documenting the cost of the sovereign immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to the amount of the sovereign immunity waiver.⁴⁶ The Division also settles and defends tort suits filed against the agencies.

In Fiscal Year 2021-2022, the Division paid \$7,637,712 for the resolution of 2,080 general liability claims.⁴⁷ Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2021-22, the Division paid \$6,691,380 for the resolution of 472 automobile liability claims.⁴⁸

Sovereign Immunity in Other Jurisdictions

At least 27 other state legislatures have placed monetary caps on recovery from actions in tort against their state or political subdivisions:

- Colorado: \$350,000 per person; \$990,000 per occurrence;⁴⁹
- Georgia: One million dollars per person; three million dollars per occurrence;⁵⁰
- Idaho: \$500,000 per occurrence, regardless of the number of people, unless the government is insured above the limit;⁵¹

⁴³ Section 95.11(4), F.S., generally requires a claim based on wrongful death or medical malpractice to be filed within 2 years of the claims accrual.

⁴⁴ Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.

⁴⁵ *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

⁴⁶ Section 284.30, F.S.

⁴⁷ Department of Financial Services, Division of Risk Management, *Fiscal Year 2022 Annual Report*, 8-9 (2022), available at https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2022---final.pdf?sfvrsn=59248690_2 (last visited Feb. 16, 2023).

⁴⁸ *Id.*

⁴⁹ Colo. Rev. Stat. §24-10-114.

⁵⁰ Ga. Code §50-21-29(a)-(b)(1).

⁵¹ Idaho Code §6-926.

- Illinois: \$2,000,000;⁵²
- Indiana: \$700,000 per person; five million dollars per occurrence;⁵³
- Kansas: \$500,000 per occurrence;⁵⁴
- Louisiana: \$500,000 per occurrence;⁵⁵
- Maine: \$400,000 per occurrence;⁵⁶
- Maryland: \$400,000 per person; \$890,000 per occurrence;⁵⁷
- Massachusetts: \$100,000;⁵⁸
- Minnesota: \$500,000 per person; \$1,500,000 per occurrence;⁵⁹
- Mississippi: \$500,000;⁶⁰
- Missouri: \$300,000 per person and two million dollars per occurrence;⁶¹
- Montana: \$750,000 per claim and \$1.5 million per occurrence;⁶²
- New Hampshire: \$475,000 per claimant and \$3.75 million per occurrence;⁶³
- New Mexico: \$200,000 per claim of property damage; \$300,000 per claim of medical expenses; \$400,000 for claims other than property damages or medical expenses; all claims limited to \$750,000 per occurrence;⁶⁴
- North Carolina: one million dollars per occurrence;⁶⁵
- North Dakota: \$375,000 per person; one million dollars per occurrence;⁶⁶
- Oklahoma: \$125,000 per person, with higher limits for specific categories; one million dollars per occurrence;⁶⁷
- Pennsylvania: \$250,000 per person; one million dollars per occurrence;⁶⁸
- Rhode Island: \$100,000;⁶⁹
- South Carolina: \$300,000 per person; \$600,000 per occurrence;⁷⁰
- Tennessee: \$300,000 per person; one million dollars per occurrence;⁷¹
- Texas: \$250,000 per person; \$500,000 per occurrence (\$100,000 per claim of destruction of personal property);⁷²

⁵² Ill. Ann. Stat. ch. 705, §505/8.

⁵³ Ind. Code §34-13-3-4.

⁵⁴ Kan. Stat. Ann. §75-6105.

⁵⁵ La. Rev. Stat. Ann. §13:5106.

⁵⁶ Me. Rev. Stat. Ann. tit. 14, §8105.

⁵⁷ Md. State Government Code Ann. §12-104(a)(2).

⁵⁸ Mass. Gen. Laws Ann. ch. 258, §2.

⁵⁹ Minn. Stat. Ann. §3.736(4).

⁶⁰ Miss. Code Ann. 11-46-15.

⁶¹ Mo. Ann. Stat. §537.610.

⁶² Mont. Code. Ann. §2-9-108.

⁶³ N.H. Rev. Stat. Ann. §541-B:14.

⁶⁴ N.M. Stat. Ann. §41-4-19.

⁶⁵ N.C. Gen. Stat. §143-299.2.

⁶⁶ N.D. Cent. Code S32-12.2-02.

⁶⁷ Okla. Stat. tit. 51, §154.

⁶⁸ Pa. Cons. Stat. Ann. Tit. 42, §8528.

⁶⁹ R.I. Gen. Laws §9-31-2.

⁷⁰ S.C. Code Ann. §15-78-120.

⁷¹ Tenn. Code Ann. §9-8-307.

⁷² Tex. Civ. Prac. & Rem. Code Ann. §101.023.

- Utah: \$233,600 for property damage; \$583,900 for personal injury person; three million dollars per occurrence;⁷³
- Vermont: \$500,000 per person; two million dollars per occurrence; and⁷⁴
- Virginia: \$100,000.⁷⁵

III. Effect of Proposed Changes:

Liability Caps

The bill amends s. 786.28, F.S., to increase the limits of the waiver of sovereign immunity for a claim made against the State and its agencies and subdivisions from \$200,000 to \$300,000 per person, and from \$300,000 to \$500,000 per incident or occurrence. Beginning July 1, 2025, the bill provides for the adjustment of the cap every five years to reflect changes in the Southeast Consumer Price Index or a successor index as calculated by the U.S. Department of Labor. A claim's liability limits will be determined on the date that the claim incident occurred.

Settlement in Excess of Liability Cap

The bill allows a subdivision of the State, but not the State or an agency, to settle a claim in any amount without approval of a claim bill by the Legislature. Under current law, amounts that exceed the sovereign immunity caps may be paid without approval of the Legislature only from the proceeds of an insurance policy.⁷⁶

This provision therefore allows a local government to pay a settled amount in excess of the sovereign immunity caps out of its own coffers, or through its insurance coverage. A state entity, however, is limited in its ability to pay above the sovereign immunity caps by either its insurance policy limit or a legislative appropriation resulting from the claim bill process.⁷⁷

Additionally, the bill prohibits a party from lobbying against any agreed upon settlement brought to the Legislature in the claims bill process and prohibits an insurance company from placing any conditions on the payment of benefits on the enactment of a claim bill.⁷⁸

Pre-suit Notice and Statutes of Limitation

The bill reduces the pre-suit notice timeframe from 3 years to 18 months, therefore requiring that a claimant provide quicker notice to the State, or one of its agencies or subdivisions than required under current law. The bill also reduces the Department of Financial Services' (DFS) or appropriate agency's allotted time to review a claim in the pre-suit notice phase from 6-months

⁷³ Utah Code. Ann. §63G-7-604.

⁷⁴ Vt. Stat. Ann. tit. 12, §5601.

⁷⁵ Va. Code §8.01-195.3.

⁷⁶ "No claims bill is necessary if excess insurance is purchased and the plaintiffs find it necessary to proceed directly against the excess carrier." *Hillsborough Co. v. Star Ins. Co.*, 847 F.3d 1296, 1306 (2017).

⁷⁷ See discussion of FLA. CONST. art. VII, s. 1(d), *infra*.

⁷⁸ This provision will likely prevent inclusion of contractual provisions that bar recovery for claimants pursuant to an insurance policy by, e.g., requiring the claimant to first go through the Legislative Claims Bill process before the insurance policy may be used for payment of a settlement. See, *Martin v. Nat'l. Union Fire Ins. Co. of Pittsburgh, Pa.*, 616 So. 2d 11433, 1145 (Fla. 4th DCA 1993).

to 4-months—during which the statute of limitations is now tolled for all defendants, not just in cases for medical malpractice and wrongful death actions. After the DFS or state agency issues its final disposition of a claim, or a final denial of a claim has occurred, the claimant has the greater of 60 days or the remainder of the period of the applicable statute of limitations to file suit against the appropriate actor.

The bill imposes varied statutes of limitations (barring the action unless commenced within prescribed timeframe), requiring a claimant to file a civil action against the State or an agency or subdivision of as follows:

- For claims based on negligence, within 2 years;
- For claims of sexual battery where the plaintiff was younger than 16 years old at the time of the injury (other than one which would have been time barred on or before July 1, 2010), there is no statute of limitations; and
- For any other claim—within 4 years.

The bill takes effect October 1, 2024, and applies to any claim that accrues on or after this date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article I, s. 10 of the State Constitution prohibits laws that impair the obligations of existing contracts.⁷⁹ Because the bill bars insurance conditioned on the payment of a claim bill, the Legislature should specify that this provision applies to insurance contracts entered into or renewed on or after the effective date of the bill.

⁷⁹ *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1190 (Fla. 2017).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may enable more individuals harmed by a state entity-tortfeasor to receive larger payments without the need to pursue a claim bill. The capacity for a larger reward without a claim bill may incentivize private attorneys to represent such claimants.

C. Government Sector Impact:

The bill has an indeterminate impact to state revenue and expenditures.

The cost to local governments is indeterminate as it relates to its ability to settle claims without regard to any statutory limit on damages under s. 768.28, F.S. However, local governments may experience an increase in expenditures due to settlements, awards, and other legal costs.

By reducing the statute of limitations for suits against the government arising in negligence, the bill may reduce the number of cases initiated and the potential damages sought by claimants from the government. Further, by reducing the pre-suit time period for a government entity or the Department of Financial Services (DFS) to review and dispose of a claim against the State, the bill may affect the pre-suit settlement process.

By increasing the statute of limitations for sexual battery on a victim under 16, the bill may increase the number of claims against the government for such sexual battery. The bill may reduce the workload of the Legislature by reducing the number of claim bills filed but may also reduce the legislative oversight of claims against local government entities.

The DFS estimates, in order to establish and maintain a separate section to process the increased claims and defense attorney billings, the bill will require an additional five positions, with recurring salaries and benefits cost of \$366,455 and nonrecurring costs of \$58,980.⁸⁰ The DFS did not include an estimate for rate associated with the requested positions.⁸¹ The DFS proposes the five positions as follows:⁸²

⁸⁰ Department of Financial Services, *Senate Bill 472 Agency Analysis* at 4 (on file with the Senate Committee on Appropriations).

⁸¹ *Id* at 4.

⁸² *Id* at 4.

DFS – Division of Risk Management Proposed Staffing to Implement SB 472							
Title	Pay Grade	Class Code	Salaries	Benefits	Expenses	TR/DMS	Total
Records Specialist	15	0130	\$35,000	\$21,958	\$11,436	\$360	\$68,754
Risk Management Program Specialist	22	3545	\$46,549	\$24,408	\$11,436	\$360	\$82,753
Risk Management Program Specialist	22	3545	\$46,549	\$24,408	\$11,436	\$360	\$82,753
Risk Management Program Specialist	22	3545	\$46,549	\$24,408	\$11,436	\$360	\$82,753
Risk Management Program Administrator	424	3546	\$75,000	\$31,626	\$11,436	\$360	\$118,422
Total			\$249,647	\$116,808	\$57,180	\$1,800	\$453,435

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 45.061, 110.504, 111.071, 125.01015, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395, 375.251, 381.0056, 393.075, 394.9085, 395.1055, 403.706, 409.175, 409.993, 420.504, 420.507, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 627.7491, 723.0611, 760.11, 766.1115, 766.112, 768.1335, 768.1382, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.351, 1002.37, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on February 26, 2024:

The committee substitute:

- Increases the statutory caps on liability from \$200,000 and \$400,000 per individual/occurrence to \$300,000 and \$500,000, respectively. This is a decrease from the bill’s initial proposed increase of \$400,000 and \$600,000, respectively.
- Makes a technical correction, deleting the word “settled” from line 111.

CS/CS by Appropriations on February 22, 2024:

The committee substitute:

- Restores the home venue provision to current law;
- Establishes determination of liability limits for a claim is based on the limitations of liability in effect when the claim incident occurred versus the date of final judgment; and
- Provides the DFS shall adjust the limitations of liability every 5 years based on the changes in the Consumer Price Index for the Southeast or a successor index, not to exceed three percent.

CS by Governmental Oversight and Accountability on January 29, 2024:

The committee substitute:

- Abolishes the common law doctrine of “home venue privilege” in relation to negligence suits against the State.
- Allows a subdivision of the state, but not the State or an agency, to agree to settle a claim in excess of the sovereign immunity cap, and without regard to insurance coverage limits, without further state action.
- Allows the State or an agency to agree to settle a claim pursuant to the sovereign immunity waiver, and seek excess payment from the Legislature through a claim bill, or up to the maximum limit of its insurance coverage without further legislative action.
- Prohibits a party from lobbying the Legislature to vote against a claims bill that it agreed to settle.
- Sets the date on which a claim’s liability limits are determined as that on which a final judgment is entered.
- Delays the calculation of an adjusted sovereign immunity cap (based on CPI) to July 1, 2029, and requires a recalculation every five years.
- Requires a claimant to file pre-suit notice of a claim with the appropriate agency no later than 18 months, rather than three years, after the claim accrues in order to pursue an action against the State or one of its agencies or subdivisions.
- Reduces from six months to four months the general pre-suit statutory timeframe for a government entity’s review and disposal of a claim.
- Tolls the statute of limitations for all defendants, not just those in medical malpractice and wrongful death actions, for the duration of the Department of Financial Services’ (DFS) or agency’s pre-suit consideration of a claim.
- Provides 60 days or the remainder of the statute of limitations, whichever is greater, from the date on which the DFS or appropriate agency issues a final disposition of a claim or otherwise is deemed to have issued a final denial, for a claimant to file suit.
- Reduces the statute of limitations for filing a claim against a governmental entity for claims based in negligence from four to two years, but maintains the 4-year statute of limitations for “any other action not specified.”
- Removes the statute of limitations for filing a claim against a governmental entity for sexual battery of a victim under the age of 16.
- Changes the effective date to October 1, 2024, and states that it applies to claims that accrue on or after that date.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
